ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE
March 19, 2001
3:25 p.m.

MEMBERS PRESENT

Representative Lisa Murkowski, Chair
Representative Kevin Meyer
Representative Pete Kott
Representative Norman Rokeberg
Representative Harry Crawford
Representative Joe Hayes

MEMBERS ABSENT

Representative Andrew Halcro, Vice Chair

COMMITTEE CALENDAR

HOUSE BILL NO. 106
"An Act relating to the authorizations for state financial institutions; relating to confidential financial records of depositors and customers of certain financial institutions; relating to the Alaska Banking Code, Mutual Savings Bank Act, Alaska Small Loans Act, and Alaska Credit Union Act; and providing for an effective date."

- HEARD AND HELD

PREVIOUS ACTION

BILL: HB 106
SHORT TITLE:FINANCIAL INSTITUTIONS
SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
02/05/01	0236	(H)	READ THE FIRST TIME - REFERRALS
02/05/01	0236	(H)	L&C
02/05/01	0237	(H)	FN1: ZERO(CED)
02/05/01	0237	(H)	GOVERNOR'S TRANSMITTAL LETTER
03/14/01		(H)	L&C AT 3:15 PM CAPITOL 17
03/14/01		(H)	Bill Postponed
03/19/01		(H)	L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

TERRY ELDER, Director
Division of Banking, Securities and Corporations
Department of Community and Economic Development (DCED)
P.O. Box 11807
Juneau, Alaska 99811-0807
POSITION STATEMENT: Testified on HB 106.

TERRY LUTZ, Bank Supervisor
Division of Banking, Securities and Corporations
Department of Community and Economic Development (DCED)
P.O. Box 11807
Juneau, Alaska 99811-0807
POSITION STATEMENT: Testified on HB 106.

VINCE USERA, Securities Supervisor
Division of Banking, Securities and Corporations
Department of Community and Economic Development (DCED)
P.O. Box 11807
Juneau, Alaska 99811-0807
POSITION STATEMENT: Testified on HB 106.

LISA BELL, Senior Vice President and Chief Executive Officer
Alaska Pacific Bank
2094 Jordan Avenue
Juneau, Alaska 99801
POSITION STATEMENT: Testified on HB 106 for the Alaska Bankers Association.

DAVID LAWER
Alaska Bankers Association;
First National Bank
P.O. Box 720
Anchorage, Alaska 99501
POSITION STATEMENT: Testified on HB 106.

JERRY WEAVER, Senior Vice President and Manager
Commercial Banking Group;
National Bank of Alaska;
Alaska Bankers Association
P.O. Box 100600
Anchorage, Alaska 99510
POSITION STATEMENT: Testified on HB 106.

ACTION NARRATIVE

TAPE 01-35, SIDE A

Number 0001

CHAIR LISA MURKOWSKI called the House Labor and Commerce Standing Committee meeting to order at 3:25 p.m. Representatives present at the call to order included Representatives Murkowski, Crawford, and Hayes. Representatives Kott, Meyer, and Rokeberg arrived as the meeting was in progress.

HB 106-FINANCIAL INSTITUTIONS

[Contains discussion pertaining to SB 66, the companion bill in the Senate.]

Number 0070

CHAIR MURKOWSKI announced that the committee would take up HOUSE BILL NO. 106, "An Act relating to the authorizations for state financial institutions; relating to confidential financial records of depositors and customers of certain financial institutions; relating to the Alaska Banking Code, Mutual Savings Bank Act, Alaska Small Loans Act, and Alaska Credit Union Act; and providing for an effective date."

CHAIR MURKOWSKI declared a conflict of interest because she is on the board of directors of a state bank.

Number 0167

TERRY ELDER, Director, Division of Banking, Securities and Corporations, Department of Community and Economic Development (DCED), said HB 106 and the companion bill on the Senate side, SB 66, are bills relating to the regulation of financial institutions, mostly state banks. He said most of the provisions would affect either state banks or state credit unions. Mr. Elder gave an overview, generally discussing some of the changes in the bill, and then used the bill packet to highlight sections in the bill. The following discussion ensued.

MR. ELDER explained that there are a couple of provisions that affect national banks and national credit unions, too, but most of these provisions deal with the state-chartered institutions. He explained the reason for the bill. When the Gramm-Leach-Bliley Act (GLBA) passed Congress, it removed the restrictions on bank affiliations put in place after the Depression, which

prohibited banks from affiliating in certain ways with insurance companies and securities firms.

Number 0347

MR. ELDER relayed that in [Alaska's] banking code there have been certain restrictions against insurance activities. There was a need to look through [Alaska's] code and remove conflicts between the affiliations and the kinds of activities allowed under the banking code and under the federal banking laws. In addition, [the division] talked to some [Alaskan] state banks and credit unions to see if there were changes and problems that could be identified in the law. Several suggestions were received and were included in the bill. Finally, the third group of changes are ones that the division felt were appropriate improvements to the banking code or to the other chapters within Title 6.

Number 0420

MR. ELDER gave some examples. [Alaska] has a state-chartered mutual savings [bank], and currently the chapter in Title 6 that deals with mutual-savings banks treats the trustees, who are equivalent to directors of a commercial bank, differently from the way that directors are treated for commercial banks; there are different restrictions with respect to transactions among the director, the trustees, and the institution, and with respect to [their varying] lending limits. The mutual-savings bank had asked that [the division] put the trustees on an equal footing with directors of commercial banks.

CHAIR MURKOWSKI asked for background information on why the trustees would not have been treated similarly to directors.

MR. ELDER said he wasn't sure and deferred the question to Terry Lutz, Bank Supervisor.

TERRY LUTZ, Bank Supervisor, Division of Banking, Securities and Corporations, Department of Community and Economic Development (DCED), replied that he didn't know the history. He said there was no reference made to the banking code when [Alaska's] Savings Bank Act was initiated. Later on, reference was put in to give commercial banks powers in the banking code that didn't conflict with those of savings banks - so now [the two] are very [similar].

Number 0581

MR. ELDER said he thought it was the "nature of the beast," being a mutual versus a stock-type of ownership. It probably comes from the attitude that the owners are really the depositors and so forth; if that is the case, it is from a "time gone by." It is more appropriate that protections be put in, if there are "arms-length" transactions, he said, so there shouldn't be any problems having dealings with the bank that differ from a director's having dealings with a commercial bank.

MR. ELDER noted a couple of ideas [the division] had for the bill. He explained that there are two kinds of banks, nationally chartered banks and state-chartered banks. [The division] regulates and examines state-charted banks; however, there are some sections of the code that relate to national banks.

Number 0724

MR. ELDER said one of the areas that does include national banks is interstate branching, and there is a provision in the banking code that requires a national bank coming into Alaska and buying another bank to get a permit from [the division]. For example, Wells Fargo came in and acquired National Bank of Alaska (NBA); both are national banks that the division doesn't regulate or examine, but under [Alaska's] statutory provisions [Wells Fargo] had to apply to the division for a permit. He said [the division] doesn't think that makes much sense. [The division] is proposing a change so [a company would just have to notify the division]. He clarified that [the division] is going to keep the permitting provision for state banks because [the division] examines them.

MR. ELDER explained that if a person were going to put an automated teller machine (ATM) off-premises, under current law that [institution] would have to get the approval from the division. [The division] is suggesting that this is not necessary and that all a person has to do is to notify [the division], explaining where the banking services are. Again, he said, it is to reduce unnecessary regulatory burden.

MR. ELDER explained that the current statute lists limitations on staff in terms of where banking can be done; a change occurred in 1983 or 1984 saying that [division staff] couldn't bank at any bank regulated and examined [by the division]; it also [dictated] where [the division] could issue permits and certificates of authority. If enough national banks branch into

the state and buy enough state banks, he said, and [the division] issues them permits, that would mean that the division's staff couldn't bank anywhere in Alaska. For this reason, [the division is] proposing to change it back to what it was before 1993, prohibiting staff to bank with banks [that the division] examines, so the state-chartered institutions are examined. Clearly, there is a conflict of interest, he remarked.

