

**ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE**

April 25, 2001

3:30 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. 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."

- MOVED CSHB 106(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 184

"An Act relating to the business of insurance, including changes to the insurance code to implement federal financial services reforms for the business of insurance and to authorize the director of insurance to review criminal backgrounds for individuals applying to engage in the business of insurance; amending Rule 402, Alaska Rules of Evidence; and providing for an effective date."

- MOVED CSHB 184(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 227

"An Act instructing the State Board of Registration for Architects, Engineers, and Land Surveyors to adopt minimum technical standards relating to the practice of surveying."

- HEARD AND HELD

HOUSE BILL NO. 226

"An Act relating to the employment of persons 14 years of age or older and under 19 years of age on licensed premises, including hotels, restaurants, or eating places; and relating to hours of work of minors under 16 years of age."

- SCHEDULED BUT NOT HEARD

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
03/19/01		(H)	Heard & Held
03/19/01		(H)	MINUTE(L&C)
03/28/01		(H)	L&C AT 3:15 PM CAPITOL 17
03/28/01		(H)	Bill Postponed
04/04/01		(H)	L&C AT 3:15 PM CAPITOL 17
04/04/01		(H)	Scheduled But Not Heard
04/20/01		(H)	L&C AT 3:15 PM CAPITOL 17
04/20/01		(H)	Scheduled But Not Heard
04/23/01		(H)	L&C AT 3:15 PM CAPITOL 17
04/23/01		(H)	Scheduled But Not Heard
04/25/01		(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
04/20/01	(H)	Heard & Held MINUTE(L&C)
04/25/01	(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 227

SHORT TITLE:LAND SURVEY STANDARDS

SPONSOR(S): REPRESENTATIVE(S)HARRIS

Jrn-Date	Jrn-Page		Action
04/02/01	0809	(H)	READ THE FIRST TIME - REFERRALS
04/02/01	0809	(H)	L&C
04/02/01	0809	(H)	REFERRED TO LABOR & COMMERCE
04/25/01		(H)	L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

FRANKLIN TERRY ELDER, Director
Division of Banking, Securities and Corporations
Department of Community and Economic Development
P.O. Box 110807

Juneau, Alaska 99811-0807

POSITION STATEMENT: Testified on HB 106; explained changes in Version F and proposed amendment F.1. Testified that he has not reviewed HB 184.

JOE SCHIERHERN, Senior Vice President
Northrim Bank

P.O. Box 241489

Anchorage, Alaska 99524

POSITION STATEMENT: Testified in support of HB 106, Version F; concurred with Mr. Elder's testimony.

LAURA WALDON

Alaska Public Interest Group

4120 Resurrection Drive

Anchorage, Alaska 99504

POSITION STATEMENT: Testified on HB 106.

LISA BELL, Senior Vice President

Chief Operating Officer

Alaska Pacific Bank

2094 Jordan Avenue

Juneau, Alaska 99801

POSITION STATEMENT: Testified in support of HB 106 on behalf of the Alaska Bankers Association.

STEVE CONN

Alaska Public Interest Research Group
618 West 18th Avenue
Anchorage, Alaska 99503

POSITION STATEMENT: Testified on HB 106.

BOB LOHR, Director

Division of Insurance
Department of Community and Economic Development
3601 C Street
Anchorage, Alaska 99503

POSITION STATEMENT: Testified on HB 184.

KATIE CAMPBELL, Life and Health Actuary

Division of Insurance
Department of Community & Economic Development
PO Box 110805
Juneau, Alaska 99503

POSITION STATEMENT: Answered a question concerning written consent on HB 184.

JOHN MANLY, Staff

to Representative John Harris
Alaska State Legislature
Capitol Building, Room 513
Juneau, Alaska 99801

POSITION STATEMENT: Testified on behalf of the sponsor of HB 227.

JIM COLVER

PO Box 427
Palmer, Alaska 99645

POSITION STATEMENT: Testified on behalf of himself on HB 227.

PATRICK KALEN, Land Surveyor

Alaska State Board of Registration for Architects, Engineers and Land Surveyors
Division of Occupational Licensing
Department of Community & Economic Development
PO BOX 110806
Juneau, Alaska 99811

POSITION STATEMENT: Testified on HB 227.

BARBARA HUFF, Legislative Director
Teamsters Local 949
PO Box 110806
Juneau, Alaska 99811
POSITION STATEMENT: Testified in support of HB 227.

ACTION NARRATIVE

TAPE 01-67, SIDE A
Number 0001

CHAIR LISA MURKOWSKI called the House Labor and Commerce Standing Committee meeting to order at 3:30 p.m. Members present at the call to order were Representatives Murkowski, Halcro, Crawford, and Hayes. Representatives Meyer, Kott, and Rokeberg joined the meeting as it was in progress.

HB 106 - FINANCIAL INSTITUTIONS

[Contains discussion of HB 184 and SB 66]

Number 0081

CHAIR MURKOWSKI announced that the first order of business would be 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 reminded members that during a previous hearing she had emphasized the necessity of working on HB 106 in concert with HB 184, to ensure uniformity with regard to the related privacy issues including financial disclosures and certain health information disclosures.

Number 0255

REPRESENTATIVE HALCRO made a motion to adopt the proposed committee substitute (CS), version 22-GH1026\F, Bannister, 4/19/01, as a work draft. There being no objection, Version F was before the committee.

Number 0290

FRANKLIN TERRY ELDER, Director, Division of Banking, Securities and Corporations, Department of Community and Economic Development, stated that he understands that [Version F] reflects much of the work done in the Senate Labor and Commerce Standing Committee on SB 66. However, a large exception regarding policy is that the reference to the Gramm-Leach-Bliley Act (GLBA) was removed in HB 106 from the privacy section, AS 06.01.028, making it essentially an opt-in bill. That removal is the department's preference, he indicated, and although it also was requested of the Senate Labor and Commerce Standing Committee [regarding SB 66], that change wasn't made. Mr. Elder expressed hope that the change could be done on the Senate side as well.

MR. ELDER highlighted two small "nonpolicy" differences between HB 106 and SB 66. First, [Version F of HB 106] adds the reference to the National Credit Union Administration (NCUA), which didn't make it into the Senate bill. Mr. Elder remarked, "As a policy, we work with both the FDIC [Federal Deposit Insurance Corporation] and the NCUA when we do examinations; and so I was, I guess, a little surprised that didn't make it in, in the Senate bill, but you've taken care of that ... in this committee substitute." He noted that second, [Version F] takes care of the slight difference in the ATM [automated teller machine] section on credit unions, with the small wording change being the same as for ATMs at banks.

Number 0502

MR. ELDER informed members that the other major event from the department's viewpoint, in conjunction with the committee's work on Version F, has been to have further discussions with the Alaska Bankers Association to find common ground for protecting Alaskans' privacy while still making the everyday work of financial institutions run smoothly, while at the same time considering the differences between small banks, which may have few or no affiliates, and larger ones.

MR. ELDER pointed out that when talking about sharing or selling information for banks and credit unions covered by the Fair Credit Reporting Act (FCRA), the FCRA regulates the sharing of information among affiliates. It preempts any state restrictions on sharing among affiliates until January 2004, after which time [the legislature] needs to pass a bill that references the FCRA in order to overcome the preemption. By contrast, the Gramm-Leach-Bliley Act only deals with the sharing of information with nonaffiliates.

