ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE
April 20, 2001
3:25 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 128
"An Act relating to employment of certain minors in agriculture."

- HEARD AND HELD

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

- HEARD AND HELD

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."

- SCHEDULED BUT NOT HEARD

PREVIOUS ACTION

BILL: HB 128
SHORT TITLE:EMPLOYMENT OF MINORS IN AGRICULTURE
SPONSOR(S): REPRESENTATIVE(S)OGAN

Jrn-Date	Jrn-Page		Action
02/14/01	0317	(H)	READ THE FIRST TIME - REFERRALS
02/14/01	0317	(H)	L&C
02/14/01	0317	(H)	REFERRED TO LABOR & COMMERCE
03/26/01		(H)	L&C AT 3:15 PM CAPITOL 17
03/26/01		(H)	Heard & Held; Assigned to Subcommittee MINUTE(L&C)
04/20/01		(H)	L&C AT 3:15 PM CAPITOL 17

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 MINUTE(L&C)
04/20/01		(H)	L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

RICHARD MASTRIANO, Director
Division of Labor Standards & Safety
Department of Labor & Workforce Development
PO Box 107021
Anchorage, Alaska 99510
POSITION STATEMENT: Testified on HB 128.

REPRESENTATIVE SCOTT OGAN
Alaska State Legislature
Capitol Building, Room 108
Juneau, Alaska 99801
POSITION STATEMENT: Testified as sponsor of HB 128.

BOB LOHR, Director
Division of Insurance
Department of Community & Economic Development
3601 C Street
Anchorage, Alaska 99503
POSITION STATEMENT: Explained the changes made in the proposed CS for HB 184.

KATIE CAMPBELL, Life and Health Actuary
Division of Insurance
Department of Community and Economic Development
PO Box 110805
Juneau, Alaska 99503
POSITION STATEMENT: Answered questions on HB 184.

JOHN GEORGE, Lobbyist
3328 Fritz Cove Road
Juneau, Alaska 99801
POSITION STATEMENT: Testified on behalf of the American Council of Life Insurance, American Family Life Insurance Company, and National Association of Independent Insurers on HB 185.

KATHERINE ALTENEDER
(No address provided)
Eagle River, Alaska 99577
POSITION STATEMENT: Testified on behalf of herself on HB 184.

ACTION NARRATIVE

TAPE 01-63, SIDE A
Number 0001

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

HB 128-EMPLOYMENT OF MINORS IN AGRICULTURE

CHAIR MURKOWSKI announced that the first order of business would be HOUSE BILL NO. 128, "An Act relating to employment of certain minors in agriculture."

Number 0073

REPRESENTATIVE ROKEBERG made a motion to adopt the proposed committee substitute (CS) for HB 128, version 22-LS0373\J, Cramer, 4/6/01, as a work draft. There being no objection, Version J was before the committee.

REPRESENTATIVE ROKEBERG, speaking as the chair of the subcommittee assigned to work on HB 128, explained that the proposed CS provides for a method [referenced on page 2, paragraph (1)] advancing the approval by the Department of Labor & Workforce Development to meet the requirements. [Paragraph (2)] allows an employer to hire a minor with a written consent from the parents or guardian within three days after [the minor] begins working. He noted that the department had come up with substitute language [included in packets, most of which are incorporated in Version J].

Number 0303

RICHARD MASTRIANO, Director, Division of Labor Standards & Safety, Department of Labor & Workforce Development, testified via teleconference. He stated that the department's proposed language makes it mandatory [under paragraph (1)] for the employer to inform the department of the job duties the minor would be performing, and gives the employer seven days in which to file the written consent from the parents. He explained that [the department] could then make the employer aware if he or she is employing a child in something that may be considered hazardous or may cause a problem for the employer, particularly with the hours of work or number of days the child may be asked to work. [The department's proposed language] eliminates paragraph (2) from the original bill by saying it is mandatory that [the employer] notify the department in order to track the job duties the [department] has approved.

MR. MASTRIANO stated that the second change is that employers need to submit written consent for minors working in the physical presence of the parents; however, the employer should still contact the department to ensure that the employee can actually perform the duties. He said [the department's] concern is that parents may allow kids to do some work without the knowledge that it may be a violation of either state or federal law. He remarked that the third change from is that written consent from a parent or legal guardian filed under (c) of Section 2 is valid as long as the minor performs the duties that had been approved by the employer. Originally, he said, [it was valid] for one year; however, most kids don't stay at a job for a year. [Version J] has also changed the requirement that both

parents must sign [the consent] to one parent or one legal guardian. He noted that the custodial parent and a court-appointed legal guardian can sign for the child. [The department] will have to devise some sort of tracking system for approved job duties and approved employers. Once an employer has gotten a job approved, the only thing he or she would have to do is send in the parental consent form within seven says.

REPRESENTATIVE ROKEBERG stated that during the subcommittee meeting a draft fiscal note of $214,000 was submitted by the department. He asked Mr. Mastriano whether adopting the department's changes would bring the fiscal note down to zero.