Number 0830

MR. ELDER explained that this is not a trivial issue because under Title 6, if anyone violates that provision of banking, there is immediate termination, so [the division] wants to fix it.

MR. ELDER referred to the GLBA and said there are provisions in the bill that will eliminate the restriction on insurance activities, and allow the affiliations that GLBA [allows]. There are probably only two areas that are most controversial: Section 3, dealing with privacy, and Section 11, where "we" are proposing to remove the current 17 percent cap on credit card interest rates, allowing [companies] to [put in place] whatever is agreed upon between the customer and the issuing institution.

Number 1022

MR. ELDER said the natural knee-jerk reaction to that is to say that rates would be allowed to go "sky high," which is not the actual impact; the only impact of the current cap is to prevent state-charted banks from getting into that business and offering that service to customers.

MR. ELDER referred to Section 2, page 1 [of the bill]. It is a "wild card section" that allows [the division] to respond to requests from banks entering into certain activities; under current law it is required to do that only through regulation. [The division] is proposing to change that to allow the division to issue orders, so it will be more responsive to the requesting organization. In addition, it is cheaper. To do regulations, the division has to publish notices, which can be very expensive. He said [the division] doesn't have provisions in its budget for more than just a couple of notices a year, so the regulation activity has to be grouped together to get the most "bang for the buck." And it would make it difficult to keep the state-charted banks competitive with national banks.

Number 1143

CHAIR MURKOWSKI asked if any consumer protection is lost in not going through the public process.

Number 1170

MR. ELDER stated that it is a risk that's run. [The division] would have no objection if the legislature wanted to say that the orders could be temporary. He said the major objective is to make state-chartered institutions competitive with national institutions. Usually what [the division] is dealing with is a state-chartered institution that wants to do something, such as provide a certain service or product that is allowed under the federal code. It would depend on the institution's rating on a safety-and-soundness scale, he said, and unless it has an impact on that, [the division is] going to allow the state-chartered banks to compete with the national charters.

Number 1280

MR. ELDER referred to Section 3, the privacy provision. He said there are some amendments that have been offered by [the division]. Right now in the banking code, AS 06.05, there is a privacy provision at AS 06.05.175 that says that information shall not be made public except under certain circumstances, such as issuing court orders and so forth, without the approval of one of the items on the list, "without the approval of the customer". Getting the customer to sign something approving that is called "opt in." One of the issues in GLBA and the privacy provisions in various states is that GLBA has provisions for "opt out" rather than "opt in." Under GLBA the "opt out" really refers to sharing non-public information, not just public information like name, address, and so forth. It allows the sharing of non-public information with non-affiliated third parties, unless the customer opts out.

Number 1495

MR. ELDER said GLBA also allows states to adopt more restrictive privacy provisions, and if there is a conflict in terms of whether something applies or not, the Federal Trade Commission (FTC) [makes the decision]. Either interested party could bring it to the FTC, he said. For example, right now North Dakota is asking the FTC for a ruling on whether its privacy provision is more protective than GLBA.

CHAIR MURKOWSKI asked for clarification that states can be more restrictive but can't be less restrictive [than GLBA].

MR. ELDER answered affirmatively. When asked why [North Dakota] would have to go before the FTC to make sure there is no conflict between its privacy provisions and the GLBA, Mr. Elder responded that his understanding is that [the FTC] also looks for inconsistencies.

Number 1583

CHAIR MURKOWSKI asked if [Alaska's privacy provisions] would go before the FTC if the committee adopted HB 106.

MR. ELDER said someone has to bring it to the FTC; however, any interested party can do that. He said whether information is shared among affiliates, how that happens, and whether it is "opt in" or "opt out" are major issues. He reiterated that GLBA provides "opt out." He added that for the past 30 years [Alaska's] law has been "opt in."

CHAIR MURKOWSKI said it is "opt in" for state banks, as stated in Chapter 5 of the banking code. She asked whether moving this privacy provision from Chapter 5 to Chapter 1 means that the "opt in" provision will be applicable to all financial institutions.

Number 1601

MR. ELDER responded that most of what Chair Murkowski had said was correct. He said AS 06.05 [the banking code] just says "banks", not "state banks", so [the division's] view is that the privacy protection currently applies to both national and state banks. There are some provisions in AS 06.05 that deal with national banks, he said, and interstate branching is one example. He said in applying AS 06.01 to financial institutions, it would apply to the various financial institutions in Title 6, including credit unions, small loan companies, premium finance companies, and trust companies.

MR. ELDER said [the division] is trying to find a privacy policy and consistently apply it across various financial institutions in Title 6. Privacy is more important now that GLBA has passed, he remarked, allowing the banks to form affiliations with security firms and insurance companies.

Number 1688

MR. ELDER referred to Section 7, which allows state banks to publish [reports] electronically. He said currently information has to be published in the newspaper, which is very expensive.

CHAIR MURKOWSKI referred back to Section 5, which provides a definition of a state financial institution. She said she understood through Mr. Elder's letter that the bill removes the Alaska Commercial Fishing and Agriculture Bank (CFAB) [AS 44.81] and [Alaska's] Business and Industrial Development Company (BIDCO) [AS 10.13] from the definition of a state financial institution. She said last year legislation was adopted that expanded the authority of CFAB beyond the traditional agriculture and fishing loans, and it was [left] "wide open," in her opinion. She had [previously] relied on the audits and understood that this amendment would [remove the requirement] that subjects [CFAB and BIDCO] to a state audit. She asked if that was correct.

Number 1777

MR. ELDER replied that this is not the case. He explained that it was discussed with CFAB, and its title and chapter were looked at; there is already a similar privacy provision in AS 44.81. Since [CFAB and BIDCO] weren't called financial institutions in Title 6, it has no impact on the fact that [the division] does an audit.

MR. ELDER, in further response, clarified that [BIDCO and CFAB] are not in Title 6 now; originally [the division] had proposed to put them in the definition of a state financial institution, because of the desire to cover them under the privacy provision; however, they have their own privacy provision in their own chapter, so [the division] decided to take them out; that is why, in the letter to [the committee], CFAB was dropped entirely and BIDCO was put into the privacy section.

Number 1850

MR. ELDER referred to Section 8 of the bill, which deals with employees. It would limit business activities between [employees] and state financial institutions; currently, it is any institution that [the division] issues a permit or certificate to. He clarified that "employee" refers not only to the examining staff, but also to the director of the division and the commissioner.

MR. ELDER, referring to Section 10, said it brings [Alaska's] credit-lending limits for state institutions in line with federal lending limits. Responding to a question about the reason for including "dairy cattle" in Alaska's statutes, Mr. Elder referred to subsection (10), page 8, of the bill; he remarked that it is there to mirror the federal law.

MR. ELDER said Section 11 removes the 17 percent cap on credit cards issued by state banks. He explained that the cap only applies to state-chartered institutions, [not] to nationally [chartered institutions]. And he surmised that people almost completely have credit cards from national banks. [These national companies] can import any rate in any state under current laws, so [these companies] are not restricted by [Alaska's] 17 percent cap. All a cap ever really does is make it unattractive for anyone to be in that business. He added that about half the state-chartered institutions currently issue credit cards.

Number 2046

MR. ELDER explained that there are six state-chartered institutions in Alaska, including four banks and two credit unions: First Bank, Northrim Bank, Denali State Bank, Mount McKinley Mutual Savings Bank, North Country Credit Union, and Credit Union One.

MR. ELDER explained that [the division] tries to not prevent state-chartered institutions from being able to compete on a level playing field with their national counterparts. If there is a cap on these rates, it makes that unattractive; this is why half the institutions issue credit cards and half don't. Furthermore, the ones that do issue them don't "push" them, but probably do it to be a full-service institution or to offer overdraft protection to a checking account. It is certainly not a profitable source of business for a state institution.