Number 0655

MR. ELDER reported on the department's further conversations with the Alaska Bankers Association. He said it is his understanding that the department and the association had agreed upon some clarifying language in subsection (d) of AS 06.01.028, which allows for financial institutions to share information necessary to provide services. In testimony on that section, both on the Senate side and in a letter to Representative Halcro, Mr. Elder said he had stated that he thought that would also cover joint marketing efforts. He expressed the belief that the language agreed upon by the department and the Alaska Bankers Association clarifies that it includes joint marketing efforts.

CHAIR MURKOWSKI asked Mr. Elder whether he had a copy of proposed amendment F.1 [22-GH1026\F.1, Bannister, 4/23/01], which read:

Page 3, lines 24 - 25:

Delete all material and insert:

"(1) the disclosure is necessary to
(A) provide the services of the financial institution to a depositor or customer; or
(B) market financially related products or services of the financial institution and its marketing partners; and"

MR. ELDER affirmed that Amendment F.1 is the language agreed upon by the department and the bankers association. He pointed out that the specific clarifying language is in subparagraph (1)(B).

Number 0775

MR. ELDER emphasized that [under Amendment F.1] the information to be shared must be necessary, not just extraneous. Furthermore, it must be financially related services of the financial institution and its marketing partners. He noted that subsection (d) requires a contractual relationship, in writing, between the financial institution and the marketing partner, saying that the marketing partner will be subject to the privacy restrictions of AS 06.01.028. Mr. Elder characterized that provision as "fairly powerful," emphasizing that it truly would be a marketing partner, rather than a telemarketer, who might not be willing to enter into such an [agreement].

Number 0840

REPRESENTATIVE HALCRO asked whether an unaffiliated mortgage company having a brochure in a bank is "sharing information" or whether Mr. Elder is talking about the banks giving out information about a specific customer.

MR. ELDER suggested that a decision to allow a company to put a brochure in the lobby, which anyone could pick up, probably wouldn't be contemplated here. Rather, this relates to privacy in terms of providing, for marketing purposes, information that is in the possession of a financial institution. It may have been obtained from a variety of sources, he noted, including directly from the consumer, or indirectly from credit reports or other reports. Amendment F.1 limits it to "financially related," and there would have to be a contractual agreement if one company were receiving any of that nonpublic information.

REPRESENTATIVE HALCRO said one argument for the "opt-out" is that the current law is so strict that it doesn't provide for a mortgage company to put a brochure in the lobby. He expressed concern that privacy should relate to the sharing of account information, for example, or payees on checks.

MR. ELDER concurred.

Number 1031

REPRESENTATIVE CRAWFORD referred to subparagraph (A), Amendment F.1. He inquired about defining the term "services"; he said it seems very broad.

MR. ELDER reported that he had come to agree with the bankers' position that ten people, when making a list of services, would provide ten different lists; a month from now, those lists would change. Therefore, it would be difficult to lock in a specific list of services of a financial institution. Changing that list later would require either a regulatory action or a statutory change. Mr. Elder also expressed his belief that if there were an issue regarding this - whether in front of a hearing officer if the department had brought an action, or before a court - the court [or hearing officer] could look at something and determine whether it is a service offered by the institution.

REPRESENTATIVE CRAWFORD noted that the committee is trying to go with opt-in, and this is an exception. He asked whether it

shouldn't, therefore, be the fewest services that are exceptions, such as check-printing and other services that had been discussed previously.

MR. ELDER answered that he believes this language is more workable than having a list, and that it is sufficiently limited by the word "necessary". He said subparagraph (A) isn't talking about marketing in that regard, because these people already are customers, including depositors. Furthermore, it relates to providing services of the institution for which people have chosen to have a customer relationship.

REPRESENTATIVE CRAWFORD asked whether, for example, a bank or credit union would be able to share with its insurance company how timely a customer had been regarding payments for a car loan. He asked whether that could be construed as a service.

MR. ELDER replied, "Not under (A), because under (A) it's talking about the financial institution, and so ... it wouldn't be sharing ... the information for somebody else to provide the services." He said it is more limited than one might think. He cited as obvious examples the statement-printing and check-printing. He restated his concern about coming up with a list of all the possible services of an institution.

Number 1345

REPRESENTATIVE CRAWFORD turned the committee's attention to subparagraph (B) of Amendment F.1, noting that it says "market financially related products". He asked whether an institution would be able to share without a customer's opting in.

MR. ELDER answered that under (B), he would say that "insurance product" is a financially related service - if the two were affiliated, there could be sharing anyway. If the two were not affiliated, and if there were a contractual relationship between the insurance company and the financial institution, they could provide information that is relevant - necessary - to the service.

REPRESENTATIVE CRAWFORD asked whether that would be true even if the consumer didn't opt in.

MR. ELDER affirmed that. He added that otherwise, small banks such as many Alaskan banks would be at a significantly competitive disadvantage when compared to larger, generally national, banks that have an affiliate structure. For example,

having an affiliate insurance company would force smaller banks either to not compete, to seek out those kinds of affiliations, or to be purchased by bigger institutions.

Number 1501

REPRESENTATIVE HALCRO reported that he had received an e-mail that day from the Alaska Public Interest Research Group (AkPIRG), which said HB 106 would strip the cap off of credit card interest rates. He asked whether it would, in fact, do so.

MR. ELDER referred to Section 13, page 9, Version F, saying the division and the state had proposed that it remove the current cap of 17 percent on credit card charges. He explained the reason for that language. He said "our" view is that a cap such as this essentially has no effect on the interest rates paid by most Alaskans on their charge cards. Instead, it only prevents smaller, state-chartered institutions from participating in the credit card business. He noted that of the six state-chartered institutions in Alaska, three don't offer credit cards, and three offer them but don't "push" them. He surmised that [offering credit cards] comes more from a desire to be a full-service institution or from the fact that credit cards may be a means of providing overdraft protection for checking accounts.

MR. ELDER reported that [the department] also looked at what the legislature did in 1996 in amending the retail installment sales Act, which is in Title 45. The cap on interest rates was changed at that time to essentially whatever was negotiated between the institution and the borrower. Noting that he has a background as an economist, Mr. Elder said a cap is effective only if the market rate would be higher; otherwise, all a cap does is create a shortage, because the demand would exceed the supply at that price. Mr. Elder said that is what he believes has happened, since half of the state-chartered institutions don't offer credit cards.

Number 1713

MR. ELDER suggested that one test is looking at the credit cards in one's wallet; if they are from major banks, the rates will vary widely - having no relationship to the 17 percent - because federal law allows banks that operate in more than one state to "export" interest rates. Mr. Elder suggested that a cap may even go against economic development by ensuring that the decisions will be made outside of the state, because in order to

export interest rates, they must be made in other states. He then stated:

We honestly don't believe that if House Bill 106 passes and becomes law this way, and that [the] cap is removed, ... people will see any difference in the interest rates that they pay on the credit cards that they are likely to have in their wallet. The only possible difference would be that perhaps a state-chartered financial institution that they otherwise do business with will also offer credit cards.

... I don't think it is anti-consumer or anything like that. But having said that, the will of the committee and the will of the legislature are fine with me. ... It's not a Gramm-Leach-Bliley issue. I think it's more of ... a fairness-to-state-banks-versus-out-of-state-banks and ... a small-bank-versus-large-bank issue. ...

I'd like to see bipartisan support of House Bill 106, and if that is the only section that was preventing bipartisan support for the bill, then ... I wouldn't have any strong feeling, one way or the other, if the legislature chose not to include it.