MR. MASTRIANO responded that [the fiscal note] would not be small, because one of the problems inherent in the proposed system is that there would be more field enforcement, and [the department] would have to develop a tracking system. Right now [the department] tracks minors by taking a copy of the work permit and, if available, the minor's proof of age. For example, an investigator could receive a call from an employee, parent, or the general public saying, "We've seen a kid [who] looks awfully young working at this particular establishment. Do you know if they have a work permit?" [The department] could then pull up the permit and see the age of the kid. He stated that there would be an investigator at each one of the regional offices.

Number 0942

REPRESENTATIVE HALCRO stated that this is a huge jump. [The committee] started with a bill that would have allowed certain minors to work in agriculture. At that point [the committee] heard testimony from one man who said his main problem was that he didn't have a decent fax line; therefore, he couldn't get the reports back and forth. Representative Halcro asked Mr. Mastriano whether he had met with the group of farmers.

MR. MASTRIANO responded that he talked with [representatives of nine to ten farms] with regard to that [committee meeting]. Two farmers expressed that they didn’t realize they were even required to have a work permit, and asked that permits be forwarded to them. The individual who expressed concern at the [committee meeting] said it was his intent to continue using the work permit form, but would not have it approved prior to the minor's starting to work. Mr. Mastriano said he is concerned that by doing that, the man could leave himself liable, since

there are a lot of duties that fall under hazardous orders, particularly for minors 14 and 15 years old.

REPRESENTATIVE HALCRO asked whether the same farmer who gave testimony in support of the bill was the only one who said he had a problem with the current system.

MR. MASTRIANO said he was correct. He noted that the man was the chairman of the meeting. He added that work-permit requirements probably were not of major concern to [the farmers], because most were trying to deal with hoof and mouth disease.

REPRESENTATIVE HALCRO asked Mr. Mastriano how he currently handles work permits for industries other than agriculture, and what the turnaround time [of approving the work permits] is for the other industries.

Number 1188

MR. MASTRIANO answered that he uses the same method of work permits for other industries. As to the turnaround time, he stated that ordinarily [the department] can turn them around in one to three hours. In a busy time, it can be done within 24 hours. For example, in the summertime when the fish processors start hiring, kids tend to jump from job to job, and the [department] gets a lot of faxes overnight. [The department] can turn those around by the close of business that day.

REPRESENTATIVE ROKEBERG asked Mr. Mastriano what the fiscal note requirement would be. He stated that the provisions of the proposed CS as well as the suggestions [from the department] were in part designed to save the department money. He said he agrees that having field inspection would perhaps provide a higher level of protection, but the bill doesn't require more field instructors.

MR. MASTRIANO responded that the current work permit indicates to [the department] the rate of pay, the hours the child is going to work, and the duties. He stated that if the consent form were to have all of this information on it, then there wouldn't be a large fiscal impact, other than [the department's] approving all of it.

Number 1434

CHAIR MURKOWSKI asked Mr. Mastriano whether he is suggesting that before the department grants the approved job duties for there would be a site inspection.

MR. MASTRIANO answered that she was correct. He said usually before a child starts working [the department] checks the work permit, and if the duties are something that the child of a particular age is not allowed to do, the work permit is denied or the employer is contacted. Currently, the child is not supposed to start working until the [employer] gets the approved work permit back. As for the inspection, the only time [the department] would [do a site inspection] is when it got the consent forms saying what the individual kids would be doing.

CHAIR MURKOWSKI remarked that it really doesn't make any sense to give the advanced approval if [the department] is still going to do an on-site enforcement making sure the kids are doing what the employer said they were doing.

REPRESENTATIVE ROKEBERG stated that he assumed there would only be an inspection if there was some hazardous duty and/or material being used. He asked, if he owned a restaurant and was going to hire a kid to flip hamburgers, whether [the department] would inspect the premises.

MR. MASTRIANO answered yes.

REPRESENTATIVE ROKEBERG asked whether that happens now.

MR. MASTRIANO answered yes.

REPRESENTATIVE ROKEBERG asked why, then, there is a fiscal note.

MR. MASTRIANO explained that [the department] is familiar with fast-food restaurants and knows that [the employer] is going to list the hours the individual works, the amount of money being paid, and the equipment that is going to be used. However, if a 15-year-old is going to work at a private business, [the department] needs to go out and make sure that the 15-year-old is cooking in plain view of the public so that it's not considered a hazardous order.

Number 1625

REPRESENTATIVE SCOTT OGAN, Alaska State Legislature, sponsor of HB 128, testified via teleconference. He stated that he is perplexed because there are 11,000 faxes that [the department]

gets, and they have the same amount of information. He said this looks to him like an opportunity for the Department of Labor and Workforce Development to grab a few extra positions. He noted that this is one of the pieces of legislation that the Alaska's Farmer Association requested.

REPRESENTATIVE ROKEBERG stated that this is a problem for every employer in the state and every person trying to get a job.

REPRESENTATIVE CRAWFORD remarked that he was leaning toward favoring the bill when it talked about family farms. However, this has been expanded to all sorts of industries, and there are a lot of dangerous jobs out there that parents and other people are having kids do. He shared that he used to flip burgers. When he was 16 years old, the nephew of his boss was draining the grease one night and dropped the pan. It burned his feet and he was crippled for life. He said he had an ironworker friend who had his two boys, ages 16 and 15, put up a pole building. One boy fell off the apex of the building onto the concrete and "scrambled" his brains for the rest of his life. He stated that the reason there are child labor laws is because kids were getting hurt. He said he heard earlier that there were 66,000 kids who were injured in the line of work last year. He remarked that he is now opposed to this bill.

