

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 28, 2001

4:50 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

MEMBERS ABSENT

Representative Albert Kookesh

COMMITTEE CALENDAR

SENATE BILL NO. 178

"An Act relating to the detention of delinquent minors and to temporary detention hearings; amending Rule 12, Alaska Delinquency Rules; and providing for an effective date."

- MOVED SB 178 OUT OF COMMITTEE

SENATE BILL NO. 166

"An Act relating to the time of filling by appointment a vacancy in the office of United States senator."

- MOVED SB 166 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."

- MOVED CSHB 184(JUD) OUT OF COMMITTEE

PREVIOUS ACTION

BILL: SB 178

SHORT TITLE:DETENTION OF DELINQUENT MINORS

SPONSOR(S): SENATOR(S) THERRIAULT

Jrn-Date	Jrn-Page		Action
04/06/01	0978	(S)	READ THE FIRST TIME - REFERRALS
04/06/01	0978	(S)	HES, JUD
04/20/01		(S)	HES AT 1:30 PM BUTROVICH 205
04/20/01		(S)	Moved Out of Committee MINUTE(HES)
04/23/01	1213	(S)	HES RPT 4DP
04/23/01	1213	(S)	DP: LEMAN, WILKEN, WARD, DAVIS
04/23/01	1213	(S)	FN1: ZERO(HSS)
04/23/01		(S)	JUD AT 1:30 PM BELTZ 211
04/23/01		(S)	Moved Out of Committee
04/23/01		(S)	MINUTE(JUD)
04/24/01	1236	(S)	JUD RPT 3DP 1NR
04/24/01	1236	(S)	DP: TAYLOR, ELLIS, THERRIAULT;
04/24/01	1236	(S)	NR: COWDERY
04/24/01	1237	(S)	FN1: ZERO(HSS)
04/24/01	1236	(S)	FN2: ZERO(CRT)
04/25/01	1260	(S)	RULES TO CALENDAR 4/25/01
04/25/01	1262	(S)	READ THE SECOND TIME
04/25/01	1262	(S)	ADVANCED TO THIRD READING UNAN CONSENT
04/25/01	1262	(S)	READ THE THIRD TIME SB 178
04/25/01	1263	(S)	PASSED Y20 N-
04/25/01	1263	(S)	COURT RULE(S) SAME AS PASSAGE
04/25/01	1263	(S)	EFFECTIVE DATE(S) SAME AS PASSAGE
04/25/01	1266	(S)	TRANSMITTED TO (H)
04/25/01	1266	(S)	VERSION: SB 178
04/25/01		(S)	RLS AT 10:45 AM FAHRENKAMP 203
04/25/01		(S)	MINUTE(RLS)
04/26/01	1225	(H)	READ THE FIRST TIME - REFERRALS
04/26/01	1225	(H)	JUD
04/28/01		(H)	JUD AT 12:00 PM CAPITOL 120

BILL: SB 166

SHORT TITLE:APPOINTMENT OF US SENATORS

SPONSOR(S): SENATOR(S) DONLEY

Jrn-Date	Jrn-Page		Action
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03/28/01	0839	(S)	READ THE FIRST TIME - REFERRALS
03/28/01	0839	(S)	JUD
04/04/01		(S)	JUD AT 1:30 PM BELTZ 211
04/04/01		(S)	-- Meeting Postponed to 4/5/01--
04/05/01		(S)	JUD AT 1:30 PM BUTROVICH 205
04/05/01		(S)	<Bill Held Over to 4/6/01> -- Meeting Canceled --
04/06/01		(S)	JUD AT 3:00 PM BELTZ 211
04/06/01		(S)	<Bill Held Over to 4/9/01> -- Meeting Canceled --
04/09/01		(S)	JUD AT 4:35 PM BELTZ 211
04/09/01		(S)	Moved Out of Committee - MINUTE(JUD)
04/10/01	1045	(S)	JUD RPT 3DP
04/10/01	1045	(S)	DP: TAYLOR, DONLEY, THERRIAULT
04/10/01		(S)	FIN AT 9:00 AM SENATE FINANCE 532
04/10/01		(S)	<Pending Referral> -- Meeting Canceled --
04/17/01	1114	(S)	FN1: ZERO(GOV)
04/17/01		(S)	RLS AT 10:45 AM FAHRENKAMP 203
04/18/01	1162	(S)	RULES TO CALENDAR 1OR 4/18/01
04/18/01	1164	(S)	READ THE SECOND TIME
04/18/01	1164	(S)	ADVANCED TO 3RD FAILED Y13 N6 E1
04/18/01	1165	(S)	ADVANCED TO THIRD READING 4/19 CALENDAR
04/18/01		(S)	RLS AT 10:45 AM FAHRENKAMP 203
04/18/01		(S)	MINUTE(RLS)
04/19/01	1179	(S)	READ THE THIRD TIME SB 166
04/19/01	1179	(S)	PASSED Y14 N5 E1
04/19/01	1179	(S)	ELLIS NOTICE OF RECONSIDERATION
04/20/01	1197	(S)	RECONSIDERATION NOT TAKEN UP
04/20/01	1198	(S)	TRANSMITTED TO (H)
04/20/01	1198	(S)	VERSION: SB 166
04/23/01	1131	(H)	READ THE FIRST TIME - REFERRALS
04/23/01	1131	(H)	JUD
04/25/01		(H)	JUD AT 1:00 PM CAPITOL 120
04/25/01		(H)	Scheduled But Not Heard
04/28/01		(H)	JUD AT 12:00 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
04/27/01		(H)	Heard & Held
			MINUTE(JUD)
04/28/01		(H)	JUD AT 12:00 PM CAPITOL 120

WITNESS REGISTER

HOLLY MORRIS, Staff
to Senator Gene Therriault
Alaska State Legislature
Capitol Building, Room 121
Juneau, Alaska 99801

POSITION STATEMENT: Presented SB 178 on behalf of the sponsor,
Senator Therriault.