Number 1851

REPRESENTATIVE HALCRO summarized his understanding of what Mr. Elder was saying: first, it doesn't come into play for people whose credit cards come from outside of Alaska, and second, it impedes the success of state banks, which can't charge a decent rate in order to make money.

MR. ELDER concurred, again saying it is a matter of what is fair to state-chartered institutions, which is the reason for its inclusion.

Number 1903

CHAIR MURKOWSKI brought attention to an e-mail that referenced "an Office of the Comptroller of Currency decision, apparently, OCC letter number 822," which provides that when a national bank has branch offices in a state and makes credit determinations in that state, that bank must follow the state's law. She said the individual's concern was that if there were no cap in

Alaska, then a Wells Fargo Bank could issue an out-of-state credit card and charge usurious rates.

MR. ELDER said the federal law that governs the ability to export interest rates does say that; one criterion is where the credit decision is made. He said the banks know that and can structure their operations to show that the credit decisions are made in whatever state they need to have the credit decisions made in. Therefore, a 17 percent cap in Alaska means almost nothing to a true multi-state bank. Furthermore, nobody puts a gun to someone's head and makes that person use a credit card; people sign up for credit cards, and most people notice what the rates are. He said it is a competitive business. If a bank offered a truly usurious rate, he suggested that people wouldn't take it.

CHAIR MURKOWSKI indicated her belief that Alaska has usury laws.

REPRESENTATIVE ROKEBERG disagreed, saying the usury laws were abolished because they don't make sense anymore. He mentioned a credit reporting Act. He then said market principles are there, and it is clear, from the testimony, that state banks cannot compete with national banks because of the artificial cap. He indicated that the only thing in Alaska's statutes relating to usury is "some nonfloating-rate legal interest rates," which he said he was going to look into.

CHAIR MURKOWSKI said she would like to hear from the bankers before there was a motion to adopt Amendment F.1. She asked whether there were further questions of Mr. Elder; none were offered.

Number 2107

JOE SCHIERHERN, Senior Vice President, Northrim Bank, testified via teleconference, noting that he was a charter employee of the bank and has worked primarily in the commercial loan area over the last ten years. He informed members that he formerly was president of the Alaska Bankers Association. He added that the Alaska Bankers Association and Northrim Bank are in favor of Version F and concur with Mr. Elder's testimony.

MR. SCHIERHERN addressed the need for Amendment F.1 to allow the marketing of bank services to the public. He referred to Mr. Elder's testimony that the FCRA preempts any regulation of banks with affiliates. Mr. Schierhern said a bank with an insurance affiliate would be allowed to freely market its services to the

affiliate; by contrast, a smaller state bank without such an affiliate could not do that without the amendment. He emphasized the importance of the amendment in order to provide fairness, allowing state-regulated banks to be on an equal footing with larger national banks with affiliates. He added that another central point is the ability for consumers to receive a free flow of information. Without these provision, he said he thinks the opportunity to choose and the opportunity to receive information would be inhibited.

Number 2252

LAURA WALDON, Alaska Public Interest Group, testified via teleconference. She stated that she doesn't think HB 106 will focus on the local people, because it allows [the banks] to charge people anything they want. She said people don't realize that their [interest] rates are changing until they get their bill.

LISA BELL, Senior Vice President, Chief Operating Officer, Alaska Pacific Bank, testified on behalf of the Alaska Bankers Association. She noted that [the Alaska Bankers Association] is in complete agreement with the Division of Banking, Securities and Corporations, and is in support of the proposed committee substitute and the proposed amendment. She remarked:

We as bankers are not interested in selling lists of customer information to third parties. We have our reputation to protect. What we are interested in doing is being able to market our own products and services, and to be able to market financially related products and services that we may not be able to offer in-house. ... We believe that this legislation, with the proposed amendment, does exactly that for us, and also protects the privacy interest of Alaskans.

Number 2396

REPRESENTATIVE CRAWFORD asked Ms. Bell what personal financial information she would share if she were only marketing products to somebody the bank has a relationship with.

MS. BELL answered that it is possible that some household characteristics would be shared, which might allow [the bank] to determine if the product would be of interest to that household. For example, it could be household income or average balances. The bank might want to know who would be interested in an

account that would have a minimum balance requirement of \$2,500; therefore, [the bank] would not be marketing it to people who would be outside that range.

REPRESENTATIVE CRAWFORD asked, if based on that information, whether someone would be able to receive services that wouldn't be offered to someone who didn't have the \$2,500 minimum balance.

MS. BELL replied that she could have given a poor example; however, it's possible. Depending on the product or service, [the bank] may want to offer it to everyone. However, it depends on what the products are. They could be trust, brokerage, or insurance services, which she thinks are the most common three things her bank would want to market to customers that can't be offered in-house. She added that small banks probably don't have a long list of things they would want to engage in.

TAPE 01-67, SIDE B

MS. BELL continued [inaudible due to tape failure]. She stated that it is quite possible that database sorting would be done within the bank and not even need to be shared with a third party, because in the end, the bank is possibly paring down a list and only sharing names and addresses in order for a mailing to go out.

Number 2455

REPRESENTATIVE CRAWFORD asked Ms. Bell if she wouldn't be adverse to limiting what would be shared to just the name and address, if the list has already been limited within the bank.

MS. BELL replied that she would be concerned if limitations were placed on what is shared without knowing what the opportunities in the future might be. She said this could create an undue restriction on the kinds of financial services [the bank] might be able to offer.

REPRESENTATIVE CRAWFORD remarked that it seems to him, if the bank wants to share more information, [the bank] should get an opt-in provision whereby the consumer would say it is OK to share something more [than just name, address, phone number, birthday, or occupation].

MS. BELL responded that she would feel that [the bank] would have to be very careful in placing those limitations. A smaller bank may not have thought of all the possible opportunities. For example, there could be a situation in which the partner [of a smaller bank] has a more sophisticated system that sorts, looks at the demographics, and determines what products a person would be interested in.

REPRESENTATIVE CRAWFORD commented that he is concerned that [HB 106] may be discriminating against a large segment of the marketplace based on other information.

MS. BELL replied that she wouldn't want to mislead [the committee] on guessing what types of information might be shared or what kinds of demographics might be used in a "sort," since she has never engaged in that kind of a joint-marketing agreement with a third party.

REPRESENTATIVE CRAWFORD added that if someone could more specifically show him a need to share more information, he might be more amenable to going along with it.

Number 2337

REPRESENTATIVE ROKEBERG referred to Amendment F.1, subparagraph (B), and stated that he thinks the theory is it would allow state banks to have "equal footing" with large national banks by granting them the disclosures necessary to market financially related products or services of the financial institution and its marketing partners.

MS. BELL agreed.

REPRESENTATIVE ROKEBERG stated that he'd read the provision in the context of the exceptions that were delineated under subparagraphs (A), (B), and (C) [on page 2 of the proposed CS]. He asked Ms. Bell whether she would consider the proposed subparagraph (B) as an opt-in or an opt-out. He said it seems that the way it's drafted, it is an opt-out, and the customer would have to declare that he or she wouldn't want that information divulged.

MS. BELL answered that her interpretation is it really does stick with a default opt-in for many circumstances, except for the basic exceptions already included in the statute for the normal course of banking. She said this amendment allows, particularly, the smaller banks the opportunity to go a little

further in marketing other products and services that cannot be offered in-house.