REPRESENTATIVE HAYES stated that he thinks the bill takes back all the child welfare laws. He remarked that from the research and the testimony received in the committee, this bill is centered on a fax machine. He said he doesn't feel comfortable rewriting all the statutes and regulation over that type of testimony.

Number 1866

REPRESENTATIVE HALCRO asked Mr. Mastriano what would happen with a company that does not have preapproval on file with [the department].

MR. MASTRIANO responded that if [the department] received the notification, an investigator would be sent out to ensure that the individual is not in a hazardous occupation, and discern what he or she is being paid and how many hours he or she is working to make sure the [employer] is complying with the law.

REPRESENTATIVE HALCRO stated that it seems to him that [the department] is going to make that trip either way, whether or not [the employer] has preapproval. He remarked that if there

are companies that are preapproved and [the department] has already gone out and inspected the worksite, that is a trip [the department] will not have to make once the application comes in and is approved. Therefore, only those that don't get preapproval will have to be inspected.

REPRESENTATIVE ROKEBERG suggested that there is going to be a lot more safety for kids if preapproval does take place.

REPRESENTATIVE HALCRO commented that when [the department] arrives at a business requesting preapproval, the inspector can then point out possible occupations where minors are working that are not safe, and therefore make recommendations for the workplace to be even safer.

Number 2012

REPRESENTATIVE HAYES stated that he doesn't understand the preapproval. He asked if that means employees are already in place.

REPRESENTATIVE ROKEBERG responded that with a preapproved site, every time someone is hired [the employer] has to submit the form back to the department. Rather than have the department to get the commissioner to sign it, it will be file, unless the form shows that there is a duty that needs to be followed up on. Right now, if there is a problem that comes up on the permit, [the department] denies the permit. He submitted that that is what's clouding the system.

REPRESENTATIVE MEYER asked which version the fiscal note goes to, because what Representative Rokeberg is suggesting would actually reduce the fiscal note.

REPRESENTATIVE ROKEBERG responded that the fiscal note is for Version J. He stated that [the department] wants to hire three more inspectors.

REPRESENTATIVE HALCRO stated:

> Let's say that I owned a fast-food restaurant. I'm going to be in a position to hire ... minors. So they come out and take a look at my facility and say, "All right, you can have minors working at the cash register, at the drive-through window, you can even have them work at the shake machines, but you cannot have them at the fryer or the deep fryer. ... So then,

> as an employer, I know upfront ... what positions I can put these minors in. In addition, I've also been warned about those positions that I cannot. And it makes me a better operator, because then I have a better grasp of the law in what my limits are. And they don't have to show up again, unless, God forbid, I have an accident.

Number 2181

MR. MASTRIANO remarked that the way to eliminate the situation is when the employer calls in for a job approval. If the employer says that this job will only be done by 14- and 15-year-olds, and the [the department] approves the job, it would go back to the present system. If [an employer] says he or she wants to hire minors to cook hamburgers, the [department] will approve that, but won't know whether the kids will be 14 years old or 17 years old. He stated that if [the committee] wants to tie the job positions to age limits, the [department] doesn't have a problem doing that. The fiscal note would be reduced substantially, but the duties performed for the various age limits are one of the things [the department] looks at.

REPRESENTATIVE HALCRO stated that as he understands the process, that is already on the work permit. He asked whether [the employer] has to clearly define what the minor is going to be doing and what equipment he or she would be working around.

MR. MASTRIANO answered that he was correct. He said that saves [the department] from going out on a more frequent basis, because once [the department] does an inspection, it knows, for example, what the various jobs are and whether a 14- or 15- or 17-year-old can perform those types of [duties].

Number 2236

REPRESENTATIVE CRAWFORD remarked that currently, the kids come into the Department of Labor and Workforce Development and apply for the work permit; therefore, the [department] knows the age of the kid.

CHAIR MURKOWSKI remarked that [the committee] had been working on the bill for almost an hour, and she does not think they have made any headway. She said she is going to give it back to Representative Rokeberg, the chair of the subcommittee, to see whether he can work it through a little more based on the comments from the department.

[HB 128 was held over.]

HB 184-INSURANCE CODE AMENDMENTS

[Contains discussion of HB 106]

CHAIR MURKOWSKI announced that the final 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."

Number 2360

REPRESENTATIVE HALCRO made a motion to adopt the proposed committee substitute (CS) for HB 184, version 22-GH1025\F, Ford, 4/19/01, as a work draft. There being no objection, Version F was before the committee.

BOB LOHR, Director, Division of Insurance, Department of Community & Economic Development, came forth and explained the changes between the original version and the proposed CS. He stated that on page 2, line 2, the word "otherwise" has been deleted. On page 4, paragraph (9), lines 14 to 21, is a new paragraph that says it is OK for managerial and administrative employees of a company to operate without an insurance license. He remarked that on page 18, lines 24 to 27, is a new section that allows commission-sharing overrides. He noted that this language was in the NAIC (National Association of Insurance Commissioners) model bill dealing with the Gramm-Leach-Bliley Act (GLBA), but it was not in the original version of HB 184. On page 23, after line 8, Section 39 was added, which deals with surplus lines bonding. Currently, he said, a bond of $200,000 is required of a surplus lines broker. According to [GLBA], any additional requirements placed on an insurance sales person, an agent, or broker that are not placed on residents could mean that a state would not be reciprocal.