MR. ELDER explained that back in 1996 the legislature looked at the Retail Installment Sales Act, AS 45.10, which also had caps on it. The legislature removed those and replaced the language with whatever was agreed upon between the customer and the institution, he said, which is all that [the division] is asking for here. He said there could be a 17 percent cap, but that an institution can't be forced to offer the credit card to its customers. He said it doesn't make any sense to continue to keep the state-chartered institutions out of that business.

Number 2188

CHAIR MURKOWSKI said she thought there was paranoia that if the cap were removed, it would be bad for the consumer. She said she doesn't see how anything is really being taken "off the table," because most people nowadays get credit cards based on air miles [offered as a bonus].

MR. ELDER responded that "we" don't know how many credit cards have been issued but do know that there are three [state banks] that have issued them. He said he didn't think it would affect many people; second, even if the interest-rate cap were removed, it is still a competitive business. He said this might increase competition in Alaska because it would open it up to Alaskan-chartered institutions.

CHAIR MURKOWSKI added that the bank she is associated with was offering credit cards at a lower rate than a person would probably pay though Bank America or Bank One; however, it couldn't attract customers because it wasn't providing air miles.

MR. ELDER said if [the division] thought there would be a negative impact on consumers, it wouldn't even be proposed.

Number 2370

MR. ELDER referred to Section 14 and said this is a GLBA provision that allows the creation of financial holding companies; this is a new term created with GLBA to allow the various institutions to get into "financial holding companies." He said this is being added to allow [Alaskan institutions] the same thing.

CHAIR MURKOWSKI, referring to Section 15, said there is new [language] regarding property that the bank acquires and needs to get rid of. She said it is prefaced by saying "all investments and real and personal property". She was thrown off by the addition of "investments in the property", she remarked, and asked what purpose this serves.

Number 2443

MR. ELDER said the changes were related to reverse mortgages.

MR. LUTZ responded that when reverse mortgages were taken care of a couple of years ago in Title 45, the banking code wasn't

addressed. In order for [Alaska's] banks to be able to take advantage of that program, our statutes would also need to be changed.

MR. ELDER, referring to Section 16, said it allows state banks the [opportunity] to invest in subsidiaries like national banks can do. He said Section 20 deals with ATMs, removing the requirement that [the division] approve the ATM [location] by simply having the bank give notice [that an ATM is being put in].

TAPE 01-35, SIDE B
Number 2481

MR. ELDER said various sections from 26 to 38 deal with branching. In his introductory remarks, he had explained that national banks have to get a permit to branch into the state. [The division] is not changing the branching provisions, he said. For example, there is a prohibition against branching into the state with a newly formed bank, which has to be done by buying an existing bank. [The division] is proposing to limit its involvement in permitting to state banks.

Number 2437

CHAIR MURKOWSKI referred to comments on Sections 34 to 38. The old law provided that an interstate national bank is subject to all of Title 6, she said, and then within Section 34 through 38 there is some clarification of what reporting requirements the interstate national bank is subject to. The statute is changing from saying that an interstate national bank is subject to all of this in Title 6 to a "laundry list." She asked if there is anything that [interstate national banks] are no longer subject to as a consequence of this.

MR. ELDER replied in the negative. He said many of these are small amendments, for example, just sticking in the word "state bank" and so forth to clarify what is being talked about in those sections. The interstate national banks in the past required a permit, so this makes a clear distinction between the interstate national banks and interstate state banks.

Number 2363

MR. ELDER explained that Section 46 is the mutual savings bank section that allows "arms-length" dealing between a mutual

savings bank and its trustees. And Section 47 allows the trustees to borrow on the same basis as a bank director. Section 48, he explained, clarifies that the Small Loans Act applies even if one is exempt from licensing. He pointed out that banks are currently exempt from licensing under the Small Loans Act, and some state banks have been used as a way to get around the restrictions; therefore, the bill is making it clear that one can't do that.

Number 2293

MR. ELDER, referring to Sections 49 and 50, said these are changes dealing with credit unions, basically to bring them on a par with federal credit unions. Sections 52 and 53 also deal with credit unions, giving them authority to issue credit cards and giving them the same authority for ATMs that banks have. These provisions allow the credit unions to compete more effectively with banking institutions.

CHAIR MURKOWSKI said regarding the [ATM] for credit unions in the proposed amendments, [the division] has inserted language that would make [ATMs] available for depositors of depository institutions. She asked if this section needed to conform to that for banks.

MR. ELDER replied, "Maybe," noting that [credit unions] are depository institutions. He noted that it needed to be done in the Credit Union Act, too, and he thanked Chair Murkowski for noticing it. When [the division] met with members of the banking industry, he said, they wanted [the division] to make it clear that ATMs were to be used by depositors of these institutions, even though in current law it just says "to be used by the institution". He said it [having it] put in the Credit Union Act is an improvement.

Number 2203

CHAIR MURKOWSKI asked what the effect of repealing the individual statutes from Section 54 would be.

MR. ELDER replied that most of the repeals in AS 06.05.175 - the privacy provision - are being replaced. However, [the one in Section 54] should be eliminated. He explained that AS 06.05.005(4) survived from an older draft. He pointed out that in AS [06.05.005], there are an (a)(4) and a (b)(4), but there is no "(4)"; [the division] doesn't want to delete either [of them] now, so it should be eliminated.

MR. LUTZ continued with Section 54, page 25. He said AS 06.05.272(d) addresses investments for banks and prohibitions against insurance power. In addition, AS 06.05.990(18) is a new definition of financial institutions. Furthermore, AS 06.20.330(a) is the old exemption contained in the Small Loans Act, stating that the chapter doesn't apply to a person doing business under and as permitted by any law of the state or [or of the United States relating to banks, savings banks, trust companies, building and loan or credit unions]. The new section exempts banks from the department's licensing; otherwise, there would be a conflict.

Number 2055

MR. ELDER explained his letter of March 16, 2001 [in packets], in which the division provided a number of proposed amendments initiated from the hearings in the [Senate on SB 66] and from discussions with the industry and CFAB. [The letter noted that it was to replace the letter of March 5, 2001.]

Number 1976

MR. ELDER explained the first amendment proposed in the letter, which read:

> **1. (Section 3, page 2, lines 10-12) Replace language in lines 10-12 of the new section AS 06.01.028(a) with the following language:**
>
> The records of financial institutions pertaining to their depositors and customers are confidential and may not be disclosed except when…
>
> This amendment replaces the sentence in the proposed AS 06.01.028 with essentially similar language in the current privacy provision at AS 06.05.175. The main area of concern expressed by industry was to make it clear that these records are records of the financial institution. We agree with that position. This amendment will make that clear.

MR. ELDER explained that this is the new privacy provision, and the current proposal is to move banking code AS 06.05.175 to AS 06.01.028. The intention was to keep it very similar; however, in rewording it and talking with the industry, "they" are concerned about the current wording, "The financial records of

depositors and customers of financial institutions are confidential". Alaska Statute 06.05.175 talks about bank records, he added, and "they" were concerned that rewording this changes the legal status of the information, from records that belong to the institution, to records that belong to the customers and depositors. What [the division is] proposing is to modestly change the current language, from "bank records" to "financial institutions", so it clearly reads, "the records of financial institutions pertaining to the depositors".

Number 1900

REPRESENTATIVE ROKEBERG referred to three pages of proposed amendments from the Alaska Bankers Association. He asked if [the association members] are aware of this letter [from the division] and whether there is communication between them.

CHAIR MURKOWSKI stated that Ms. Bell, Gerry Weaver, and David Lohr had all spoken from the Alaska Bankers Association. She asked if she was correct in surmising that most of the [division's proposed amendments] had resulted from conversations between the Alaska Bankers Association and the division.