REPRESENTATIVE ROKEBERG asked whether her interpretation is that this would occur without the permission of the customer.

MS. BELL agreed, and stated that this would be an exception to opt-in; however, there are still requirements under the GLBA that would require the bank to have a contract with the third party.

REPRESENTATIVE ROKEBERG asked Mr. Elder if conformance with the GLBA is in the bill.

Number 2225

MR. ELDER answered that there are aspects of the GLBA that apply to the bank regardless of what is done in terms of opt-in or opt-out. He explained that subsection (f) [on page 3] is an exception to the general rule that disclosure of information is not allowed, and subsections (a) through (c) state when that is allowed. The purpose of subsection (d) is to level the "playing field" between the small state-chartered banks that don't have affiliate structures and the larger banks that do.

REPRESENTATIVE ROKEBERG asked whether it would not be consistent with the GLBA to say "state-chartered banks", if there were any enforcement on the national level.

MR. ELDER responded that the idea is that in [Alaska] smaller banks tend to be state-chartered banks, but nationwide there are some large state-chartered banks. He stated that the issue isn't necessarily whether it's state-chartered or national, but whether it has an affiliate structure or not. He noted that it just so happens that in [Alaska] the state banks are also smaller banks and tend not to have an affiliate structure. He emphasized that subsection (d) is designed to allow smaller banks to do things that other banks can already do because of their affiliate structure.

CHAIR MURKOWSKI asked, if [HB 106] is trying to give equal footing to the state-chartered banks, whether it could be specified that the state banks are brought up to parity with their ability to do the [agreement].

MR. ELDER, in response, reiterated that the purpose of subsection (d) is to level the playing field between banks that

have large affiliate structures and banks that don't, regardless of their charter.

CHAIR MURKOWSKI asked Mr. Elder if he would be reluctant to specify that it is a state financial institution because that is just the way it is right now.

MR. ELDER agreed.

Number 2012

REPRESENTATIVE ROKEBERG asked if, under the proposed subparagraph (d)(1)(B) and the proposed CS, banks have the right to opt back in.

MR. ELDER responded that the bill and the amendment are written with information that is necessary to provide the services of the institution, or to conduct joint-marketing efforts of that institution with its marketing partners where there is a contractual relationship. He explained that he thinks it's limited by the fact that it is necessary information, it's financially related services, and there has to be a written contract between the financial institution and the partner that they will be subject to the limitations in subsections (a) through (c).

REPRESENTATIVE ROKEBERG asked, if [the committee] adopts Amendment F.1, where in the bill it would provide that the opt-out provision would be sent out [to customers].

MR. ELDER answered that if [the committee] passes the bill as it is, opt-in is in paragraph (a)(1) [on page 2]. He added that the Gramm-Leach-Bliley requirement, which the banks - including the state banks - are still subject to, requires that a privacy notice be sent.

Number 1794

CHAIR MURKOWSKI asked, by opting-in, if the Gramm-Leach-Bliley provisions are still in play, but there will be a higher standard when it comes to privacy.

MR. ELDER agreed.

REPRESENTATIVE ROKEBERG stated that also, those institutions with large affiliate structure have been allowed to have co-marketing parties.

MR. ELDER responded that institutions with large affiliate structures already have large marketing parties, which is why subsection (d) is necessary. Should [institutions] not have an affiliate in a certain area that's a financially related area, and should they want to operate under a contractual arrangement just like any other bank, then subsection (d) would allow them to do that. He added that the contractual obligation is there because it binds them to the rest of the sections of the privacy provision, it's limited to financial services, and it has to be a joint effort.

REPRESENTATIVE ROKEBERG asked Mr. Elder whether there is a natural disincentive within the structure of an institution with a large number of affiliates to compete against itself. He said the natural flow of things is that this would allow the smaller, less-affiliated institution to be able to compete with a larger one.

MR. ELDER agreed.

CHAIR MURKOWSKI remarked that she was trying to suggest that [the committee] limit the amendment to only state-chartered institutions. However, she said she was reminded, for example, that Alaska Pacific Bank is a federally chartered bank, but doesn't have any affiliates. Therefore, if the amendment were limited, [the committee] wouldn't really have done what they want to do, which is to allow the smaller state banks [to do things that other banks can because of their affiliate structure].

MR. ELDER stated that that is exactly why subsection (d) is written the way it is - to only address the difference in affiliate structures. He added that one thing that needs to be kept in mind when talking about information that is shared or sold under Gramm-Leach-Bliley is that the restriction is on nonpublic information. Therefore, there are no restrictions on things that are available publicly.

Number 1582

REPRESENTATIVE HALCRO referred to Ms. Bell's comment about how the intention is not to sell lists. He asked her, if she were to create a prospective list of customers based on an average daily or monthly balance, and she was going to do a joint marketing with somebody who offered market accounts, what her bank would get for providing that list.

MS. BELL answered that there would be two types of benefits from it. [Her bank] would hopefully retain the customer, who might have otherwise taken his or her money out and put it in a brokerage account, and [her bank] might get an interest override paid back on the funds that are basically sent out of the bank.

REPRESENTATIVE CRAWFORD commented that a few years ago he decided not to do business with a couple of the larger banks in [Alaska] because he wasn't getting good, individualized service. He asked Ms. Bell if she thinks one of the plusses about smaller banks is that they provide more individualized service. He remarked that it seems to him that now [these smaller banks] want to get bigger.

MS. BELL responded that she understands Representative Halcro's point and she agrees with him. She stated that she doesn't think any small bank in Alaska has an intention of "stuffing people's mailboxes" with all kinds of offers. She said she thinks they want the ability to do selective kinds of marketing for products that they think will help retain customers.

REPRESENTATIVE HALCRO stated that it seems to him from subparagraph (B) in the proposed amendment that [the smaller banks are marketing financially related products or services] without accepting an opt-in.

MS. BELL remarked that paragraph (B) is an exception to opt-in.

REPRESENTATIVE HALCRO asked if it would be OK to first check with [the consumers] to see if they are interested in receiving that material.

Number 1346

MS. BELL responded that she thinks the whole point of the amendment was to allow [banks], without a lot of expense and effort, to be able to offer something to a large portion of the customer base so that they could look at it at their leisure and make their own decisions. She stated that it is far more expensive and time-consuming to seek opt-in; it would probably prevent some of these offers from ever taking place. She said the return rate is not very high when people have to say, "Yes, I want to receive more mail." Opt-in is still preserved in many circumstances under this legislation, and certainly for any nonfinancially related products.

REPRESENTATIVE HALCRO asked whether financially related products are the only things that [banks want to share].

MS. BELL stated that that is the only thing her bank would want to share.

REPRESENTATIVE HALCRO remarked that opt-in wouldn't be preserved in anything except for financially related products.

MS. BELL responded that preserving opt-in for the rest of the field of possibilities protects the privacy of Alaskans.

Number 1151

STEVE CONN, Alaska Public Interest Research Group, testified via teleconference. He stated that the purpose of the GLBA was to break down the barriers between financial institutions. (Indisc.) He said the issue of the caps on interest rates and the response of Mr. Elder were quite revealing, because not only do working people lose the protection of the 17 percent, it opens the possibility that the out-of-state banks will make their decisions here and that the "sky will be the limit." He concluded by saying that both bills [HB 106 and HB 186] lack private rights of action. This is in high contrast to a bill moving through the Senate and the House related to the automobile dealers their manufacturers, and the franchise relationships whereby the consumers are talking directly to the automobile dealers and to the Department of Law's representative. This bill, he said, is outside the realm of consumer protection, and it "cries out" for private rights of action to be installed, because "we" simply cannot trust those who only speak to bankers and never speak to consumers.