TAPE 01-63, SIDE B
Number 2484

MR. LOHR stated that the [division] feels there are important consumer protections in the bonding requirements for surplus

lines, and would like to do anything possible to maintain that requirement and make the argument at the national level that this is a legitimate consumer protection that should not make a state nonreciprocal. In the event that the argument fails, this change would allow the director to have the bonding requirement by regulation, but would not require it. Therefore, the effect of the change in the proposed CS would be to make optional the requirement for the surplus lines bond.

CHAIR MURKOWSKI asked how [the bonding requirement] can be optional if it is required.

MR. LOHR responded that currently, under law, it is required. With this amendment, proposed in the CS on lines 10 and 11 of page 23, it would say that "if required by the director by regulation", then the bond would be maintained in a form acceptable to the director. He explained that if [the division] adopted a regulation by the effective date of this section, then the requirement for the bond would continue. If [the department] didn't adopt a regulation requiring the surplus lines bond by that deadline, then the requirements would no longer be there.

MR. LOHR continued, stating that on page 25, line 14, the phrase "or insured" has been deleted from two places. It has also been deleted from line 17. On the same page, line 31, there is a correction to the citation. The original bill said "provided in 15 U.S.C 6801-6805" and has been corrected to read "15 U.S.C. 6801-6809". He noted that that is the correct citation for Title V of GLBA, and is the privacy provision for that legislation.

REPRESENTATIVE ROKEBERG asked whether there is a definition of "personal information records" within the bill.

MR. LOHR responded that there is a definition of "personal information" in GLBA.

Number 2336

KATIE CAMPBELL, Life and Health Actuary, Division of Insurance, Department of Community and Economic Development, came forth and stated that "personal information" is a defined term within the federal bill - GLBA - and is broad.

REPRESENTATIVE ROKEBERG asked whether there is an issue about what can and cannot be disclosed.

MR. LOHR answered that the approach in the bill is to direct the division to come up with regulations on privacy. The NAIC model, which was a previous reference point for what [the division] should do, has been changed in the bill to a reference to GLBA - on page 26, line 8, of the bill. He added that GLBA, Title V is the privacy provision of that Act and is a starting point for regulations. In either case, federal law under Title V, of GLBA clearly allows states to go beyond the privacy provisions adopted by federal regulators, if that's the wish of a state. If [a state] does so, unlike for most federal preemption law, the state provision will be upheld. A stronger, more protective privacy provision in a state regulation adopted under GLBA will be upheld if it is found to be more protective of privacy than an equivalent provision under the federal regulations that have been adopted under the same title.

REPRESENTATIVE ROKEBERG stated that because of the adoption of the so-called Alaska patients' bill of rights [HB 211], there are strong and restrictive abilities to release medical information. He asked, when that was passed [during the previous session], whether a de facto opt-in situation was set up.

MR. LOHR answered that the provision in HB 211, which takes effect July 1, 2001, goes beyond opt-in by prohibiting the sharing of financial information. Therefore, it is inconsistent with the kinds of approaches that have been discussed in both the banking bill and the insurance bill with respect to privacy, and the kind of provisions found in the national models that deal with privacy.

REPRESENTATIVE ROKEBERG remarked, "Albeit, it's more consistent with our state's constitution."

MR. LOHR responded that he believes that's correct.

REPRESENTATIVE ROKEBERG asked whether HB 211 will be more restrictive than anything else [the committee] will adopt.

MR. LOHR answered that he believes that's the case, but would like to double-check with counsel, since HB 211 predated the application of GLBA - it was there before the federal regulations were adopted. He remarked that there is a timing question in his mind, but in terms of the thrust of Title V of GLBA upholding stronger privacy provision, he said he believes Representative Rokeberg's assessment is correct.

Number 2082

REPRESENTATIVE ROKEBERG asked, since [the legislature] is going to grant [the division] the ability to draft the regulations, how [the division] will handle taking policy directions from this legislation and the existing statutes.

MR. LOHR replied that the primary guidance would come from [HB 184]; however, the fact that this bill directs [the division] to adopt regulations would not in any way authorize [the division] to adopt a regulation inconsistent with existing statute.

REPRESENTATIVE ROKEBERG remarked that that is precisely his point. When [the division] is formulating the regulations, he said it seems to him that it will have to take the HB 211 requirements into consideration. He asked whether those need to be looked at.

MR. LOHR responded that [the division] has given some thought to the question of how to deal with the existing statutory provision and how to interpret it. He said that's something that would be suitable for discussion in the committee.

REPRESENTATIVE ROKEBERG stated that this is a situation whereby [the committee] is giving the division preauthority to draft regulations. If there are existing statutes in place, [the division] will obviously review those in light of the regulations. He said he thinks that militates toward some extraordinary, tight privacy regulations. He stated that he is wondering whether that needs to be lightened up.