DEBORAH DAVIDSON, Staff
to Senator Dave Donley

Alaska State Legislature
Capitol Building, Room 506
Juneau, Alaska 99801

POSITION STATEMENT: Presented SB 166 on behalf of the sponsor,
Senator Donley.

HEATHER M. NOBREGA, Staff
to Representative Norman Rokeberg
House Judiciary Standing Committee
Alaska State Legislature
Capitol Building, Room 118
Juneau, Alaska 99801

POSITION STATEMENT: During discussion of HB 184, provided
information regarding proposed Conceptual Amendment 4.

BOB LOHR, Director
Division of Insurance
Department of Community & Economic Development (DCED)
3601 C Street, Suite 1324
Anchorage, Alaska 99503-5948

POSITION STATEMENT: During discussion of HB 184 and proposed
amendments, answered questions on behalf of the administration.

KATIE CAMPBELL, Life and Health Actuary
Division of Insurance
Department of Community & Economic Development (DCED)
PO Box 110805
Juneau, Alaska 99811-0805

POSITION STATEMENT: During discussion of HB 184 and proposed
amendments, answered questions on behalf of the administration.

RYNNIEVA MOSS, Staff
to Representative John Coghill
Alaska State Legislature
Capitol Building, Room 102
Juneau, Alaska 99801

POSITION STATEMENT: During discussion of HB 184 and proposed
amendments, responded to a question.

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 and proposed
amendments, responded to questions.

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: During discussion of HB 184 and proposed amendments, responded to questions.

CHARLIE MILLER, Lobbyist
for Alaska National Insurance Company (ANIC)
PO Box 102286
Anchorage, Alaska 99510

POSITION STATEMENT: During discussion of HB 184 and proposed amendments, responded to questions.

ACTION NARRATIVE

TAPE 01-78, SIDE A
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing Committee meeting to order at 4:50 p.m. Representatives Rokeberg, James, Coghill, Meyer, and Berkowitz were present at the call to order. Representative Ogan arrived as the meeting was in progress.

SB 178 - DETENTION OF DELINQUENT MINORS

Number 0080

CHAIR ROKEBERG announced that the first order of business would be SENATE BILL NO. 178, "An Act relating to the detention of delinquent minors and to temporary detention hearings; amending Rule 12, Alaska Delinquency Rules; and providing for an effective date."

Number 0094

HOLLY MORRIS, Staff to Senator Gene Therriault, Alaska State Legislature, sponsor, explained on behalf of Senator Therriault that the Juvenile Justice and Delinquency Prevention Act of 1974 provided federal formula grant funding to implement four mandates that were established in that Act. Those mandates included deinstitutionalization of status offenders; addressing disproportionate minority confinement; sight and sound separation of juveniles from adult offenders; and removing

juveniles from adult jail and lockup facilities. To meet these mandates, a variety of community-based delinquency response services have been established with federal grant funding, including electronic monitoring (EM) programs, youth courts, and mentoring and community accountability courts. Senate Bill 178 brings Alaska statute into compliance with federal regulation by requiring an arraignment within 24 hours if a juvenile cannot be safely transported to a youth facility. This federal regulation also allows the state to extend those time limits due of adverse weather, limited transportation options, and other conditions without being out of compliance with the federal mandate.

MS. MORRIS said current Alaska statute allows a juvenile to be held in an adult lockup facility for a maximum of 24 hours while awaiting transport to one of the six regional youth facilities. Senate Bill 178 does not extend the time limit that a juvenile may be held in an adult lockup facility, nor does it change the 48-hour arraignment rule for juveniles that are already in a youth facility. Basically, she said, SB 178 will apply to the regions of the state that don't have a juvenile facility nearby, and in which the juvenile is taken to an adult lockup facility until he/she can safely be transported to a juvenile facility. This legislation gives Alaska the ability to claim certain exemptions to the federal mandates, and preserves the state's eligibility for 100 percent of the federal formula grant allocation, but it would not allow juveniles to be held in adult facilities any longer than is absolutely necessary.

REPRESENTATIVE MEYER said that SB 178 is a good bill, and noted that without it, Alaska will lose federal funds.

Number 0363

REPRESENTATIVE JAMES moved to report SB 178 out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, SB 178 was reported out of the House Judiciary Standing Committee.

SB 166 - APPOINTMENT OF US SENATORS

Number 0430

CHAIR ROKEBERG announced that the next order of business would be SENATE BILL NO. 166, "An Act relating to the time of filling by appointment a vacancy in the office of United States senator."

Number 0442

DEBORAH DAVIDSON, Staff to Senator Dave Donley, Alaska State Legislature, sponsor, explained on behalf of Senator Donley that SB 166 amends current law to provide a five-day waiting period before the governor "names an appointment" in the event a vacancy occurs in one of Alaska's U.S. Senate seats. The governor must wait at least five days after the date of the vacancy but must still - per current statute - make the appointment within 30 days of the date of the vacancy.

REPRESENTATIVE BERKOWITZ asked whether there is something inadequate with the current method.

MS. DAVIDSON replied that she would not term the current system inadequate, rather that SB 166 simply gives residents of Alaska a longer opportunity to voice their opinion to the governor regarding who should be appointed.

REPRESENTATIVE BERKOWITZ asked whether the sponsor's objective is to encourage public participation in the [political] process.

CHAIR ROKEBERG asked whether under current statute the appointee has to be of the same political party as the person vacating the seat.

MS. DAVIDSON said that the nominee must be a member of the same political party that the predecessor to the office was, at the time [he/she] took office.