Number 1042

REPRESENTATIVE HAYES made a motion to adopt Amendment 1 [22-GH1026\F.1, Bannister, 4/23/01], which read:

Page 3, lines 24 - 25:

Delete all material and insert:

"(1) the disclosure is necessary to
(A) provide the services of the financial institution to a depositor or customer; or
(B) market financially related products or services of the financial institution and its marketing partners; and"

REPRESENTATIVE CRAWFORD objected. He stated that he believes subparagraph (B) of the amendment takes out the opt-in provision for anything financially related, and therefore "guts" the language.

CHAIR MURKOWSKI disagreed. She stated that she thinks an effort has been made to preserve the opt-in policies in reference to information, whether it be financial information or personal health information. When this was first discussed, it was all opt-out; however, it is recognized in Alaska that there are greater privacy protections. She remarked that she thinks there has to be certain exceptions to that in order to allow state institutions to offer the type of services that are expected. She noted that a bank's competition is no longer another bank; people are putting their money everywhere else except a bank.

REPRESENTATIVE CRAWFORD withdrew his objection.

Number 0795

CHAIR MURKOWSKI announced that there being no further objection, Amendment 1 was adopted.

REPRESENTATIVE HAYES moved to report CSHB 106, version 22-GH1026\F, Bannister, 4/19/01, as amended, out of committee with individual recommendations and the attached zero fiscal note. There being no objection, CSHB 106(L&C) moved from the House Labor and Commerce Standing Committee.

HB 184-INSURANCE CODE AMENDMENTS

[Contains discussion of HB 211, HB 106, and SB 138]

CHAIR MURKOWSKI announced that the next order of business would be HOUSE BILL NO. 184, "An Act relating to the business of insurance, including changes to the insurance code to implement federal financial services reforms for the business of insurance and to authorize the director of insurance to review criminal backgrounds for individuals applying to engage in the business of insurance; amending Rule 402, Alaska Rules of Evidence; and providing for an effective date." [Before the committee was a proposed committee (CS), version 22-GH1025\f, Ford, 4/19/01, adopted as a work draft on 4/20/01]

CHAIR MURKOWSKI addressed Bob Lohr, the Director of the Division of Insurance, and stated that during the last hearing on the bill, [the committee] wanted to make sure that privacy

provisions with regard to financial institutions and what was going on with the insurance were somewhat similar. She said she assumed that the proposed F.2 amendment is the product of those concerns. Amendment F.2 [22-GH1025\F.2, Ford, 4/25/01], which was later adopted as Amendment 1, read:

Page 25, line 30, through page 26, line 9:

Delete all material and insert:

"Sec. 21.36.162. Nondisclosure of an individual's personal financial and personal health information.

(a) A person may not disclose personal financial or personal health information regarding an individual who seeks to obtain, obtains, or has obtained an insurance product or service, except when and only to the extent that the disclosure is

(1) authorized by the individual whose personal financial or personal health information is sought to be disclosed;

(2) required by federal or state law or federal or state regulation;

(3) compelled by a subpoena, search warrant, or other order issued by a court or administrative agency of competent jurisdiction;

(4) for the performance of any of the following insurance functions: claims administration; claims adjustment and management; detection, investigation, or reporting of actual or potential fraud, misrepresentation, or criminal activity; underwriting; policy placement or issuance; loss control; rate making and guaranty fund functions; reinsurance and excess loss insurance; risk management; case management; disease management; quality assurance; quality improvement; performance evaluation; provider credentialing verification; utilization review; peer review activities; actuarial, scientific, medical, or public policy research; grievance procedures; internal administration of compliance, managerial, and information systems; policyholder service functions; auditing; reporting; database security; administration of disputes and inquiries; external accreditation standards; the replacement of a group benefit plan or workers' compensation policy or program; activities in connection with a sale, merger, transfer, or exchange of all or part of a business or operating unit; or other functions

that the director may approve as necessary for the performance of the above functions and that are fair and reasonable to the interest of the insurance consumer;

(5) permitted without requiring authorization under federal privacy rules adopted under 42 U.S.C. 300gg - 92 (Health Insurance Portability and Accountability Act of 1996) by the United States Department of Health and Human Services; or

(6) required to enforce the person's rights or the rights of other persons engaged in carrying out an insurance transaction or providing an insurance product or service that an individual requests or authorizes.

(b) The director may adopt regulations to implement this section that provide not less than the protection of an individual's personal financial and personal health information provided under (a) of this section.

(c) This section does not restrict disclosure of publicly available information.

(d) This section does not prohibit a person from disclosing personal financial information if

(1) the disclosure is necessary to market a financial product or service of the person, including a financial product or service that is jointly offered, endorsed, or sponsored by another person under a written contract;

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

(3) the person disclosing the information provides written notice to the individual who is the subject of the information and the notice includes

(A) the information that the person collects;

(B) the information that will be disclosed; and

(C) to whom the information will be disclosed.

(e) For purposes of this section,

(1) "personal financial information" means any information or data about a person that is not personal health information;

(2) "personal health information" means any information or data except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or other person that relates to

(A) the past, present, or future physical, mental, or behavioral health or condition of an individual;

(B) the provision of health care to an individual; or

(C) payment for the provision of health care to an individual;

(3) "publicly available information" means any information that a person has reasonable basis to believe is lawfully made available to the general public from

(A) federal, state, or local government records;

(B) widely distributed media; or

(C) disclosures to the general public that are required to be made by federal, state, or municipal law."

Number 0330

BOB LOHR, Director, Division of Insurance, Department of Community and Economic Development, came forth and stated that Chair Murkowski was correct. He stated that the Senate has been considering a companion bill [SB 138] to this one, which is now in the form of a Senate Labor and Commerce Standing Committee CS in front of the Senate Judiciary Standing Committee. Both committees have taken the approach of mandating that the Division of Insurance come up with regulations that are consistent with, but no less restrictive of, privacy in the Gramm-Leach-Bliley Title Five. He stated that the division would prefer the duty of adopting regulations to make all of this consistent. He emphasized that [the division] still feels that is the best approach to getting a good privacy standard for Alaskans with respect to insurance financial information and insurance health information. This is what the amendment would do.

MR. LOHR explained that subsection (d)(3) of the amendment is the one difference between the banking marketing exemption and

the insurance approach. It would require notification to the individual that joint marketing arrangements might occur. Under this approach, in the bill, it would provide an opt-out or opt-in. The individuals are simply qualifying for an exemption; however, they would at least receive notification that this type of joint marketing could occur. He noted that some reviewers of the amendment have asked why that wouldn't give them opt-in or opt-out, and why a customer couldn't be allowed to say, "You tell me you want to do joint marketing; I don't think you should with my data." He explained that that would be a kind of opt-out approach imbedded in paragraph (d)(3). He emphasized that that is not the way it is currently drafted, but is an approach the committee may wish to consider.

REPRESENTATIVE ROKEBERG stated that he is uncomfortable with joining the health insurance information with other financial information. He said he thought [the committee] had talked about having very stringent confidential and/or opt-in health insurance, without exceptions.

Number 0159

CHAIR MURKOWSKI stated that she understands that with this amendment, personal information is opt-in, and the only exception is to financial information. The exceptions that are in paragraph (4) [on page 1 of the amendment] are part of the NAIC (National Association of Insurance Commissioners) model; therefore, they are not new.