Number 1942

REPRESENTATIVE HALCRO asked Mr. Lohr whether he is getting some feedback from people in the insurance industry similar to what [the committee] is getting from the banking people with the banking side of the bill - that they view GLBA as an opportunity to loosen some of the state's privacy regulations.

MR. LOHR responded that [the division] is not hearing that as much as how the industry would like a consistent national standard.

REPRESENTATIVE CRAWFORD stated that he doesn't understand why [the committee] would want to put this in regulation and not in statute, if the next insurance commissioner could rewrite the

regulation. He asked whether it is not written in stone when it is put in regulation.

MR. LOHR responded that that's correct; however, the regulation [the new commissioner] would have to rewrite would have to be consistent with, but no less restrictive than, GLBA, because those are statutory standards.

REPRESENTATIVE CRAWFORD stated that this bill gets away from what originally was in statute, as far as opt-in and opt-out, by having a less restrictive point of view.

MR. LOHR remarked that the current state of the law for insurance code is that there is no protection for privacy whatsoever. From that perspective, any effort to establish a regulatory process or a statutory standard, which protects financial privacy and health privacy in the hands of insurance companies, would be a major step forward.

Number 1753

REPRESENTATIVE ROKEBERG stated that he thinks because of the Administrative Procedure Act, those regulations are law and are hard to change. Nevertheless, he asked whether there is anything in the bill that gives [the division] policy direction on that particular level of privacy.

MR. LOHR responded that the closest he could come is with the "consistent with, but no less restrictive than, GLBA Title V" language. That sets a floor, but is essentially what the federal regulations already provide. It could go anywhere above that, up to and including the absolute prohibition that is in HB 211, in terms of sharing. He stated that if there were no legislative action taken this year in Alaska, then the default standard would be that of the federal regulations, and would be opt-out for financial information.

REPRESENTATIVE ROKEBERG asked whether there is no opt-in in the default standard in the personal information area of insurance.

MS. CAMPBELL responded that in the preamble to the federal regulation, regulators considered any information that a person provides in his or her application in the process of getting a financial product to be considered within the purview of GLBA. That would include health and financial information.

REPRESENTATIVE ROKEBERG asked whether that is shared with affiliates.

MS. CAMPBELL answered that under GLBA sharing among affiliates is not restricted - it is restricted for nonaffiliated third parties.

REPRESENTATIVE ROKEBERG stated that he is concerned with giving [the division] a "blank check" and not giving [the committee] some policy direction.

Number 1611

CHAIR MURKOWSKI remarked that Mr. Lohr had indicated that the goal is to get all of the states at the same level. She stated that if [the committee] gives the director authority to adopt that, with this minimum threshold that it has to be consistent with, but no less restrictive than, GLBA, [the division] could essentially have an opt-in provision that puts Alaska at a different place than the other states.

MR. LOHR remarked that he thinks she is correct. He stated that if HB 211 were not amended as part of this privacy process, he thinks the division would take that as guidance of the highest possible privacy standard that had been established for health information. Unlike the financial information, where there's been some debate on the health side as being an opt-in provision as discussed in the NAIC model, there's been relatively little debate about whether that's appropriate. Most people, he said, seem to agree with the opt-in standard.

REPRESENTATIVE CRAWFORD stated that it seems to him that there are bound to be other meetings going on around the country asking similar questions. He said if the idea here is to get into compliance with GLBA, but there is still the option to be stricter, he thinks there will be a lot of states with varying degrees of regulation. He said he thinks it is going to be difficult to adopt a nationwide standard that has so much leeway.

Number 1412

REPRESENTATIVE HALCRO asked what HB 211 is.

REPRESENTATIVE ROKEBERG responded that it is the so-called patients' bill of rights [passed last year]. He said it had a

small provision on privacy, and he thinks there was a consent provision.

MS. CAMPBELL remarked that there are several conditions whereby health information can be released. One of them is with written consent. Another one is research - if it's needed to reimburse for a claim.

REPRESENTATIVE ROKEBERG added that there were provisions that allowed for a day-to-day course of activities, but it strictly prohibits the release of information without the consent of the patient. He suggested that [the committee] send a letter of intent to providing policy guidance to the division as to what direction [the committee] wants the regulations to go.

CHAIR MURKOWSKI asked Mr. Lohr whether there are more changes.

Number 1263

MR. LOHR responded that on page 27, lines 3 through 10, the proposed CS deletes the privacy standard from consumer protections for banking, because it's already covered by GLBA through the privacy provision on page 26.

CHAIR MURKOWSKI asked whether this gives some additional guidance in terms of privacy for financial information.

MR. LOHR answered that the specific applicability of the deleted section, on page 27, referred to banking institutions selling insurance. Those institutions would be within the definition of what is covered by the privacy regulation under GLBA. Other than the fact that it singles out that one group, he said he doesn't believe it would be any more restrictive or provide any additional guidance from the legislature to the division about the privacy provisions.

CHAIR MURKOWSKI asked how this interrelates to HB 106 and privacy provisions that [the committee] is wrestling with, with financial institutions.

MS. CAMPBELL responded that this provision deals with the sale of insurance by these financial institutions, while banking only deals with the financial product. He said it was very common for banks in the past to issue credit insurance. This particular provision is on real property used as collateral for a loan.