Number 1833

MR. ELDER replied affirmatively. He said these proposed amendments resulted from an early discussion with [the Alaska Bankers Association]; they would prefer a different privacy provision, and if passed, the language doesn't necessarily need to be changed in [the division's] privacy provision; however, if [the legislature] doesn't replace it, then both the association and [the division] agree with this language change.

Number 1745

MR. ELDER drew attention to the second amendment in the letter, which read:

> **2. (Section 3, page 3, lines 3-7) Replace the sentence beginning "However, notification…" with the following sentence:**
>
> However, notification either before or after disclosure may not be made if disclosure is made under a process included (a)(1) of this section and the document requiring disclosure on its face requires the

financial institution not to notify the depositor or customer.

This amendment covers more accurately the processes provided for in (a)(1) of the section, and also clarifies that the financial institution shall not notify the customer if the order, subpoena, or similar document states on its face that the customer is not to be notified.

MR. ELDER explained that the second amendment replaces the following language from the original bill:

However, notification either before or after disclosure may not be made if disclosure is made under a subpoena, subpoena duces tecum, search warrant issued by a court, or under a court order or subpoena issued at the request of a grand jury, if the document requiring disclosure by one of [these] processes on its face requires confidentiality.

MR. ELDER discussed how the meaning of the word "confidentiality" is confusing. "We" are really talking about not telling the "target" of the investigation. [The division] thought it would clarify this by just referring to (a)(1), because all of those processes are in that part of the bill.

Number 1695

CHAIR MURKOWSKI pointed out that the search warrant is not in (a)(1) of the bill.

MR. ELDER said he thought the search warrant was under a court order. He said a search warrant is another process under the supervision of a court, which is why [the division] thought it wasn't necessary. Everything in that "laundry list" is a process described in (a)(1), which is why the new wording would be "notification either before or after disclosure may not be made if disclosure is made under a process included in (a)(1) of this section". He said the document requiring disclosure "on its face" requires the financial institution not to notify the depositor or customer. The provision is there because if a criminal-investigating agency is investigating a scheme on securities or money laundering, one doesn't necessarily want to alert the target and have that money disappear.

MR. ELDER drew attention to the third proposed amendment in the letter, which read:

> **3. (Section 3, page 3, lines 8-11) Replace (c) with new language as follows:**
>
> (c) When disclosure of financial institution records is compelled under (a)(1) of this section, the document shall provide for the reimbursement of the financial institution for the reasonable costs incurred in complying with the order.
>
> This amendment provides for reimbursement of reasonable costs for compliance with any process under (a)(1), whereas the current language only references court actions.

Number 1591

MR. ELDER said if a subpoena is received from an administrative agency, obviously there should be reimbursement. He explained that if [the division] seeks the court order, it would be up to "us" to reimburse [the financial institution].

Number 1526

VINCE USERA, Securities Supervisor, Division of Banking, Securities and Corporations, Department of Community and Economic Development (DCED), replied to a question about whether a rule change would be required. He said he went over this section with one of the attorneys from the Department of Law, and it was concluded that there is no conflict with any of those provisions. He explained that Civil Rule 45 doesn't address reimbursement at all; it simply talks about the circumstances under which a subpoena can be issued.

CHAIR MURKOWSKI suggested that if it doesn't provide for reimbursement, and yet [the bill] is saying that the document shall provide for the reimbursement of the financial institution for the reasonable cost incurred, the rule is being added to.

MR. USERA said it doesn't add to the rule. There is no prohibition in Rule 45 against reimbursement of costs. The costs are provided for under the administrative rules and one other, but those are costs associated with trials and hearings. He said there is nothing in there that prohibits costs being

afforded to an institution; it just adds a [twist] that affects those processes that [DCED] handles.

Number 1403

MR. ELDER drew attention to the fourth proposed amendment in the letter, which read:

> **4. (Section 3, page 3, lines 12-15) Replace the first sentence in the new section AS 06.01.028(d) beginning on line 12 with the following sentence:**
>
> A financial institution or any other person is liable to their depositor or customer for intentional violations of this section in an amount equal to actual damages caused by the disclosure of the confidential records of the financial institution pertaining to their depositor or customer.
>
> This amendment removes the $1,000 minimum liability and leaves it set at actual damages. We agreed with members of the banking industry that the minimum could make financial institutions subject to frivolous claims.

MR. ELDER commented that there is agreement that the rule changes weren't necessary. He explained that this adds liability to the banks if they disclose non-public information, contrary to the law. He said in the current provision it states "the greater of $1,000 or actual damages". Industry people felt that putting a floor of $1,000 meant that they would get a lot of "nuisance-type" complaints with everybody asking for $1,000, and it would be cheaper to "cave in" rather than to litigate for $1,000. He said saying "actual damages" requires the person to show damage, and it would have to be substantial enough for him or her to seek litigation.

MR. ELDER referred to the fifth proposed amendment in the letter, which read:

> **5. (Section 3, page 3, line 18) Insert new subsections, AS 06.01.028(e) and (f):**
>
> (e) Nothing in (a)-(d) of this section prohibits a financial institution from disclosing information to a

person necessary to provide the essential services of the financial institution to a depositor or customer, if the person receiving the information has a written agreement with the financial institution to be bound by the requirements of (a)-(d) of this section.

(f) This section applies to a financial institution subject to the regulation of the department under this title and to entities organized under AS 10.13 (Alaska BIDCO Act).

Proposed (e) is based on our discussion with members of the banking industry, and allows institutions to share information necessary to provide services such as printing monthly statements. Proposed (f) is based on our discussions with staff at the Alaska Commercial Fishing and Agriculture Bank (CFAB). Since CFAB currently has a similar privacy provision in its statute, we agreed that reference to CFAB should be removed from this bill. This amendment also extends the privacy provision of AS 06.01.028 to Alaska's BIDCOs (Business and Industrial Development Companies) that currently have no such provision in statute (AS 10.13), but we have no reason to subject BIDCOs to other provisions of Title 6. This amendment will limit the application of Title 6 regarding BIDCOs to the privacy provision only.

MR. ELDER explained that this would provide Alaskans with a private right of action against the institution that disclosed non-public information illegally. An institution might outsource its statement printing, for example, which would be disclosing a certain amount of information to a third party. He said "we" don't intend to prohibit that activity, so this section makes it clear that the financial institutions can share information, and doesn't distinguish between an affiliated or non-affiliated person who provides the essential services of that financial institution. All [the financial institution] has to do is have a contractual relationship that binds that party to non-disclosure also.

Number 1266

MR. ELDER said the only reason the Alaska BIDCO was included under the definition of a state financial institution in

subsection (f) was so it would be included in the privacy provision. It was more efficient to put [BIDCO] in a subsection within the privacy section and take it out of the definition of state financial institutions.

Number 1189

MR. ELDER referred to the sixth proposed amendment, which read:

> **6. Amend AS 06.01.040 by inserting a new section (at page 3, line 18, and renumber subsequent sections) to read:**
>
> **Sec. 06.01.040. Examination policy.** It shall be the policy of the department to conduct, whenever reasonably possible, joint examinations with the Federal Deposit Insurance Corporation or with the National Credit Union Administration of those institutions subject to this title whose accounts are insured through [THAT CORPORATION] these agencies.
>
> This amendment adds reference to the National Credit Union Administration (NCUA) to the department's examination policy, and reflects current practice of the department.

MR. ELDER explained that currently in AS 06.01.040 there is a policy that says the "department [is] to conduct joint examinations with the FDIC". There is no reason the National Credit Union Administration (NCUA) shouldn't also be included.

MR. LUTZ, responding to a question about [the frequency] of examination, explained that [these institutions] are [examined] annually.

MR. ELDER pointed out that [these institutions] are [examined] more often than banks. It is [common] practice to coordinate examinations with both the FDIC and the NCUA, he remarked.

Number 1112

REPRESENTATIVE ROKEBERG asked if this is done annually now or if a fiscal note is needed [to pay for this].

MR. ELDER replied that this is done anyway.