MR. LOHR stated that Chair Murkowski was correct. He said he doesn't believe that this marketing exemption would be available for health information; as a result, the stricter standard is maintained.

CHAIR MURKOWSKI referred to page 2, line 16 [subsection (d) of the amendment], and said she read that as being an exception for the financial information, and that it does not apply for personal health information.

MR. LOHR responded that Chair Murkowski was correct.

REPRESENTATIVE ROKEBERG remarked that the format of commingling both the health and the financial information leaves it open for interpretation. He stated that he is not comfortable with the drafting language, because it is not clear.

MR. LOHR agreed with Representative Rokeberg. He stated that the division had prepared redundant language for both the health and financial information to separate the notion of health from privacy. He said he was advised by staff and by the office of the Attorney General that that was unnecessary; therefore, they were combined. However, he said the division has prepared a version that will allow completely separate sections for the health information and the financial information.

REPRESENTATIVE ROKEBERG stated that he is also uncomfortable with the "laundry list" of activities in paragraph (4) [subsection (a), page 1 of the amendment].

TAPE 01-68, SIDE A
Number 0076

MR. LOHR clarified that the language [in paragraph (4)] is analogous to a bill title. It is lengthy and involved because it is designed to delimit what an insurance company may do with that exemption. By being so precise in each individual element, it covers regulations on privacy from the NAIC that were determined to be appropriate to allow insurance companies to do. It does not have vague language, which could then be broadly interpreted in such a way as to fit in some type of exemption under the guise of administrative operations of the company. He stated that the elements of subsection (a)(4) are designed to allow an insurance company to do the business for which the financial or health information is gathered in the first place.

REPRESENTATIVE ROKEBERG stated that he thinks paragraph (6) [subsection (a), page 2 of the amendment] is broad; yet it provides the protections without having to list every one. He asked whether the intention of paragraphs (4) and (6) is to allow the activities of health insurance to be conducted.

MR. LOHR responded that paragraph (6) appears to be more of a general statement.

CHAIR MURKOWSKI stated that language taken directly from the NAIC regulations has the whole "laundry list," as does paragraph (6). She asked where the list of regulations came from.

MR. LOHR answered that the list came from the model regulations. He explained that once the Gramm-Leach-Bliley Act (GLBA) was adopted, the NAIC began a process of forming a working group of commissioners from various states and taking detailed testimony from insurance companies, interested parties, and consumer

groups. The regulations are consistent with the GLBA, but in some respects they go beyond it. For example, with respect to health information, GLBA does not restrict uses of health information; however, the model regulations that NAIC developed address that. He added that [the list in paragraph (4)] is what is appropriate for a company to do, while not allowing a lot of "wiggle room" in terms of defining an individual element of administrative practice by that company.

Number 0407

REPRESENTATIVE ROKEBERG stated that with HB 106 [the committee] was trying to look at the smaller financial institutions in Alaska and put them on equal footing with national insurance companies. He asked how many domestic insurers there are in Alaska.

MR. LOHR answered that there are nine domestic insurance companies.

REPRESENTATIVE ROKEBERG asked Mr. Lohr if it would be his opinion that those smaller, local companies could use some assistance, particularly given GLBA, to do the expanded marketing.

MR. LOHR responded that there has not been substantial comment to the division about the provisions of this bill.

REPRESENTATIVE ROKEBERG stated that this language is not the same language in [HB 106]. He said this is more of an opt-out situation, without much in the way of sideboards.

MR. LOHR responded that it is neither opt-in nor opt-out in the sense that a company that wishes to engage in joint marketing is not required to notify customers of its plan to [disclose personal information]. He added that paragraph (d)(3) [in the amendment] is an exemption to the requirement for opt-in, as proposed in this amendment.

CHAIR MURKOWSKI asked whether this is an expansion from when [the committee] first started. She said initially it was opt-out with regard to financial information and opt-in with regard to personal health information. Now, it is still opt-in for personal health information, but neither "here nor there" with financial information.

MR. LOHR agreed, and stated that traditionally opt-in is a tighter form of privacy protection than opt-out. However, that is not the case when a sufficiently large exemption is created with opt-in that doesn't require opt-in or opt-out; opt-in then looks more permissive.

Number 0726

CHAIR MURKOWSKI asked: In order to change this so it is opt-in for everything, with an exception to opt-in for financial information, would paragraph (d)(3) [of the amendment] also allow the consumer to say he or she does not want that information to be shared?

MR. LOHR responded that [it could be fixed that way].

CHAIR MURKOWSKI stated that the opt-in provision in subsection (a)(1) [of the amendment] explains that it has to be authorized by the individual whose information is being sought, but it doesn't require that the authorization be in writing. She asked if written consent would be one of the overall requirements.

MR. LOHR responded that it is hard for him to see how this would require written consent. He recalled a debate about switching from one long-distance telephone company to another, and the level of proof that is required from the person intending to switch. He stated that the regulatory commission does allow voice-mail messages, which is easier for the customer, but puts the customer at some risk. [With the referenced section], he said it is a policy call of whether it is worth the extra burden on the company in terms of gathering [the written consent]. He noted that the health information is more restrictive and does require a written consent.

Number 0887

KATIE CAMPBELL, Life and Health Actuary, Division of Insurance, Department of Community & Economic Development, stated that this is an oversight; it should actually be authorized in writing or in electronic form, which is consistent with the NAIC model.

CHAIR MURKOWSKI asked if "electronic form" would be an e-mail.

MS. CAMPBELL answered yes. She added that it may be unnecessary to put "electronic form" [in the amendment], because there may be another provision that would allow electronic [communication] to count as written authorization.

CHAIR MURKOWSKI stated that the model regulations provide for the administration of consumer disputes and inquiries; however, page 1, line 23, paragraph (a)(4) [of the amendment] reads "administration of disputes and inquiries". She asked whether there was a reason to delete "consumer".

MR. LOHR answered that there was no intent to change what it said, and [the division] would support [the committee's] adding "consumer".

Number 1026

REPRESENTATIVE ROKEBERG referred to paragraph (a)(5) [of the amendment], which states "permitted without requiring authorization" under the HIPA (Health Insurance Portability and Accountability Act) rules. He asked whether that is going to be a default whereby the HIPA federal privacy rules are the bottom line and can be tightened up.

MR. LOHR responded that under the NAIC model regulations for health, the approach was to say that if an insurance company is complying with the HIPA regulations, then that is good enough. There is no attempt to go beyond those HIPA regulations or duplicate the health requirements in the NAIC model regulations.

REPRESENTATIVE ROKEBERG asked whether they could be tightened up through subsection (b) [of the amendment], which reads "not less than the protection" provided under subsection (a).

MR. LOHR answered that they could.

REPRESENTATIVE ROKEBERG asked whether there is a provision for HB 211, in which statutory provisions are already tighter than the HIPA model.

Number 1114

MR. LOHR responded that this authority would not extend to addressing the HB 211 provision. He said he would encourage [the committee] to consider the possibility of conforming the HB 211 provisions to be more like whatever the decided approach is for health privacy in this bill.

REPRESENTATIVE ROKEBERG remarked that if Mr. Lohr is suggesting that he change his bill to meet whatever regulations the division writes, he does not agree with that.

MR. LOHR responded that he thinks he was indicating that having substantive health provisions in this bill consistent with the HB 211 approach would make sense.