REPRESENTATIVE BERKOWITZ said that this current requirement is a result of an amendment made in [1968] - "the 'dead Ted' amendment." At the time, Senator Stevens - a republican - was appointed to "fill the shoes of a democrat," and people did not want that to occur again, he added.

CHAIR ROKEBERG noted that for a vacancy occurring in the Alaska State Legislature, the party nominates three candidates and the governor selects one of them.

MS. DAVIDSON added that at the congressional level, no nomination by the political party occurs; the statute simply says that the person must be a member of the same political party. In response to Representative Berkowitz's question regarding the sponsor's intent, said that it was just to give the public more time for input.

REPRESENTATIVE BERKOWITZ asked whether the sponsor is "on record as saying that the more the public weighs in, the better."

MS. DAVIDSON said yes.

Number 0778

REPRESENTATIVE BERKOWITZ made a motion to adopt Amendment 4 [taken up first], which read [original punctuation provided]:

Page 1, line 1, following "filling":

Delete "**by appointment**"

Page 1, line 4, through page 2, line 3:

Delete all material and insert:

*** Section 1.** AS 15.40.010 is amended to read:

Sec. 15.40.010. Condition [CONDITIONS] and time of calling special election [FILLING VACANCY BY APPOINTMENT]. When a vacancy occurs in the office of United States senator, the governor [, WITHIN 30 DAYS, shall, **by proclamation and subject to AS 15.40.050, call a special election to be held on a date not less than 60 nor more than 90 days after the date the vacancy occurs** [APPOINT A QUALIFIED PERSON TO FILL THE VACANCY]. However, if the [REMAINDER OF THE TERM OF THE PREDECESSOR IN OFFICE WILL EXPIRE OR IF THE] vacancy **occurs on a date that is less than 180 but more than 60 days before the date of the primary election for the office** [WILL BE FILLED BY A SPECIAL ELECTION BEFORE THE SENATE WILL NEXT MEET, CONVENE, OR RECONVENE], the governor may not **call a special election** [FILL THE VACANCY].

*** Sec. 2.** AS 15.40.050 is amended to read:

Sec. 15.40.050. Date of special election. The special election to fill the vacancy shall be held on the date of the first [GENERAL] election, whether primary or general, [WHICH IS HELD MORE THAN THREE FULL CALENDAR MONTHS] after the vacancy occurs **if the vacancy occurs on a date that is less than 180 but more than 60 days before**

(1) a primary election, other than the primary election for the office; or

(2) a general election.

*** Sec. 3.** AS 15.40.060 is amended to read:

Sec. 15.40.060. Proclamation of special election. The governor shall issue the proclamation calling the special election at least **50** [80] days before the election.

* **Sec. 4.** AS 15.40 is amended by adding a new section to read:

Sec. 15.40.075. Date of nominations. Candidates for the special election shall be nominated by petition transmitted to the director before the 21st day after the vacancy occurs by

(1) the actual physical delivery of the petition in person;

(2) mail postmarked not later than midnight of that date; or

(3) telegram of a copy in substance of the statements made in the petition.

* **Sec. 5.** AS 15.40.030, 15.40.040, 15.40.080, and 15.40.090 are repealed.

* **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c)."

REPRESENTATIVE BERKOWITZ explained that Amendment 4 basically provides that:

If we're believing in public participation, then we should allow the people to vote to fill the spot. Now, that's not such a radical concept because that's what we do if [a seat in] the [U.S.] House of Representatives falls open. So I think that what's good for the [U.S.] House of Representatives ought to be good for the [U.S.] Senate. We should have a special election because if we believe the public has the right to weigh in - rather than [having] a governor make an appointment - then let the people vote.

Number 0842

REPRESENTATIVE JAMES objected.

CHAIR ROKEBERG asked whether Amendment 4 would result in a vacancy for a particular period of time.

REPRESENTATIVE BERKOWITZ said yes; it would be same as if there were a vacancy in the [U.S. House of Representatives] - no vacancy would be more than 90 days. With regards to SB 166, Representative Berkowitz posited that the whole point of SB 166 is to prevent Governor Knowles from appointing Senator Frank Murkowski's successor. He said that if the legislature has an opportunity to do something that's based on good public policy rather than expedient politics, then the legislature should

pursue good public policy; he added that Amendment 4 is preferable public policy - just let the people vote.

REPRESENTATIVE JAMES commented that if Representative Berkowitz "was on the other side of this issue, he would be doing the same thing."

REPRESENTATIVE BERKOWITZ said, "That's not true." And when asked how someone would know that it wasn't true, he responded by saying, "Essentially what I'm doing is ... trading the right of a democratic governor to make an appointment [in favor of throwing] the whole thing open to a public vote. I'm conceding some form of partisan power. So that's how you know."

CHAIR ROKEBERG opined that having a vacancy in the [U.S. Senate] for up to 90 days is not advisable, adding that he is considering changing the process for any vacancies which may occur in the [U.S. House of Representatives] as well.

REPRESENTATIVE MEYER asked why Amendment 4 is being offered.

REPRESENTATIVE BERKOWITZ said, "Because I think that when we have a vacancy we should have a special election; that's what we do for [the U.S. House of Representatives], we should do it for Senate."

Number 1044

A roll call vote was taken. Representatives Berkowitz voted for Amendment 4. Representatives Coghill, Meyer, James, and Rokeberg voted against it. Therefore, Amendment 4 failed by a vote of 1-4.

Number 1076

REPRESENTATIVE BERKOWITZ made a motion to adopt Amendment 3 [taken up second], which read [original punctuation provided]:

Page 1, lines 9-13,
Delete all materials

He explained that, "Amendment 3 says, 'If your going to have this waiting period, then we should go back to the way it was before we had the "dead Ted bill," which is [to] allow the sitting governor to appoint ... a person based on their qualifications rather than on their party affiliation."