MR. ELDER went on to the seventh proposed amendment, which read:

7. (Section 5, page 3, lines 25-27) Amend the new paragraph to read:

(4) "state financial institution" means a financial institution that is organized under this title, or that is subject to examination by the department under this title.

This amendment removes reference to entities organized under AS 10.13 (Alaska BIDCO Act) and AS 44.81 (CFAB). The privacy provision was discussed above, other provisions of Title 6 are not relevant to a BIDCO or CFAB, and so it is appropriate to delete reference to AS 10.13 and 44.81 from the definition of "state financial institution."

MR. ELDER added that it changes the definition of a state financial institution by removing BIDCO and CFAB.

MR. ELDER referred to the eighth proposed amendment, which read:

8. (Section 20, page 11, lines 16-20) Replace the sentence starting on line 16 with the following sentence:

An automated teller machine operated off bank premises shall be made available on a nondiscriminatory basis for use by depositors of other depository institutions [BANKS] authorized to do business in the state [AND THEIR CUSTOMERS], upon the agreement of the other depository institutions [BANKS] to pay a fair and equitable amount for the use of the machine.

MR. ELDER explained that the sentence that starts with "An automated teller machine" is being replaced by adding "for use by depositors of". The current language in statute says an automated teller machine operating from a premise shall be made available on a nondiscriminatory basis for use by other banks. Therefore, ["banks"] is being changed to "depository institutions". He answered affirmatively when asked if this would be [changed] for credit unions as well.

Number 1011

MR. ELDER drew attention to the ninth and tenth proposed amendments, which read:

9. (Section 44, page 18, lines 29-31) Replace language with the following:

(24) "state financial institution" means a financial institution that is organized under this title, or that is subject to examination by the department under this title.

This amendment keeps the definition of "state financial institution" in AS 06.05 consistent with the definition in AS 06.01. For the same reasons described earlier, this amendment removes reference to AS 10.13 and 44.81.

In addition to the above requested amendments to HB 106, we have reviewed the request for amendments outlined in a letter from Ms. Leslie Ellis, President of Credit Union 1, dated February 16, 2001, addressed to Senator Randy Phillips, (copy attached) and have no problem with her request concerning AS 06.45.060(5)(A)(iv) to achieve parity with federally chartered credit unions. In addition, although her letter does not mention the following paragraph, it, too, should be amended to be consistent with the change in (iv).

These could be accomplished by amending Section 50 to include the following changes in addition to those indicated in the bill:

10. (Section 50, pages 21-22, lines 31-8) Amend (iv) and (v) as follows:

(iv) a loan or aggregate of loans to a director or member of the supervisory or credit committee of the credit union making the loan which exceeds [$5,000] $20,000 plus pledged shares shall be approved by the board of directors;

(v) loans to other members for which directors or members of the supervisory or credit committee act as guarantor or endorser shall be approved by the board of directors when the loans standing alone or when added to an outstanding loan or loans of the guarantor or endorser exceed [$5,000] $20,000;

MR. ELDER referred to the ninth proposed amendment and stated that it takes the definition of a state financial institution from AS 06.05 and makes it consistent with the previous state financial institution definition from AS 06.01.

MR. ELDER explained that the tenth proposed amendment is a request from Credit Union One, which sent in a letter of support for the bill with a couple of requests. One request was for the GLBA's "opt out" approach to privacy, which [the division] didn't agree with; the other request which [the division] agreed with, referred to Section 50, pages 21-22, starting with line 31 of the bill. There are two times when the number $5,000 appears, he said, and this amendment would change both of those to $20,000. The current federal limit is $20,000, he pointed out, rather than $5,000.

Number 0890

REPRESENTATIVE HAYES asked why [Alaska's] privacy criteria are so strict when compared to the Lower 48's.

MR. ELDER clarified that for the last 30 years [Alaska] has had "opt in." It is [the division's] understanding from the Association of Bank Regulators, Conference of State Bank Supervisors (CSBS), that there are about six states that have fairly restrictive privacy provisions. He said "folks" [in Alaska] like privacy, plus there is a constitutional provision for privacy probably not present in other states.

Number 0723

LISA BELL, Senior Vice President and Chief Executive Officer, Alaska Pacific Bank (a small community bank based in Juneau with offices around Southeast Alaska) testified on behalf of the Alaska Bankers Association, representing nine financial institutions around the state, both state-chartered and federally chartered institutions. She said this bill crosses the line between state-chartered and federally chartered institutions.

MS. BELL said the [Alaska Bankers Association] generally supports this bill, which has a lot of cleanup language; the intent to bring the old banking code into a more modern light and make it more parallel with the GLBA is "excellent," allowing financial institutions to compete with other types of financial intermediaries now in the marketplace. Brokerages, insurance companies, and so forth have broader powers than [banks] and in

many cases have been able to offer products similar to "ours" while "we" haven't been able to offer products similar to theirs. She remarked that it hasn't felt like a level playing field.

MS. BELL commented that GLBA breaks down barriers and provides free commerce with better choices for consumers.

Number 0606

MS. BELL explained that GLBA was "sweeping financial modernization," and Title 5, the privacy provision, is one important piece that is supposed to create some parity among financial institutions across the country, allowing banks and other financial institutions to have the same rights of information sharing, regardless of whether they are state-chartered or federally chartered. One important focus is on allowing more parity among states so banking institutions with banks in more than one state can apply the same rules, provide customers with the same disclosures, and have the same products and services without a lot of confusion.

Number 0477

MS. BELL noted that GLBA only governs the sharing of non-public financial information, information sharing among third parties, non-affiliated companies are what GLBA legislates, she explained. Information sharing of the same type among affiliated companies or companies within the same parent company has been governed by the Fair Credit Reporting Act (FCRA) since the 1970s and is governed under current federal legislation.

MS. BELL explained that GLBA sets affiliates aside and just talks about non-affiliated third parties. Once on the topic, there is a differential between those non-affiliated third parties necessary to complete the transaction for the customer; that would include title and check-printing companies, and even a marketing company that allows marketing of financial products to customers. This would fall within the exceptions to GLBA and would be considered a normal part of the traditional banking services.

Number 0352

MS. BELL explained that GLBA also addresses the "not-quite-as traditional, non-affiliated third parties"; it sets forth a comprehensive set of conditions and protections for customer

privacy dealing with non-affiliated third parties. In February, the FDIC issued a handbook to all state-chartered and federally chartered banks, which talks about GLBA Title 5 privacy - explaining what it means in plain language and how to comply. She said "we" are required to provide disclosures to all customers beginning July 1. When a person walks through the door of a bank for the first time as a new customer, he or she will receive a privacy disclosure from that bank telling what its privacy and information-sharing practices are. If [banks] share information beyond the exceptions in GLBA, they are required to give customers an opportunity to "opt out" the first time they walk through the door.

Number 0166

MS. BELL said after that, [the opportunity would be provided] annually. And anytime a bank changes its practice, it has to send out a new set of disclosures to customers; this, she said, allows customers to compare policies between banks.

Number 0144

MS. BELL said a person could tell how complex a banking institution is by its disclosure [statement], also known as the "opt out" provision.

MS. BELL stated that the FCRA governs the sharing of information among affiliates. She said the FCRA also has "opt out" provisions that were built in so customers have the opportunity to prevent affiliates from sharing information among themselves. Generally, that type of information might be credit information shared to cross-market products in the same family of companies; however, a person still has the opportunity to opt out.

Number 0078

MS. BELL pointed out that it appears that the existing and proposed statutes may be in conflict with the FCRA if sharing information with affiliates is not allowed under state law, and added that the FCRA forbids state preemption of that portion until 2004. She said it needs to be closely looked at with the Division of Banking to understand whether it would be meaningful.

TAPE 01-36, SIDE A
Number 0049

MS. BELL said the Alaska Bankers Association and its various members, along with Mr. Elder and Mr. Lutz, have an ongoing, open dialog. She said "we" also met with Jeff Bush, Deputy Commissioner, Department of Community and Economic Development (DCED). She said she thought there was an "open door" for working with them. She expressed the hope of finding the holes where improper information may leak out and plugging them.