REPRESENTATIVE ROKEBERG asked whether the Senate had left the NAIC language in [its version].

MR. LOHR answered that the Senate version said "consistent with but no less than GLBA". He said the Senate has adopted an amendment that would drop the NAIC model and put GLBA in its place.

Number 1248

CHAIR MURKOWSKI made a motion to adopt Amendment 1 922-GH1025\F.2, Ford, 4/25/01, text provided previously].

REPRESENTATIVE ROKEBERG objected for purposes of discussion.

Number 1274

CHAIR MURKOWSKI made a motion to adopt Amendment 1 to Amendment 1, on page 1, line 8, [subsection (a)(1)] of the amendment, after "authorized", to insert "in writing". There being no objection, Amendment 1 to Amendment 1 was adopted.

CHAIR MURKOWSKI made a motion to adopt Amendment 2 to Amendment 1, on page 1, line 23, [subsection (1)(4)] of the amendment, after "administration of", to insert "consumer". There being no objection, Amendment 2 to Amendment 1 was adopted.

CHAIR MURKOWSKI made a motion to adopt conceptual Amendment 3, to Amendment 1, on page 2, subsection (d)(3) of the amendment, to create a subparagraph (D) that would give the individual the opportunity to prohibit the sharing.

REPRESENTATIVE ROKEBERG asked whether that would be prior to the company's disclosing the information.

CHAIR MURKOWSKI explained that in HB 106 there were examples of how banks provided the opt-out information. She said she thinks if [the committee] does not allow for this, then it is neither opt-in nor opt-out when it comes to the financial information.

MR. LOHR remarked that [the division] would be happy to help with the conceptual amendment.

CHAIR MURKOWSKI announced that there being no objection, conceptual Amendment 3 to Amendment 1 was adopted.

Number 1501

MR. LOHR made a motion to adopt conceptual Amendment 4 to Amendment 1, on page 2, line 14, [subsection (b)] of the amendment, to delete "under (a) of" and insert "in". There being no objection, conceptual Amendment 4 to Amendment 1 was adopted.

REPRESENTATIVE ROKEBERG stated that he is not sure what the chair would like to do in regard to the health insurance policy issue.

CHAIR MURKOWSKI responded that Mr. Lohr had mentioned that he thought the financial and the health information needed to be separated or set out more clearly in the amendment. She said she thinks [the committee] has gotten to the point of knowing what the policy call is by opting in when it comes to privacy.

REPRESENTATIVE ROKEBERG removed his objection to Amendment 1.

CHAIR MURKOWSKI announced that there being no further objection, Amendment 1, as amended, was adopted.

Number 1738

MR. LOHR explained his proposed amendment, later adopted as Amendment 2, which read [original punctuation and capitalization provided, except that one line of text had been crossed out by hand and is not included here]:

Page 18, after line 4, add a new section as follows

***Sec. 26**, AS 21.27.360 is amended to read:

Sec. 21.27.360. Reporting and accounting for premiums and premium taxes and fees. (a) A licensee involved in the procuring or issuance of an insurance contract shall report to the insurer the exact amount of consideration charged as a premium for the contract. The amount charged shall be shown in the contract and in the records of the licensee.

(b) All money, except that made payable to the insurer, representing premium taxes and fees, premiums

or return premiums received by the licensee, shall be received by the licensee as a [IN THE] fiduciary [ACCOUNT OF THE LICENSEE] and shall be promptly accounted for and paid to the person entitled to the money. [THE FIDUCIARY ACCOUNT SHALL BE LOCATED IN THIS STATE UNLESS THE LICENSEE IS LICENSED AS A NONRESIDENT UNDER AS 21.27.270. FOR PURPOSES OF THIS SECTION, THE FIDUCIARY ACCOUNT OF THE FIRM SHALL BE CONSIDERED THE FIDUCIARY ACCOUNT OF AN INDIVIDUAL LICENSEE ACTING ON BEHALF OF THE FIRM AND SHALL BE THE RESPONSIBILITY OF THE FIRM.] Money held by the licensee as a fiduciary [DEPOSITED INTO A FIDUCIARY ACCOUNT] may not be commingled or otherwise combined with other money not held by the licensee as a fiduciary[, EXCEPT AS ALLOWED UNDER (d) OF THIS SECTION AND AS 21.27.365].

(c) In addition to any other penalty provided by law, a person who the director has determined has acted to divert or appropriate money held as a fiduciary [ACCOUNT MONEY] for personal use shall be ordered to make restitution and shall be subject to suspension or revocation under AS 21.27.420 - 21.27.430 of all licenses and a civil penalty not to exceed \$50,000 for each violation.

(d) A licensee may only commingle premium taxes and fees, premiums, and return premiums with additional money for the purpose of advancing premiums, establishing reserves for the payment of return premiums, or reserves for receiving and transmitting premium or return premium money. [MONEY COLLECTED FOR THE PAYMENT OF PREMIUM TAXES, POLICY OR FILING FEES, LATE PAYMENT CHARGES, AND INTEREST FROM FIDUCIARY MONEY ON DEPOSIT, MAY BE COMMINGLED IN A FIDUCIARY ACCOUNT, BUT SHALL BE SEPARATELY ACCOUNTED FOR AND PERIODICALLY REMOVED FROM THE FIDUCIARY ACCOUNT].

(e) Money held by a licensee as a fiduciary may not be treated, [A LICENSEE MAY NOT TREAT MONEY REQUIRED TO BE IN A FIDUCIARY ACCOUNT] as a personal asset, as collateral for a personal or business loan, or as a personal asset or income on a financial statement, except that money held by the licensee as a [IN A] fiduciary [ACCOUNT] may be included in a financial statement of the licensee if clearly identified as assets held by the licensee as a fiduciary. [ACCOUNT ASSETS AND LIABILITIES].

(f) This section does not apply to an individual in the firm who acts solely on behalf of a firm that

maintains compliance with this section [AND DEPOSITS ALL MONEY INTO THE FIRM'S FIDUCIARY ACCOUNT].

Page 30, after line 12, add a new section as follows:

***Sec. 49.** AS 21.36.350 is amended to read:

Sec. 21.36.350. Regulations relating to claim settlement and premium accounting practices. (a) The director of insurance shall promulgate regulations to implement, define, and enforce AS 21.36.125.

(B) The director of insurance may promulgate regulations to implement, define, and enforce AS 21.36.360(b) and AS 21.27.360.

Page 31, after line 23, add a new section to read

***Sec. 55.** AS 21.27.360(c), AS 21.27.365, AS 21.27.900(7) are repealed.

Page 32, after line 12, add a new section to read

***Sec 58.** Sections 26, 39, 49 and 55 of this Act take effect July 1, 2002.

[Note: The line of the amendment that had been crossed out by hand read: "Page 30, line 29, after 'refusal" add "limitation'"]

MR. LOHR stated that all of page one through subsection (b) on page 2 of his proposed amendment deals with trust accounts. He stated that at this time the Division of Insurance does require agents and brokers to have a trust account for premium that is received but not yet paid to an insurance company. He said this is a good consumer-protection measure. Unfortunately, under the Gramm-Leach-Bliley licensing provisions, if the trust account requirement is maintained as an additional licensing requirement on nonresident applicants, the state will be nonreciprocal for purposes of helping to avoid a national takeover of licensing. As a result, [the division] has proposed to delete the references to "trust account" in Chapter 27 and to substitute fiduciary capacity. He stated that as a legal matter [the division] has been told that this makes no difference in terms of what the responsibilities of the agent or broker would be.