Number 1095

REPRESENTATIVE JAMES objected.

CHAIR ROKEBERG opined that Amendment 3 is not in the "public interest," and is unfair to the incumbent.

REPRESENTATIVE BERKOWITZ surmised then that partisanship would be the defining trait for an appointee.

CHAIR ROKEBERG remarked, "They're only filling a vacancy."

REPRESENTATIVE BERKOWITZ pointed out that a vacancy could last two years, which is "as long as we sit in un-vacant seats."

Number 1150

A roll call vote was taken. Representatives Berkowitz voted for Amendment 3. Representatives Coghill, Meyer, James, and Rokeberg voted against it. Therefore, Amendment 3 failed by a vote of 1-4.

Number 1170

REPRESENTATIVE BERKOWITZ, after noting that he would not be offering Amendment 2, made a motion to adopt Amendment 1 [taken up last], which read [original punctuation provided]:

Page 1, preceding line 4, insert:

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

FINDINGS AND INTENT: The legislature finds that, in order to ensure the people of Alaska receive the best possible representation in the United States Congress and Alaska's executive branch:

(a) Members of Congress and elected executives should seek election to other offices after completing their current terms.

(b) In the event that Members of Congress and elected executives choose to pursue other offices during their term in office, they should resign their current post to allow a successor to vigorously pursue Alaska's interests."

Re-number following sections accordingly.

REPRESENTATIVE BERKOWITZ said Amendment 1 is a statement of intent:

Because I know, Mr. Chair, that you just said how important it was to make sure that people are paying full attention to their duties when they're either in Congress or filling statewide office in the state, and I think it should be clearly expressed that they oughtn't run for other offices at the same time because it would distract them from their ability to do their duty. We couldn't have a major issue in Congress if, for example, a U.S. Senator were running for governor and distracted by that campaign.

Number 1194

REPRESENTATIVE JAMES objected. She noted that when a congressional issue is serious, members of Congress are focused on that issue and not on their campaigns.

CHAIR ROKEBERG opined that, "It's part of our American political tradition to be able to have what's called the 'free pass' for people to move up in office throughout our systems."

REPRESENTATIVE BERKOWITZ mentioned that Amendment 1 might cure any problems that the governor has with SB 166.

Number 1278

A roll call vote was taken. Representatives Berkowitz voted for Amendment 1. Representatives Meyer, James, Coghill, and Rokeberg voted against it. Therefore, Amendment 1 failed by vote of 1-4.

Number 1310

REPRESENTATIVE JAMES moved to report SB 166 out of committee with individual recommendations and the accompanying fiscal note.

Number 1314

REPRESENTATIVE BERKOWITZ objected. He said:

When we tailor a law in order to suit an individual circumstance, we're doing the public process a disservice. And that's what's happening here. We can pretend that there's efforts to notify the public, but that not really what's going on; what's going on is

the expectation that Frank Murkowski will run for governor, win the governorship, and then have the ability to appoint his own successor. ... I don't think we ought to change the rules just so that can happen. I think it looks like we're creating special legislation in order to benefit one person and one party. ... That doesn't withstand the test of time and it doesn't do us credit. And if I'm wrong, someone look me in eye and tell me that this is not done for that purpose.

CHAIR ROKEBERG said, "You may be right, I don't know."

Number 1392

A roll call vote was taken. Representatives James, Coghill, Meyer, and Rokeberg voted to report SB 166 from committee. Representatives Berkowitz voted against it. Therefore, SB 166 was reported from the House Judiciary Standing Committee by a vote of 4-1.

CHAIR ROKEBERG called an at-ease from 5:14 p.m. to 5:18 p.m.

HB 184 - INSURANCE CODE AMENDMENTS

Number 1431

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), as amended on 4/27/01.]

Number 1442

CHAIR ROKEBERG made a motion to adopt Conceptual Amendment 4, which read [original punctuation provided]:

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

CERTIFICATION OF EFFECTIVE DATE OF REGULATIONS.
The lieutenant governor shall certify to the revisor of statutes the effective date of the regulations

initially adopted by the Director of the Division of Insurance under AS 21.21.420, to implement the provisions of sections __, __, and __ regarding investments by insurers.

*Sec. __. Sections __, __, and __ take effect 30 days after the revisor of statutes receives notice from the lieutenant governor under sec. __ of this Act.

Number 1450

HEATHER M. NOBREGA, Staff to Representative Norman Rokeberg, House Judiciary Standing Committee, Alaska State Legislature, explained that when Amendment 2 was adopted [on 4/27/01], several statutes were repealed since they were going to be replaced by regulations. Conceptual Amendment 4 simply ensures that those statutes remain in effect until the regulations are in place.

Number 1483

CHAIR ROKEBERG asked whether there were any objections to Conceptual Amendment 4. There being no objection, Conceptual Amendment 4 was adopted.

REPRESENTATIVE COGHILL spoke next on Amendment 5, which read [original punctuation provided]:

Page 43, line 15, after "personal information."
Insert: "(a)"

Page 43, line __, after "March 2, 2001"
Delete: "."
Insert: ";"

Page 43, line __
Insert:

(b) unless required by federal or state law or federal regulation, disclosure of a person's personal financial or personal health information under (a) of this section must be authorized in writing by the individual whose personal information is sought to be disclosed;

(c) the person receiving disclosed information agrees in writing not to disclose or use the information other than to carry out the purposes for which the person disclosed the information.