MS. BELL referred to the amendments submitted by the Alaska Bankers Association that were included in the committee packet. The first amendment would completely replace Section 3, rather than doing it piece by piece. It read:

> **1. Delete p.2, line 10 through p.3, line 17, and replace that material with**
>
> Sec. 06.01.028. Depositor and customer records confidential. (a) The records of a financial institution pertaining to its depositors and customers and the information contained in such records are confidential. Such records and information may not be disclosed by the financial institution to another person or a government except when, and only to the extent that, the disclosure is
>
> (1) authorized in writing by the depositor or customer;
>
> (2) required by federal or state statute or regulation or by a subpoena, search warrant or other order directed to the financial institution issued by a court or administrative agency having jurisdiction of the financial institution;
>
> or
>
> (3) made in compliance with sections 501-509 of P.L. 106-102 (15 U.S.C. (Sections) 6801-6809) and regulations promulgated thereunder.
>
> (b) A financial institution is authorized, but is not required, to comply with a subpoena, search warrant or other order issued by a court or administrative agency of this state that does not provide for the reimbursement of the financial institution's reasonable cost of complying with the order.
>
> (c) When disclosure is required or permitted under (a)(2), (a)(3), or (b) of this section by a subpoena, search warrant or other order of a court or administrative agency, the financial institution shall mail a copy of the order to the depositor or customer within three business days after its receipt of the

order unless the order is, or is accompanied by, a court order that expressly directs the financial institution not to notify or inform the depositor or customer.

(d) In this section, "government" means the United States; a state, commonwealth, district or territory of the United States; a municipality or other political subdivision of a state, commonwealth, district or territory of the United States; a foreign state; or a department, agency, instrumentality, officer, employee or agent of any of the foregoing.

MS. BELL explained that the real "meat" of this amendment is a direct reference back to GLBA for what information can be shared, and whether it is "opt in" or "opt out." There are other pieces in the amendment that are slightly different from what the Division of Banking proposed. She said "we" can work out those differences and come to an agreement on the language.

Number 0172

MS. BELL referred to number 1, subsection (a). [See inserted Alaska Bankers Association first proposed amendment above]. "We" wanted to ensure that the customer records are actually the property of the financial institution, she said, to alleviate any type of legal battle in the future if someone decides otherwise. She remarked that "our" language may differ slightly but the intent is the same.

MS. BELL referred back to the discussion about when a financial institution provides information under a subpoena, court order, or search warrant. It doesn't sound as if it is a big deal, but it can be, she explained, both the reimbursement part and providing clarity about when the customer needs to be notified. She said that is why there is new language proposed from both the Alaska Bankers Association and the division.

Number 0290

CHAIR MURKOWSKI asked about the reimbursement component, referring to the Alaska Bankers Association's proposed amendment number 1, subsection (b) [from above insert]. She said she would think that not complying with a subpoena [would be possible] for other legitimate legal grounds, but not because of a reimbursement issue.

Number 0399

MS. BELL replied that her financial institution was recently served with a search warrant, and a huge volume of information was being requested; it would cost the institution over $10,000 to get all of that information. "We" are a little bank, and this is just one search warrant. The search warrant itself didn't say anything about reimbursement, nor did it say whether the customer could be told, so it crossed over into both of those issues.

MS. BELL stated that "we" think it is entirely fair and within the law to require reimbursement, and yet a law enforcement agency could say, "We are not required to reimburse you for that $10,000."

Number 0477

MS. BELL, referring to the customer disclosure, said [financial institutions] have an obligation to let customers know when someone is seeking their private information. She said this is definitely a privacy issue. In the case of that search warrant served, it didn't say anything about disclosure. So the law enforcement agent was notified that unless something is provided that says that "we" can't, "we" are going to tell our customer, because that is our duty under the law. She said "we" forced them to go back to the judge and get an order that requires silence for a couple of months. The position of the state law enforcement agency, in looking at Criminal Rule 37, was that search warrants could be sealed for up to four years.

Number 0549

MS. BELL explained that there is no reference to this in state statute. So how would a person know to go to Criminal Rule 37, she asked, when a person is just trying to comply with a request for information?

MS. BELL, referring to the Alaska Bankers Association's proposed amendment, stated that from number 1, subsection (d) and beyond, it provides definitions for terms used within the statute, which are details that can be worked on with the division. The second and third amendments read:

2. Delete p.3, lines 18-28 and replace that material with

*Sec. 4. AS 06.01.050 is amended to read:

Sec. 06.01.050. Definitions. In this title [CHAPTER], unless the context otherwise requires,

(1) "commissioner" means the commissioner of community and economic development;

(2) "department" means the Department of Community and Economic Development;

(3) "financial institution" means a person [AN INSTITUTION] subject to the regulation of the department under this title;

(4) "person" means an individual, a corporation, a general, limited or limited liability company, or any other association or organization accorded status or capacity by law; and

(5) "state financial institution" means a financial institution that is organized under this title, AS 10.13, or AS 44.81.

3. At page 25, add a new section to read as follows

***Sec. 59. COURT RULE CHANGES.** To the extent that it requires court orders compelling disclosure to provide for reimbursement of a financial institution's cost of compliance, AS 06.01.028(b) has the effect of amending Rule[s]45_____of the Alaska Rules of Civil Procedure, Rule[s]_____of the Alaska Rules of Criminal Procedure, and Rule[s]_____, Alaska Rules of Administrative Procedure.

Number 0641

MS. BELL said the current state law is an "opt in" situation and requires that before customer information can be released, unless something has already been signed by the customer or the institution is compelled to comply because of a court order and so forth, one has to go out and seek an affirmative response from the customer before that can be shared; however, when talking on a larger-scale-type of product offering or marketing opportunity, it is a much more complex issue. In this situation, "opt in" becomes cumbersome, expensive, and not necessarily to the customer's advantage; this, she said, "we" consider a big issue.

MS. BELL emphasized that protecting customer privacy is a big deal and that integrity and reputation are at stake if [customer] privacy isn't protected, so "we" are not at odds with the Division of Banking or the Office of the Governor about where "we" want to be. "We" want to make sure that everyone is educated on the existing privacy provisions under federal law so something isn't created that is already there, and so we are not

unduly restricted from participating in the new era of "enlightenment" in the financial services industry.

Number 0741

MS. BELL explained that the best-case scenario would be to make a direct referral in Section 3 back to GLBA, so that if one is in compliance with the GLBA privacy provisions, then one is in compliance with state law. That would be the easiest cleanest way to do it, she said; however, "we" are also willing to work with other parties on trouble spots, for specific issues where maybe Alaska is different and "we" want to reserve the right to specifically restrict something. We" would like to be like every other bank in the nation and be subject to GLBA, she told members, which is already quite complicated to comply with. And "we" need to know what our marching orders are so we can comply with them by July 1 [2001]; "we" feel that the current state statute would impose something contrary and far more restrictive. At this point, she said, the puzzle pieces don't fit together.

Number 0846

REPRESENTATIVE HAYES asked what the downside is to having a more restrictive policy than the federal law.

MS. BELL replied that although the privacy provisions may have been on the books for 30 years, not all banks in the state have been subject to them. As a federally chartered institution, [Alaska Pacific Bank] was never notified that it was governed by Section 6 of the banking code, and was under the impression that only state-chartered, state-examined banks were subject to the existing law. "We" have complied with the intent of the Alaska statute; however, "we" have never considered all banks legally subject to it. It is old and outdated and doesn't allow affiliates within the same family of companies to share information.

Number 0979

MS. BELL stated that the hope is that this doesn't have to be revisited every year to keep making changes to it. She explained that their vision is to offer a broader array of financial services, a broader mix of things that are all part of the package that consumers are looking for.