Number 1116

REPRESENTATIVE HALCRO asked Mr. Lohr whether [the division] deleted the language because of the reference to GLBA in this bill or in HB 106.

MR. LOHR answered that [the division] has added the reference to GLBA in this bill on page 26, and has deleted the reference in this bill to the model privacy regulations adopted by NAIC. He noted that [the division] has not proposed any changes to HB 106.

REPRESENTATIVE HALCRO asked whether he is correct in saying that this doesn't tie in to what is being discussed with HB 106.

MR. LOHR answered that he was correct.

REPRESENTATIVE ROKEBERG stated that he thinks they are tied together by GLBA, and the fact is that now [the committee] has the phenomenon of bundling affiliations between insurance companies and banking institutions.

REPRESENTATIVE HALCRO remarked that that is his question, because [the committee] is considering removing the reference to GLBA in the banking bill.

REPRESENTATIVE ROKEBERG remarked that these bills have to be coordinated.

MR. LOHR stated that in terms of the relationship with the bills, [the division] has tried to coordinate with Mr. Elder [Director of the Division of Banking, Securities & Corporations] in terms of the content of his bill and the approach to privacy. He added that the GLBA reference in HB 184 was suggested to [the division] by industry; they felt strongly that it was a preferable reference to the NAIC model.

REPRESENTATIVE HALCRO commented that the bankers want GLBA because it's far more lenient than existing state statutes.

MR. LOHR noted that in [the division's] case, there is no standard; therefore, the adoption of a standard would advance the cause considerably.

Number 0903

REPRESENTATIVE ROKEBERG remarked that he thinks a letter of [intent] could stipulate as to the consistency of both of the bills and the fact that [the committee] wants a regulations policy adopted by both departments. He said he has a lot of concern about bundling services.

REPRESENTATIVE CRAWFORD stated that he doesn't want to get to the point at which the bank is the insurance company, and a person couldn't buy car insurance because the bank doesn't like his or her credit report. He said he would like to put some "firewalls" in between these businesses.

MR. LOHR continued, stating that on page 30, line 3, [the division] added the reference to credit union and the federal citation, because when credit unions are selling insurance it is important to make sure that "financial institution" includes them as well in the definition. On lines 11 and 12 [the division] added, "'financial institutions' does not include an insurer". That was always understood, but now it is made explicit. He stated that on lines 29 and 30, the language concerning domestic violence has been amended to capture the compromise that was reached a number of years ago when the original insurance domestic violence provision was adopted, and to make sure there was not substantive change accomplished by HB 184. Finally, he said a proposed amendment would deal with the effective date clause on the surplus lines provision. Currently it is listed as taking effect July 1, 2001, on page 32, line 12. The [division] would recommend that the committee consider making that one year later, or July 1, 2002.

CHAIR MURKOWSKI remarked that the last time the committee heard this, there was testimony from folks within the industry who had concerns with some of the issues. She asked whether [the changes from the division] are what industry has also agreed to.

MR. LOHR responded that all of the amendments were done at the behest of industry representatives. He said it is [the division's] understanding that each group that expressed concerns previously is satisfied with the version of the bill.

Number 0540

JOHN GEORGE, Lobbyist, came forth on behalf of the American Council of Life Insurance (ACLI), American Family Life Insurance Company (AFLAC), and National Association of Independent Insurers (NAII). He said they have worked extensively with the

Mr. Lohr, have come up with compromises, and are prepared to support the bill.

CHAIR MURKOWSKI stated that during the last go-around Mr. George's major concern was with the privacy provision. She asked whether he is comfortable with allowing the director to implement it by regulation.

MR. GEORGE responded that the compromise was to allow [the director] to do it by regulation, and to allow [ACLI, AFLAC, and NAII] to make arguments during the regulatory process as opposed to setting the NAIC [standard] as a floor. He added that if regulations are adopted and they find that they don't work, it is a lot easier to go back and change a regulation than to go through the legislative process.

REPRESENTATIVE CRAWFORD agreed that it is a lot easier to change regulations than it is to change statutes. He said [the legislature] is just trusting that the current commissioner is going to be looking out for the interest of the consumer and the interest of the industry on an equal basis.

Number 0403

MR. GEORGE responded that it is the purview of the legislature to set policy, and there are a number of standards that could be put on as sideboards, such as having a total prohibition of release of information, using the NAIC standard or the National Conference of Insurance Legislators [standard], or adopting regulations not more restrictive than GLBA.

CHAIR MURKOWSKI remarked that [the committee] was just handed an article from BNA's Banking Report dated April 16 that talks about the Gramm-Leach-Blily privacy deadline and what states are doing. It says many states appear to be moving toward adoption of the NAIC model regarding privacy. She said 23 states are leaning this way, including Alaska.

MR. LOHR responded that he believes that would reflect a survey that was done based on the original version of HB 184.

REPRESENTATIVE ROKEBERG referred to HB 211 and stated that it does have a provision that says "it's confidential and not subject to public disclosure - that's any medical or financial information." He said one exception is the written consent by the individual. He asked how the HCFA (Health Care Financing

Administration) privacy regulations fit in with the whole equation.