REPRESENTATIVE COGHILL remarked that Amendment 1 - adopted on 4/27/01 - requires that regulations be created that are no less restrictive than the National Conference of Insurance Legislators (NCOIL) Financial Information Privacy Protection Model Act. He said that after reading what this Act entailed, he is not very comfortable with it. He said he would like the committee to either rescind the motion to adopt Amendment 1 or consider adopting Amendment 5 because he wants to ensure that any of the customer's information that is shared and sold between businesses is protected. Although he wants to see businesses flourish, he added, he does not want it to be at the expense of the customer's privacy. He said he has concerns that when companies send out information telling customers that they can "opt out" of sharing information at any time, it will be written in such fine print that customers won't really understand what is going on. He opined that "the floor is too low" in the NCOIL model Act, it allows the industry to share a lot of information, and he has concerns that sensitive information will be traded around inappropriately between companies.

CHAIR ROKEBERG said he and other members of the House Labor and Commerce Standing Committee share the concern that information might be inappropriately disclosed. He remarked, however, that the NCOIL model is "opt in" with regard to health information.

REPRESENTATIVE COGHILL said, "They are an 'opt out' provision, Mr. Chairman."

Number 1687

BOB LOHR, Director, Division of Insurance, Department of Community & Economic Development (DCED), testified via teleconference and clarified that the NCOIL model, as well as the NAIC (National Association of Insurance Commissioners) model both use "opt in" for health information. He added that Amendment 1 stipulates that in promulgating regulations, the Division of Insurance can go no lower than an "opt in" standard for health information and if it wanted to, the division could go higher than that standard with regard to protecting the privacy of health information.

Number 1857

KATIE CAMPBELL, Life and Health Actuary, Division of Insurance, Department of Community & Economic Development (DCED), added

that Chapter 5 of the NCOIL model pertains to health information, and that the General Rule reads: "A licensee shall obtain an authorization to disclose, prior to making such disclosure, any personally identifiable health information if the purpose of the disclosure is for the marketing of services or goods for personal, family, or household purposes." This is the "opt in" language for health information, she said. She explained, however, that the NCOIL model has an "opt out" standard for financial information, which, according to her understanding, is fairly consistent with the Gramm-Leach-Bliley Act (GLBA), and which is what national banks and other financial institutions are subject to.

REPRESENTATIVE COGHILL said he still struggles with the concept of an "opt out" standard for financial information. He said he considers it to be a significantly lower standard [of privacy] because he has to specifically tell the company that it may not share his financial information.

CHAIR ROKEBERG noted that before GLBA "there [were] no requirements one way or the other." With enactment of the federal GLBA, the "opt out" provisions start taking effect federally. He said that the question before them now is how Alaska will handle its domestic banks and insurers.

We have to be very careful what we do here; it not only affects our nine domestic insurers that are domiciled in Alaska, it affects all the insurance companies, nationally, that do business in this state. We have to be careful ... that we don't create special barriers by adopting some unusual regulation and/or statute that hinders the flow of business and commerce.

REPRESENTATIVE COGHILL noted that Alaska is a relatively compact society and information sharing is a sensitive issue. He added that he is not too sure that the GLBA standard is the one he supports. He said that according to his understanding, "we have an 'opt in' provision in most places."

MR. LOHR clarified that currently there is no standard protecting personal insurance information. He added that he believes that the banking industry does have an "opt in" standard.

CHAIR ROKEBERG countered that an "opt in" standard for the banking industry may be part of corporate policy but it is not in statute.

Number 2053

RYNNIEVA MOSS, Staff to Representative John Coghill, Alaska State Legislature, pointed out that according to the Division of Insurance, banks and financial institutions have had an "opt in" standard for 30 years.

MR. LOHR, in response to questions, explained that based on HB 184 and the amendments adopted to date, the division would be permitted to promulgate regulations using the NCOIL model or even the NAIC model (which is less restrictive with regard to privacy) as a standard. Whatever the starting point turns out to be, and conceivably it could be based on both models, he noted, they both have a similar approach towards financial information, which is to allow "opt out." If there is no legislation this year, then the federal regulations adopted under GLBA will kick in and they will use an "opt out" standard for financial information. He explained that "opt in," which will apply to health information, means that without the customer signing and sending something in that says information may be shared, it won't be; "opt out," which will apply to financial information, means that without the customer signing and sending something in that says information can not be shared, it may be. He noted, however, that even if someone decides to "opt out" of having his/her financial information shared, it could still be shared with affiliates.

MR. LOHR also explained that whether the standard becomes "opt out" or "opt in," will depend on public testimony received during the public hearing process for the regulations. He added that months and months of public hearings and written comment [periods] have helped develop the regulations for the national models. He opined that the public hearing process is necessary in order to make a good decision regarding the regulation standards.

REPRESENTATIVE COGHILL asked if his personal information could be sold on the market if he does not "opt out."

CHAIR ROKEBERG said it could, but added that he would be given the choice.

MS. CAMPBELL noted that there are extensive notice requirements:

You're given a notice of what kind of information they collect, and how they would handle it, and who they would disclose it to. And you're given that at the time that you initially ... purchase a product; ... then you're given annual notices, so that if you don't read your initial notice, you'll get another one that says, "Look, this is what we have," and there will be a reply form that you can send back [to] say, "I don't want my information shared."

MR. LOHR pointed out that "the regulations will establish standards for the size of the type and the readability; we're not going to have this fine print where you can't read it."

Number 2220

REPRESENTATIVE BERKOWITZ asked whether there were any provision is either HB 184 or the GLBA that would prohibit the sale of information, or exchange of information for any kind of remuneration.

MR. LOHR said he does not believe that there is any outright prohibition of such in the GLBA.

REPRESENTATIVE BERKOWITZ asked whether such a prohibition would pose an undue hardship on the industry.

MR. LOHR said that it could.

CHAIR ROKEBERG opined that there is usually a mandate that a choice be given to the customer. Thus a person could "opt out" of having his/her name sold to a mailing list.

REPRESENTATIVE BERKOWITZ said:

Show me that there is a business need to exchange information in order to carry on with that business. It would seem that any use of the information beyond that business need is violative of an individual's privacy. ... But if you prohibited the sale of that information, you would in essence, through the market place, protect privacy.