MS. BELL said the "opt out" provision provides the customer an opportunity to have something already in their hands, such as a new privacy notice that gives them a vehicle "right then and there" to choose. It places the control for the release of information in the hands of the customer.

Number 1057

REPRESENTATIVE HAYES asked whether [a financial institution] could give the policy to the customer when he or she walks into the bank, and the person could make the decision right there.

MS. BELL responded that it would have to be studied to see if that would work, but she mentioned that one problem is that there are actually "road maps" for these disclosures and notices. Depending on how complex a financial institution is, she said, there is kind of an A, B, and C. The wording is set up to be "opt out" and would take some reengineering to turn those into "opt in" instead. She deferred the question to some of her colleagues.

REPRESENTATIVE CRAWFORD asked what type of information would be shared with an affiliate, or non-affiliated entity.

MS. BELL explained that the type of information normally shared with affiliates is credit experience: how a person had paid on a mortgage loan, and how that relates to how well he or she would make this type of payment. Credit application information can be shared among affiliates under the FCRA, and there is personal information on the credit application; however, account numbers can't be shared. Demographic information might be shared, allowing an affiliate to make a determination as to whether a product or service would be something that a person would want to have.

Number 1206

REPRESENTATIVE CRAWFORD said the customer makes the determination to "opt out" for the first time while in the bank, and the next year receives this "thing" in the mail to "opt out"; he remarked that [the financial institution] is counting on a person not sending that in. He then asked if postage would be provided or if the individual would have to pay to send it back in.

MS. BELL said she couldn't answer that because she hasn't seen it addressed in law; however, she surmised that [whether or not

to provide postage] would be left to the individual institution. She said she believes there is a 30-day window after the notice has been provided to a customer before that information can be shared. Ms. Bell pointed out, "The instances within Alaska of sharing information outside of affiliates, outside of the normal third parties, who are exceptions under the law, is not ... a great amount."

Number 1350

MS. BELL surmised that banks don't want to be prevented from doing what other banks across the country can do; if [banks] have an opportunity to jointly market something or create a new product, they want to make sure it can be done without a significant amount of red tape and expense, and be able to present that to the broadest number of people across the state.

DAVID LAWER, Alaska Bankers Association; First National Bank, via teleconference, said he is familiar with the privacy legislation as well as the current federal legislation still "in the making." He said the customer under federal law is given the opportunity to "opt out" at the time a transaction is initiated, and also annually. The bank must give the customer reasonable means of exercising that option, which includes the opportunity to make a phone call or [send an] e-mail.

Number 1515

MR. LAWER, switching gears, explained that when a court order is received or a subpoena [issued], that person is given the opportunity to object, and could object on the grounds that it is "unduly burdensome"; limits can be set on either the time or the money expended. He said he hasn't encountered a lawyer issuing a subpoena who has litigated the issue in court; however, it would be helpful to [clarify what] the circumstances are [through this legislation].

MR. LAWER responding to the question of what the purpose of the legislation is, said over the last 30 years it has been used as a shield by banks, and otherwise ignored. In its current form, it is very (indisc.), not certain to whom it applies, and doesn't answer many of the questions posed on a quarterly basis; for example, one thing routinely disclosed from customer records is the customer's identity, such as when an account is opened with a bank and checks are issued. The bank doesn't prepare those checks; someone is hired to print those and put a customer's name on them. When [financial institutions] disclose

[a customer's] name to be printed on those checks, that is disclosing a customer record. This is contrary to the statute in its current form, he stated, and the same is true with the amount of a transaction, a loan on the security of real estate. "We" disclose who the borrow is and the amount of the loan to the title company closing the transaction, which under current legislation is prohibited, but it is done by all.

Number 1688

MR. LAWER said the existing law is so poorly drawn that it is used when it suits a purpose, and is ignore when it doesn't. Simply taking that from one section of the statute and moving it to another with minor variations doesn't improve that circumstance, he said, and only serves to "muddy the waters" in some areas and provide limited clarification in others.

MR. LAWER explained that the Alaska Bankers Association offered a substitute for that section that parallels the state and federal laws and is advantageous to the banks and customers because the federal law is evolving. There isn't comprehensive regulation of federal law for privacy now, he remarked.

Number 1739

MR. LAWER referred to an article that quoted him as saying, "The current law ... [doesn't have] any significant impact on the bank." He said it was cited in support of the proposition that the more restrictive law is not harmful to banks, insofar as costs and other matters are concerned. He said the statements in the article were accurate quotations but weren't taken with the rest of the remarks that he made during that interview. He said those things were largely in response to the question:

> Given the state law, what impact will GLB [Act] have? And the answer was: It doesn't impact the state law currently. And when asked how we were living under the more restrictive law, I gave the same response that I gave to you today, and that is, the law is not more restrictive; it's poorly drawn, it doesn't work. We use it when we can, [and] ... ignore it when it doesn't serve our purposes; it hasn't been an impediment.

MR. LAWER commented that "they" chose not to publish those remarks in the article.

Number 1861

REPRESENTATIVE ROKEBERG asked Mr. Lawer whether he recommended the "opt in" and "opt out" language in Section 3 or that in AS 06.01.028.

MR. LAWER responded that the Alaska Bankers Association proposed AS 06.01.028, an alternative that directly parallels federal law and would make state and federal law "opt out." He went on to explain that the definitions were taken from elsewhere in the statutes because none were provided [in this section].

REPRESENTATIVE ROKEBERG said he understood that the Division of Banking, Securities and Corporations in Alaska had no jurisdiction over a national bank or one that the controller currency authorized. Apparently there is some change here, he asked, because of the federal law.

Number 1935

MR. LAWER replied that there is no proposed change. Responding to a question about whether [the Division of Banking, Securities and Corporations] has an impact on the institution that Mr. Lawer works for or other interstate banks, he replied, "Not the institution that I work for, no"; however, there are provisions concerning multi-state branching and banks doing business in more than one state that will bring them within the (indisc.) of those who are subject to regulation by the [commissioner] in the state.

REPRESENTATIVE ROKEBERG asked if he was correct in surmising that the state authorities have the right under statute to have requirements on branching and establishing [institutions] in the state.

MR. LAWER responded affirmatively, and added [in those states that have multiple banks].

REPRESENTATIVE ROKEBERG said 25 years ago he represented "CIBC" when it endeavored to enter the Alaskan market unsuccessfully. He asked if that had changed.

MR. LAWER responded affirmatively.

Number 2017

REPRESENTATIVE ROKEBERG said he is not familiar with whether "opt in" or "opt out" would affect Mr. Lawer's operations or those of Wells Fargo.

MR. LAWER replied that as far as the First National Bank of Anchorage is concerned, operations wouldn't be affected because it doesn't disclose customer information at all, except at the request of the customer or as required by law.

REPRESENTATIVE ROKEBERG asked if that was what Mr. Elder was referring to as the state's default policy.

MR. LAWER responded in the negative. He said his point was that insofar as other banks are concerned, particularly larger institutions in more than one state, they make some disclosures among their affiliates and it is not necessarily prohibited by federal law; under the proposed HB 106, that isn't barred either, he said, and is not subject to the "opt in" or "opt out" provision in either event. What is being sought is the disclosure of non-public information for non-affiliated third parties, largely involving the sale of customer information.

MR. LAWER explained that "we" don't engage in that practice, Wells Fargo doesn't, nor do any of the other banks doing business in the state.

Number 2139

REPRESENTATIVE ROKEBERG asked if this is for the large holding company with affiliated organizations that want to cross-market [products and services].

MR. LAWER answered affirmatively. He said the "opt in, opt out" [provision] doesn't pertain to that because those (indisc.), with various exceptions, are affiliated institutions. He said the GLBA is the law that for the first time sets up definitions of affiliated institutions.

Number 2181

REPRESENTATIVE ROKEBERG asked for clarification that under the new definitions in the FCRA, affiliated organizations under a holding company trade could share "that" information.