Number 0141

MS. CAMPBELL responded that the federal regulations will actually go into effect in 2002, and the health care providers and health care insurers will have to comply with those regulations. She said they are opt-in, but there are exceptions where the information could be released for marketing purposes. She added that if a state has a stronger standard, those regulations would not preempt it. Regardless, she said, that is the floor for health information privacy for all health insurers.

REPRESENTATIVE ROKEBERG commented that there are so many regulations and laws.

MR. LOHR responded that it is a complex picture, but the bottom line is that privacy is of widespread concern. A lot of the regulations are coordinated with each other. For example, the NAIC model regulations provide that if [a company] is meeting the HCFA regulations for privacy, then that's adequate.

TAPE 01-64, SIDE A

REPRESENTATIVE ROKEBERG stated that this would affect all the major insurance underwriters in the state.

Number 0032

MS. CAMPBELL responded that it isn't going to affect life insurers and property and casualty insurers. The HCFA regulations do not touch the health information that property and casualty insurers or life insurers gather. She remarked that it is really just touching the health insurance HMOs (health maintenance organization) and health insurance market.

MR. LOHR stated that one reason there are so many sets of regulations is that each one covers those institutions over which they have authority. Unless they are put together as a package, there are gaps and overlaps. On the gaps, he said there is definitely a need for a set of regulations that covers life insurance, and it would not be covered by the HCFA regulation as currently drafted.

REPRESENTATIVE ROKEBERG remarked that for purposes of a life insurance examination and the release of that information, a person would not be covered by HB 211, unless it was under a managed care entity.

MR. LOHR said that's correct.

Number 0271

REPRESENTATIVE HAYES asked if the amendments would be addressed.

CHAIR MURKOWSKI responded that she is not prepared to move the bill. She said there are sufficient concerns in her mind that [the committee] know what they are doing with this particular legislation in relation to how GLBA is relating to financial institutions. She stated that she is concerned that [the committee] may be going in different directions when talking about banks versus insurance as well as privacy issues that relate to either financial concerns or the health information. She remarked that she thinks there needs to be a relatively consistent policy.

REPRESENTATIVE MEYER remarked that he shares the same concerns and suggested having a spreadsheet comparing the two.

Number 0447

KATHERINE ALTENEDER testified via teleconference. She stated that her comments are focused on three main issues: the privacy matter, a private right of action for Alaskans in order to have some recourse should information be disclosed in violation of the law, and a review of some of the antitying provisions. She stated:

> Today you are considering massive changes to the insurance Act. And the decisions you make about HB 184 and HB 106 are going to affect not only a limited number of businesses operating in Alaska, but most definitely ever single Alaskan's right and how they have control over their very personal and private information. ... Representative Kott: particularly I'm addressing my comments to you because you're my elected representative, and it's my hope that you'll represent my interest and the interest of individual Alaskans. ... I was listening before to some of the questions and things that were being heard by the committee, and I have to say as a citizen [I'm] really

confused. I'm feeling like I'm listening to a committee that's operating for industry. I've heard nothing about what would be good for Alaskans; I've heard nothing about input from consumers, and I'm deeply, deeply troubled by that. Right now you've only had the input of the banks and the insurance industry, and I think you need to hear from consumers, which are [all] Alaskans.

Looking at the right of privacy, obviously it's particularly important to Alaskans. We have a fundamental right as included in our constitution. It makes sense that when you're given the chance to act, you should act in a way that's consistent with our constitution. As I think everybody is kind of on the same page now and understanding that if you don't act ... at all, the federal law will preempt entirely, and you will have given up Alaska's right to defend. If you accept Gramm-Leach-Bliley, you're basically handing on a silver platter to them the [federal government's] complete run on how things are going to be done in Alaska. We typically don't like that here, and you guys have fought really hard in the past to prevent that, and reassure Alaskans, and that you, as our representatives, are able to control the issues that you can. ... I think this goes also to issues between state powers and federal powers. If you just let Gramm-Leach-Bliley be the ploy, you're just handing it all over to the [federal government]. ...

Number 0697

MS. ALTENEDER continued, stating:

Through, I think, Representative Crawford's office I have some handouts that I might refer to. The first one ... I want to cite as privacy being important to Alaskans. ... There's been a number of national polls that have shown that privacy is important to people across America. And now I'm referring to a Gallup survey summary sheet and a bar chart. ... Across America people are very concerned about their medical privacy in particular, but also their financial privacy. ... 84 percent of people consider the privacy of their financial information very important; 78 percent believe that medical record privacy is very important. ... There's been a lot of discussion of,

"Why not just turn it over to the regulatory process?" That's totally passing the buck. You guys are our elected legislators. ... The very dedicated and intelligent and good professional civil servants that run the agency, nonetheless, they are employees of the state; they are not the people who represent us - you are. We need you to pass laws that are going to protect us. In that regard, I really want you to think about how overwhelming ... nationally the desire of people, not business ... is to have their privacy protected.