CHAIR ROKEBERG countered that it would also have a deleterious effect on commerce because the sharing of certain marketing information between companies is typical. "This is where you

get into the issue of balancing ... privacy rights with commerce rights," he added.

REPRESENTATIVE BERKOWITZ said that in essence, as an individual who has released proprietary information to a business, he could argue that that business has stolen that information and sold it to another business and thus profited on information he gave in confidence.

CHAIR ROKEBERG said that is correct. He opined that that is why GLBA was enacted - to address some of these issues.

Number 2329

REPRESENTATIVE BERKOWITZ said he would concede that the exchange of information pursuant to legitimate business is valid, but if [the exchange of information] generates an extra source of income for the business, "if they're selling my information to make a buck," that seems to be an improper use of the information.

CHAIR ROKEBERG noted that even the "opt in" standard of the GLBA allows businesses to share information with affiliates.

REPRESENTATIVE BERKOWITZ asked for an explanation of exactly what kind of information they were discussing, and what the transactional life of that information is such as where is it assembled, where does it go, what happens to it, and what is the value of it.

Number 2421

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:

When you borrow money from a bank, they ask you a lot of financial questions; they want to make sure that you have a job, ... that you've been employed so long, that you have money in the bank, and [other questions regarding] all your assets. That's serious financial information. But ... when you applied for your automobile insurance, they didn't ask you if you had a bank account; ... they may know if you have a car and a house because they'd like to tie those together and give you a discount. So that's the kind of financial

information an insurance company has. Now, a life insurance company or a health insurance company --.

REPRESENTATIVE BERKOWITZ interjected and asked, "How do they get it?"

MR. GEORGE responded:

On the application, primarily. ... Now, they may accumulate some other data - say your claims history or something like that - [and] they will probably, if you're buying a homeowner's policy, know how much your house is worth and maybe how much your personal property is worth, so that is financial information. But they define financial information [as almost] everything that isn't health information. So your name, address, phone number, ... how many cars you have --.

REPRESENTATIVE COGHILL interjected and asked whether that included a social security number.

MR. GEORGE responded:

Good question. I don't know that they ask that on the application for auto insurance, they may well for life insurance to be sure they identify who that person is. I can't answer that. I know that that's a touchy subject

TAPE 01-78, SIDE B
Number 2475

MR. GEORGE surmised that people who buy Money magazine probably have investments and are better off than people who don't buy Money magazine; therefore, he asked, should Money magazine be restricted from selling its mailing list. "No," he answered and noted that such a company can target a market; "chances are they aren't targeting a market of people [who] aren't going to be interested in a product." The closer information can be tailored to the market that might be interested in a particular product, the lower the marketing costs are. He opined that fewer mail-outs would be received if a person only got mail-outs from companies that have products that he/she is interested in; thus having targeted markets might be advantageous to both the consumer and the company.

REPRESENTATIVE BERKOWITZ said: "So, I've signed up for automobile insurance, and Money magazine comes by to my insurance company and says, 'Can I buy your customer list?' Is that how it works?"

MR. GEORGE said:

Well, I suppose. I don't think that's the primary reason that [an] insurance company wants to be able to share this information; I think it'd be more likely to want to share it with an affiliate company where a group has a life insurance company and a property casualty insurance company, or where they may have an affiliation with ... another financial service.

REPRESENTATIVE BERKOWITZ said, "So I buy car insurance and they give it to their life insurance company, who then solicits me."

MR. GEORGE said:

They might, or if you go to apply for life insurance and you say, "I have auto insurance," [the company responds:] "Oh, you get a discount and we already have your name, address, phone number ... so you don't have to fill out the expensive questionnaire, you have to do the simple questionnaire." I think ... that we really don't know all the things that are potentially uses for this, and you think about [how] in the last ten years we've been able to come up with direct deposit. Could your insurance company directly deposit your check into the bank for you? Yeah, they can. Could you pay your insurance with a MasterCard by calling them on the phone? Yes, you can. Could you pay your insurance premium directly out of your checking account without actually writing a check? Yes. These are things that have developed; they haven't been here all that long, but the financial services industry is working real hard to make things simple, get business, and it makes our lives simpler. And some of that requires an exchange of information.

REPRESENTATIVE OGAN pointed out that Money magazine doesn't require a person to fill out confidential information in order to subscribe to its publication.

REPRESENTATIVE COGHILL said he is looking for a barrier to sensitive financial information. "I want to know where ... you stop? Where is that line [when] you as an industry are going to say, 'we're not going to sell that information'? Or do you in fact make it available now for sale?"

MR. GEORGE said he could not answer that question directly; "I am not an insurance company and I would be guessing rather than giving you factual information if I answered it."

Number 2312

SHELDON E. WINTERS, Attorney at Law, Lessmeier & Winters, Lobbyist for State Farm Insurance Company ("State Farm"), explained that State Farm does not sell any customer lists or any information, nor do they share any information outside of the State Farm companies. But, he added, State Farm wants to be able to do what Representative Berkowitz intimated, which is, if someone fills out an automobile insurance application and there is certain information on that application, they want to share that with the life insurance company and say, "This person may be someone [who] may be interested in some life insurance, or maybe we can give them a discount." He noted that with the integration of insurance companies and banking, it may be that some information on a life insurance application can be used with "State Farm Bank," and they can say, "You might be interested in an annuity."

CHAIR ROKEBERG noted that sharing such information among affiliates is typical. He posited that the question then becomes whether to expand that option.

REPRESENTATIVE JAMES mentioned that whenever she has the opportunity to choose, she chooses not to let her information be [sold or shared].