MR. LAWER responded affirmatively.

CHAIR MURKOWSKI said it would be helpful to have a chart explaining to whom and how the GLBA and the FCRA apply. And she said it would be helpful to see if there were other federal Acts relating to privacy that banks have to comply with.

Number 2235

MR. LAWER said the FCRA has privacy aspects relating exclusively to credit reports, and imposes some restriction on disclosure. He said in terms of privacy, what is being talked about is GLBA. One problem in producing that chart, he said, is that the law is evolving, and there are routinely new interpretations; when financial institutions are trying to deal with that, adding legislation at the state level, with the consistency unknown, may not be something that "we" necessarily want to do. "We" are talking about proposed legislation intended to make state financial institutions competitive with federal financial institutions.

Number 2302

MR. LAWER suggested that if a state financial institution has a different set of requirements than those that apply to others who are nonetheless in a position to do business here, [that institution] is being put at a competitive disadvantage.

REPRESENTATIVE ROKEBERG replied that this is because the Division of Banking, Securities, and Corporations has no jurisdiction over most controller-currency-type banks.

MR. LAWER responded, "State and other types of financial institutions." He said the biggest competitors for all banks and credit unions are security brokers, which are governed by federal legislation but wouldn't be governed by any of the proposed state legislation that has to do with privacy.

MR. LAWER explained that "financial institution" includes commercial banks, savings banks, credit unions, premium finance companies, small loan companies, bank holding companies, financial holding companies, trust companies, and savings and loan institutions. Security brokers and dealers are omitted from that list.

REPRESENTATIVE ROKEBERG asked about Mr. Lawer's definition under AS 10.13 and AS 44.81.

MR. LAWER stated that "they" would be, but not under the banker's proposal either. The virtue of the banker's proposal, he said, is that it requires no more or less of financial institutions than what is required by the federal law.

REPRESENTATIVE ROKEBERG asked Mr. Elder if broker-dealers are regulated by [the division].

MR. ELDER answered affirmatively.

Number 2434

MR. LAWER explained that the proposal is that a financial institution under that title doesn't include security brokers and dealers.

Number 2460

JERRY WEAVER, Senior Vice President and Manager, Commercial Banking Group; National Bank of Alaska; Alaska Bankers Association, testified via teleconference.

TAPE 01-36, SIDE B
Number 2459

MR. WEAVER mentioned the "opt out" position under GLBA. He said 20 state legislatures this year have considered some sort of "opt in" proposal or modification to GLBA, and none have passed it. If Alaska wants to stick with this restrictive "opt in," it would be one of only six states. Furthermore, some of those six states have run into severe problems. For example, some years back Vermont adopted a rigid "opt in," and because it is an isolated state with a small population, Vermont was excluded by most of the national marketing programs. There is a good chance that that could occur in Alaska, too, he said, if [Alaska] goes outside the federal guidelines.

Number 2421

MR. WEAVER said, too, that those federal guidelines are evolving quickly and will be formulated under a new regulation "P" once complete. The guidelines put out by the Federal Deposit Insurance Corporation (FDIC) in its privacy rule handbook are 12 pages long. These are comprehensive guidelines that will evolve more as time goes on; most states have decided to give the federal GLBA and regulators a chance to see how well it works before [moving forward].

Number 2392

MR. WEAVER pointed out that Alaska might want to consider this before getting in there. Finally, he said, GLBA concerns more than just the institutions that have been discussed; there is another bill that is starting to move through the legislature on the insurance industry as well. He said all of these types of institutions do essentially the same things today: they handle deposits, provide financial services, and counsel customers, and it is important that a lot of these are "cross-fed" to provide rapidly evolving benefits at a reasonable cost to customers. "We" don't want a restrictive policy, he said, and it would be good if "we" could get rid of the existing one.

MR. WEAVER remarked that GLBA provides an opportunity to reach a practical compromise.

CHAIR MURKOWSKI asked - recognizing that the National Bank of Alaska is now Wells Fargo, and that Wells Fargo is operating in many different states - if Alaska has a stricter policy regarding privacy, does a bank that is in various states handles the "opt in" provision, considering that California, for example, may have an "opt out" provision.

MR. WEAVER said the banks could do it two or three ways. With [Alaska] being such a small market, "they" would have the option to just exclude Alaska, because Wells Fargo happens to own most of its affiliates and is part of a family of companies. He said that information could probably be exchanged anyway and probably would be in Alaska, and marketing would just continue. The ones that would be harmed by the bill are the very same state banks that [this legislation] is trying to [help].

MR. WEAVER used North Rim [Bank] as an example and said it has a significant holding in a residential mortgage company, but doesn't own it free and clear. If it wanted to make referrals similar to those "we" can to our "mortgage arm" on competitive customer offers, the "opt in" provision would be a major handicap.

MR. WEAVER explained that this is one of the other reasons why "we" want to keep it fairly open; however, the legislature would want to consider being more restrictive than the federal laws if an abuse were found or if it wasn't working for Alaskans.

Number 2256

REPRESENTATIVE ROKEBERG asked for clarification that there is a deadline to make sure [Alaskan] state banks are on equal footing with national banks. From a competitive standpoint, he asked, is there an [option] to do nothing before the July 1 deadline and do it later?

MR. LAWER answered affirmatively. The privacy portion of this could be separated out, he explained, and the current law could be left as it is; the rest of the proposed legislation could be enacted to provide all of the competitive advantages to state banks that were intended by the administration.

MR. LAWER, upon being asked if there is a "sunset" for the privacy provisions after a few years, responded that there is no time limit.

REPRESENTATIVE ROKEBERG clarified that Mr. Lawer wasn't sure what those regulation are going to be. [The legislature] is being asked to pass something that would mirror something, although legislators don't know what it is going to be.

MR. LAWER remarked, "Exactly so." That would be the proposal; it is intended to take into account all of the exceptions in the federal law and bring them to bear in the case of state institutions so that competition can be on an equal footing. The other alternative is to leave the privacy provision that is in the state law as it is.

REPRESENTATIVE ROKEBERG said that from Mr. Weaver's testimony, it would have a negative effect on the economic competitive position of state institutions.

MR. WEAVER replied that after working with it for about 18 years, that is his professional opinion. He pointed out that he didn't say it was the preferred alternative, but "the" alternative. The state of Colorado, after considering this very carefully, decided that it would just stand back, use the GLBA provisions that will become regulation "P," and monitor it for a couple of years to see how it impacts the residents of California and the business climate. If [it is favorable California] can let it go forward and not legislate anything, and if not, the legislature can decided to go back and correct any errors it felt existed. He pointed out that the Alaska legislature could do the same thing.

REPRESENTATIVE ROKEBERG wondered if [the legislature] could put a sunset on that provision to review it in case the legislature "bungled" the job. There is some urgency, he remarked, for the state-chartered institutions.

MR. WEAVER stated that as far as the rest of the bill is concerned, all the bankers, regulators, and everyone who has looked at it [think] it is quite good, specifically with the fine technical revisions proposed today. Section 3 - privacy - he said, seems to be the only area of major discussion by any of the professionals in the financial industry.

Number 2109

REPRESENTATIVE ROKEBERG, referring to the Alaska Bankers Association's proposed amendments, asked Mr. Lawer if he was the author of the first amendment [text provided previously], subsection (b), referring to deleting page 2, line 10 through page 3, line 17 of the bill.

MR. LAWER replied that he had a hand in it. He said "they" could propose an alternative that would simply [mirror] federal law and regulations in [Alaska's] state law.

CHAIR MURKOWSKI announced that HB 106 would be held over because work needs to be done on Section 3.

REPRESENTATIVE ROKEBERG expressed concern that if people perceive this as a step backwards in terms of privacy [in Alaska], it would be problematic.

CHAIR MURKOWSKI noted her appreciation of the [Alaska Bankers Association] and hoped it would continue to work with the [division] director on the remaining issues.

[HB 106 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 6:00 p.m.