When the [federal government] passed Gramm-Leach-Bliley ... they only allowed a few areas for states to act; otherwise, it would be entirely federally preempted. One of the reasons they allowed the privacy arena to be a place the states could act is that they knew that every state had a different notion of what the privacy provisions or desires of that population is. In this case, the ... reason [the federal government] didn't act is because they said you, the legislators, ... represent the people; you do what your people want. ... There's also been a lot of discussion today about the NAIC model rule. ... You had a lot of industry officials standing up in front of you today saying, "Well, this is what we want." In fact, the sort of think tank ... for that has put up an opt-in, and I think that's a really critical thing to think about. ... I haven't heard any credible evidence ... that would prove that it would harm their business in any way not to share this information. Making that blanket assertion without any evidence is troubling to me.

Number 1014

REPRESENTATIVE HALCRO said to Ms. Alteneder that he thinks she misunderstood some of the discussion that has gone on, because [the committee] is referencing another bill and other discussions. He stated that he believes every member on the committee is a strict advocate of the opt-in rule, and a strict advocate of maintaining Alaska's privacy clauses.

REPRESENTATIVE CRAWFORD asked Ms. Alteneder whether she wants privacy of financial and medical records. He also asked what her suggestion is for [the committee].

MS. ALTENDER responded that [that is what she wants]. She said she has been looking at the [draft] of the bill that references Gramm-Leach-Bliley as before; there is nothing about opt-in. She said she would recommend an opt-in provision, a restriction on transferred personal information, for customers to have access to their file, limits on the reuse of information, state enforcement against offenders, and that individuals be able to bring a legal action against an entity for improper disclosure. She stated that this last point is a critical element to provide, otherwise there is nobody watch-dogging what these companies are doing. She asked whether there is a modified bill that would include an opt-in requirement for insurance.

CHAIR MURKOWSKI answered that nothing has been decided at this point.

MS. ALTENEDER explained that an opt-out for an average American family with two parents and two kids who have a checking account, a savings account, a credit union account, a mortgage, two car loans, car insurance, life insurance, three credit cards, two retirement accounts, college fund accounts, and insurance would have at least 25 accounts they would have to opt out of.

Number 1330

REPRESENTATIVE ROKEBERG stated that he believes there is some truth to that, with how [the committee] is going to handle this with the regulatory policy.

REPRESENTATIVE HAYES remarked that the only concern he has is that he doesn't want to do something that would make [Alaskan] businesses noncompetitive with other businesses in the country.

CHAIR MURKOWSKI responded that it was her hope that with HB 106 and HB 184 [the committee] could get to the point where everyone could weigh in on all of the side issues and make sure that the points of controversy are cleared up, so that it would come down to the policy consideration of opt-in or opt-out. Insurance and banking are not so separate anymore, but there can be differences. She said she doesn't want [the committee] to get "cross waves" between insurance and financial institutions when it comes to dealing with the privacy component.

REPRESENTATIVE ROKEBERG asked Mr. Lohr why he deleted the NAIC model.

MR. LOHR responded that by substituting Title V of GLBA for the NAIC model privacy regulations, there is no substantive difference. It increases the range of options available to the division because it sets GLBA as the floor, but clearly the provision in GLBA that allows [the division] to go beyond what the federal regulations do and be upheld is plenty sufficient. He remarked that if the proposed CS passes, his intention would be to promulgate the NAIC model privacy regulations as the starting point of discussion. In order to accommodate some industry concerns, [the division] was quite happy to propose a different floor, knowing that the model privacy regulations were well within that floor. He added that if nothing passes, there is no standard at all in current state law with respect to insurance privacy.

MR. GEORGE responded that [the NAIC model was deleted] at the request of some of his clients who would probably prefer the statute say that the director can issue a regulation not more restrictive than GLBA. He added that [ACLI, AFLAC, and NAII] recognize that there is no ceiling and that the floor has been lowered substantially, which leaves a great area for them to put their arguments forward.

REPRESENTATIVE CRAWFORD stated that that is where the discussion on the regulations starts, but when it starts it will be between [Mr. George] and the industry. The consumers weigh in at the legislature; he said it is the legislators' job to make sure that they are represented. If this leaves [the legislature] and goes to the regulations point, then [the legislators] no longer enter into it. After that, he said, there will be another insurance commissioner down the road who may be more favorable to the industry. He remarked that he believes there can be a healthy industry with privacy, but these things need to be decided before they leave the legislature.

REPRESENTATIVE ROKEBERG remarked that [the committee] needs to give the division more direction. Even the prior bill [HB 211], he said, with the reference to the NAIC model, gives adequate direction. He added that he thinks it is the consensus of most members of the committee and the state constitution that opt-in should be in the statute.

REPRESENTATIVE HAYES commented that he disagrees with Representatives Rokeberg and Crawford. He said he thinks [the

legislature] has more than enough opportunity to oversee this issue as it goes through the process.

Number 1878

MR. LOHR remarked that the NAIC model regulations provide opt-out for financial information held by insurance companies and opt-in for health information.

REPRESENTATIVE ROKEBERG stated that he thinks it should be consistent.

CHAIR MURKOWSKI stated that Mr. Lohr brings up a good point in that as far as insurance goes, it is both opt-in and opt-out, whereas with financial institutions, it's one or the other. If the full committee is in support of an opt-in, the full committee needs to understand that the NAIC model is not 100 percent opt-in.

[HB 184 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:35 p.m.