MR. GEORGE pointed out that the sunset clause will ensure that the legislature revisits this issue in a couple of years to see how the regulations are working. And at that point (or sooner), if things aren't working out, possible changes can be discussed. He opined that there are advantages to "doing it as the rest of the nation is doing it; let it work out and see if people are offended, and if they are, fix it."

CHAIR ROKEBERG said his concern is that if they don't pass legislation this session, there won't be "opt in" for health information on July 1, 2001. He noted that although he is not

in favor of giving regulatory authority to bureaucrats, something has to be done in order to allow their constituents some choices.

Number 2123

MR. GEORGE said that because the federal government would like to regulate insurance, the GLBA requirements could be considered a test in order to see whether individual states can regulate insurance in a uniform manner.

REPRESENTATIVE COGHILL said his concern is that the industry will get "an easy ride" regarding the disclosure of information when the burden is really going to fall on the individual consumer to "opt out."

CHAIR ROKEBERG mentioned that he has just received a questionnaire from American Express, which he noted is very clear about "opt in/opt out." He asked whether State Farm has put its questionnaire together yet.

MR. WINTERS said that State Farm is in the process of sending out the notices. He added that this notice is a little different in that it simply says at the outset, "We're not going to share your information. We want to share it between State Farm Auto and State Farm Life, and if you don't like it, here is an 800 number, call us and we'll stop."

CHAIR ROKEBERG noted that that is an example of "opt in." He added that "opt in" will be the default regarding health information, and "opt out" will be the default regarding financial information.

REPRESENTATIVE BERKOWITZ asked what assurance there is that people are making these decisions knowingly and intelligently. He said he is thinking of his grandmother, for example, being confronted with some of these "opt in" or "opt out" choices.

MR. GEORGE remarked that currently, people don't have any choice; no one has any idea what is happening with his/her information. Once either HB 184 and its accompanying regulations or the national default standards take effect, then people will have a choice. He reiterated the differences between the "opt in" and "opt out" defaults as they pertain to health information and financial information. He mentioned that Alaska is a member of NCOIL, and that Senator Donley, who is not

necessarily friendly to insurance issues, is on the executive committee.

REPRESENTATIVE COGHILL asked, "Why wouldn't you have 'opt in' for financial information? What is it that is so hard to do there?"

Number 1898

MR. GEORGE said that [insurance] companies can't do business without either functioning under "opt out" or listing numerous exemptions to "opt in"; to adjust claims, or to reinsure, or to simply perform daily transactions, they need to be able to share information. It is efficient for insurance companies to share information with affiliates. He noted if it were possible for one company to sell both life insurance and property casualty insurance, then information would not need to be shared between different companies, but that is not possible; by law, they have to be separate companies, and so instead they are separate affiliated companies. He mentioned that there are some states that have tried the total "opt in" approach, which essentially shut down insurance businesses until "they could unwind it."

MS. CAMPBELL, in response to a question, said that there are at least 1,000 insurance companies registered to do business in Alaska.

CHAIR ROKEBERG noted that setting an "opt in" default for financial information "would put a screeching halt" on all those companies because they are all gearing up for GLBA standards, which are "opt out" for financial information. He also noted that Alaska is receiving \$35 million a year in premium fees from these companies. "We don't want to be running these [companies] off by being too [different]," he added.

MR. GEORGE said that is correct; "it's very difficult to get new companies to write in Alaska. We just don't have the volume. There are a lot of companies that are able to write here that don't write here."

CHAIR ROKEBERG opined that having more competition in Alaska would drive down costs and give customers more choices.

REPRESENTATIVE COGHILL asked whether this should come at the expense of the customer's privacy.

MR. GEORGE opined that if the goal is to encourage competition, the state would have to give adequate rates and not create rules which are prohibitive to companies attempting to do business in Alaska.

CHAIR ROKEBERG opined that if too much concern is placed on privacy, the industry might be over regulated.

Number 1705

REPRESENTATIVE OGAN asked whether there has been a motion to adopt Amendment 5.

REPRESENTATIVE COGHILL said that Amendment 5 [text provided earlier] has not yet been offered; the committee has merely been discussing his privacy concerns.

REPRESENTATIVE MEYER noted that although HB 184 may not be perfect, it will be an improvement over the current privacy standards, of which there are none.

REPRESENTATIVE BERKOWITZ, on a separate topic, said that conceptually, he thinks that there should be a private right of action provision included in HB 184.

CHAIR ROKEBERG said he does not agree. He added that in certain circumstances a private right of action is appropriate but in Alaska, the Division of Insurance has a director who will resolve such issues.

REPRESENTATIVE BERKOWITZ said he thinks that individuals who are injured should have the right to pursue a remedy in court.

CHAIR ROKEBERG noted that a change in statute last year gave the director of the Division of Insurance more authority.

MR. LOHR explained that the consumer protection provisions for insurance (AS 21.36) generally do not contain a private right of action. The division has ample resources to handle consumer complaints, and works informally with consumers and with companies to resolve most problems that come up. If there are any problems that the division is not capable of resolving and which involve misbehavior by a company, the division now has authority to act on the basis of a single bad act; a pattern of practice no longer needs to be established before the division can take action.

REPRESENTATIVE BERKOWITZ said that's all well and good when the division has a benevolent director like Mr. Lohr. But, he added, that might not always be the case.

Number 1528

REPRESENTATIVE BERKOWITZ made a motion to adopt Conceptual Amendment 6, which read [original punctuation provided]:

'SEC. ENFORCEMENT.

'(a) STATE ENFORCEMENT- This title shall be enforced by the Division of Insurance and the State Attorney General with respect to financial institutions and other persons subject to their jurisdiction under applicable law, and shall make compliance with this title a part of their company examinations.

'(b) STATE ACTION FOR VIOLATIONS-

'(1) STATE AUTHORITY -In addition to such other remedies as are provided under State law, If the Director or the Attorney General has reason to believe that any person has violated or is violating this title, the state--

'(A) may bring an action to enjoin such violation in any court of competent jurisdiction; and

'(B) may bring an action on behalf of the residents of the State to enforce compliance with such rule, to obtain damages, restitution, or other compensation on behalf of residents of such State, or to obtain such further and other relief as the court may deem appropriate.

'(2) INVESTIGATORY POWERS- For purposes of bringing any action under this subsection, no provision of this subsection shall be construed as preventing the Director or the State Attorney General from exercising the powers conferred such officials by the laws of this State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

'(c) PRIVATE RIGHT OF ACTION-

(I) Civil Remedies. When an insurance institution fails to comply with any provision of this title, in such a way as to have an adverse effect on an individual, the individual may bring a civil action against the insurance institution in any court of competent jurisdiction.

(2) In any suit brought under the provisions of subsection (c)(1) of this section, the court may order the financial institution to take such action as is necessary to remedy violations of this Act, including but, not limited to:

(A) Amending the individual's record in accordance with his request or in such other way as the court may direct;

(B) Enjoining the insurance institution from withholding the complainants records and order the production to the complainant of any financial institution records improperly withheld from him. In such a case the Court may examine the contents of any financial

institution records in camera to determine whether the records or any portion thereof may be withheld and,

(C) Enjoining the insurance institution from transferring to any affiliate or nonaffiliated third party financial information.

(3) In any suit brought under the provisions of subsection (c)(1) of this section in which the court determines that the financial institution violated this Title, the insurance institution shall be liable to the individual in an amount equal to the sum of -

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of 10,000; and

(B) The court may assess against the insurance institution reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph related to those claims on which the complainant has substantially prevailed.

(5) An action to enforce any liability created under this section may be brought in any court of competent jurisdiction, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where a financial institution has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the financial institution to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation.

(6) Rights of Legal Guardians. - For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

'(e) DEFINITIONS- The terms used in subsection (a) that are not defined in this subtitle or otherwise defined in section 3(s) of the Federal Deposit Insurance Act shall have the meaning given to them in section 1(b) of the International Banking Act of 1978.

'SEC. 4. EFFECT ON FAIR CREDIT REPORTING ACT.

'Nothing in this title shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act, and no inference shall be drawn on the basis of the provisions of this title regarding whether information is transaction or experience information under section 603 of such Act.

'SEC. 5. RELATION TO OTHER STATE LAWS.

'This title shall not be construed as superseding, altering, or affecting the statutes, regulations, orders, or interpretations in effect in this State, except to the extent that such statutes, regulations, orders, or interpretations are inconsistent with the provisions of this subtitle, and then only to the extent of the inconsistency.

REPRESENTATIVE BERKOWITZ said that he thinks individuals ought to have the right to seek redress in the courts when they feel they've been injured, and that since there are privacy issues at stake, he did not see why that remedy would be precluded.

Number 1509

REPRESENTATIVE JAMES objected.

Number 1488

A roll call vote was taken. Representatives Coghill and Berkowitz voted for Conceptual Amendment 6. Representatives James, Ogan, Meyer, and Rokeberg voted against it. Therefore, Conceptual Amendment 6 failed by a vote of 2-4.

Number 1393

REPRESENTATIVE COGHILL made a motion to adopt only the last portion of Amendment 5, which read [original punctuation provided]:

(c) the person receiving disclosed information agrees in writing not to disclose or use the information other than to carry out the purposes for which the person disclosed the information.

REPRESENTATIVE COGHILL noted that this language would now be considered Amendment 5. He added that although similar language may become part of the regulations, he wants to see it in statute as well.

CHAIR ROKEBERG surmised that the language in Amendment 5 means that the person receiving the information has to put in writing that he/she will not disclose the information. He added that the industry would bear the burden of producing the appropriate forms to accommodate such a requirement. He opined that Amendment 5 is "tighter than 'opt in'" and will shut business down.

REPRESENTATIVE JAMES opined that rates to the consumers would be raised if Amendment 5 were adopted.

Number 1258

CHARLIE MILLER, Lobbyist for Alaska National Insurance Company (ANIC), with regard to Amendment 5, said that in the course of trying to solve claims and pay claims in worker's compensation cases, when ANIC sets up rehabilitation programs for people who have permanent partial disabilities and have to be retrained in a different craft, it will become increasingly difficult to meet claimants' needs if every step of the way ANIC has to fill out a new form per Amendment 5. He opined that the process of promulgating regulations is the most appropriate way for determining solutions and minimizing potential problems.

REPRESENTATIVE BERKOWITZ suggested that Mr. Miller's concerns regarding Amendment 5 could be alleviated if the committee rescinds its action in adopting Amendment 1 [which was adopted on 4/27/01].

Number 1079

REPRESENTATIVE COGHILL withdrew Amendment 5.

REPRESENTATIVE JAMES mentioned that when the Division of Insurance sends out its notice regarding the promulgation of regulations, if Representative Coghill still has concerns he could follow the regulation process.

Number 1012

MR. LOHR, with regard to Conceptual Amendment 3 [which was adopted on 4/27/01], suggested that the effective date of the regulations should be the trigger for the start of the sunset clause rather than the date when the regulations are promulgated.

REPRESENTATIVE BERKOWITZ said, "So moved, conceptually."

CHAIR ROKEBERG noted that Ms. Nobrega would ensure that this suggestion is incorporated during drafting.

Number 0988

REPRESENTATIVE JAMES moved to report CSHB 184(HL&C), as amended, out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSHB 184(JUD) was reported from the House Judiciary Standing Committee.

CHAIR ROKEBERG announced that the House Judiciary Standing Committee would meet on 4/30/01 to hear SB 183.

ADJOURNMENT

Number 0953

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 6:15 p.m.