MR. LOHR further explained his proposed amendment. Under subsection (b) of Section 49 [of the amendment], this would specifically grant the director authority to adopt regulations

that would require a trust account. This would solve the problem of being nonreciprocal. This would also have a delayed effective date, under Section 58, the last line of the amendment, of July 1, 2002.

CHAIR MURKOWSKI asked whether it legally does not make any difference using the term "fiduciary", but that for purposes of complying with Gramm-Leach-Bliley, it makes a difference.

MR. LOHR stated that she was correct. He stated that if this were featured permanently as a part of the licensing chapter, then calling it a trust account looks to the national arbiter of who is a "reciprocal" and who isn't, as if it were an additional requirement on licensing. At that point, there is a savings provision in the federal legislation that states that this would not qualify for the savings clause. Therefore, this would cause the state to become nonreciprocal for purposes of what's required under the licensing provisions of Gramm-Leach-Bliley.

CHAIR MURKOWSKI asked why this was not included as part of the original bill.

MR. LOHR responded that [the division] has been watching the evolution of what's reciprocal and what's not at the national level with the NAIC. At a meeting in Nashville last month, it was determined that trust accounts, surplus lines bonds, and fingerprinting were areas that could cause the state to be nonreciprocal.

Number 1955

REPRESENTATIVE ROKEBERG made a motion to adopt Amendment 2 [text provided previously].

There being no objection, Amendment 2 was adopted.

REPRESENTATIVE ROKEBERG asked if Mr. Elder, Director of the Division of Banking, Securities & Corporations, had a chance to look at the bill.

Number 2013

FRANKLIN TERRY ELDER, Director, Division of Banking, Securities and Corporations, Department of Community and Economic Development, came forth and responded that he has had discussions with Mr. Lohr about the sections [referred to in Amendment 2], but he has not reviewed the entire bill.

REPRESENTATIVE ROKEBERG stated that he asked because the trend in the entire country is the consolidation of financial services and primarily including insurance companies and banking institutions with other financial services. He said it seems to him that there needs to be some commonality between the regulatory and the statutory schemes that regulate these institutions in [Alaska].

MR. ELDER remarked that that is a valid point. He said [he and Mr. Lohr] have also had discussions about increasing cooperation between "two pavilions" on examining more complex institutions. Certainly Gramm-Leach-Bliley also emphasized the continuation of functional regulations; in other words, security regulators would look at the securities aspect, insurance regulators would look at the insurance aspect, and banking regulators would look at the banking aspect. However, in addition to that, "we" have to cooperate more and share more.

Number 2057

REPRESENTATIVE MEYER moved to report CSHB 184, version 22-GH1025\F, Ford, 4/19/01, as amended, out of committee with individual recommendations and the accompanying zero fiscal note.

REPRESENTATIVE HAYES declared a conflict because HB 184 concerns an area he works in.

CHAIR MURKOWSKI announced that there being no objection, CSHB 184(L&C) was moved from the House Labor and Commerce Standing Committee.

HB 227-LAND SURVEY STANDARDS

CHAIR MURKOWSKI announced that the final order of business would be HOUSE BILL NO. 227, "An Act instructing the State Board of Registration for Architects, Engineers, and Land Surveyors to adopt minimum technical standards relating to the practice of surveying."

Number 2129

JOHN MANLY, Staff to Representative John Harris, Alaska State Representative, came forth on behalf of the sponsor of HB 227 and stated that Representative Harris introduced this bill at the request of one of his constituents who is a realtor in

Valdez. He explained that the main intent of the bill is to require the Board of Architects, Engineers and Land Surveyors to adopt minimum standards for land surveys. Therefore, the land survey ordered in Fairbanks, for example, will have the same information on it as the land survey in Ketchikan. He said he is not personally well acquainted with the problems that may arise, but he is sure that it does present a problem when someone orders an as-built survey and it doesn't include an easement or a pipeline that goes through the property.

REPRESENTATIVE ROKEBERG asked Mr. Manly if he knows the position of the [Alaska] Professional Design Council [on the bill].

MR. MANLY answered no. He said the bill passed through the two surveyor members of the board and was given a relatively positive response.

Number 2255

JIM COLVER testified via teleconference on behalf of himself in opposition to HB 227. He stated that some of the realtors are concerned about what is contained in an as-built survey. He said it is mainly going to be driven by the title companies and whether they perform an ALTA (American Land Title Survey) survey or a less-than-an-ALTA survey. He said his main concern is that with this field changing so rapidly with global positioning [systems], regulations are going to have to keep being amended to comply with future standards. He said he thinks there will be bureaucrats instead of professionals determining the practice of land surveying. Under existing statute AS 08.48.101, paragraph (a)(1), the language says the board may adopt regulations to carry out the purpose of this chapter, including paragraph (5), publishing a code of ethics or professional conduct for those persons regulated by this chapter. He said he thinks a lot of this can be accomplished through the existing statutes and through ethics and professional conduct regulations promulgated from that statute. He noted that there is a standard of practice that the surveyor generally looks to, which was been developed by the Alaska Society of Professional Land Surveyors. This is taught in schools and is preparation material for those taking the land surveyor's exam.

MR. COLVER responded that that is one of the discussions the surveying community is going through right now - whether or not to require continuing education. He relayed that some of the surveyors [in the Matanuska-Susitna area] have commented that if the regulations were to be adopted, they would be comfortable

going with the Alaska Society of Professional Land Surveyors standards of practice.

Number 2405

REPRESENTATIVE CRAWFORD shared that in 1988 it was declared that the surveys were all off in Rabbit Creek Heights. He said he wasn't able to sell his land for more than ten years because there was no way to obtain financing. He asked if that sort of thing could continue, if nothing is done.

MR. COLVER answered that that was resolved through legislation a few years ago. He stated that in any practice there are mistakes made, and every profession has ways of policing its membership. He expressed that he doesn't know that government does a good job when the destiny of professions is placed in the hands of career bureaucrats. He added that he does not know that this bill would stop [errors like those at Rabbit Creek Heights] from happening.

TAPE 01-68, SIDE B
Number 2472

PATRICK KALEN, Land Surveyor, Alaska State Board of Registration for Architects, Engineers and Land Surveyors (AELS), Division of Occupational Licensing, Department of Community & Economic Development, testified via teleconference and stated that he has worked with legislation in the past for the surveyors and has some understanding of the situation. He remarked that he is also one of the land surveyors on the board of registration who would be charged with writing these regulations. He stated that that could be an arduous task, because the driving forces - the lending institutions - are the problem with as-built surveys not being uniform. If the value of the property is really high, banks will always call for ALTA survey standards; however, in the low-budget survey the banks call for an as-built survey where there aren't any standards.

MR. KALEN noted that the bill is very close to what Florida did. He stated that Florida has about 15 pages of standards, and one of the novel features is that Florida fixed the as-built problem by absolutely requiring that surveyors do a boundary survey.

CHAIR MURKOWSKI asked whether the full board has not had the opportunity to review this, which is why they haven't taken a position.

MR. KALEN stated that she was correct. He stated that this was a surprise to some [of the board members]. The two surveyors on the board have an idea of where to go with it, but they haven't heard much from the affected realtors and surveyors about how they would react. He noted that the board would probably have to talk about what would be some of the primary things in the regulations.

REPRESENTATIVE HAYES asked Mr. Kalen whether the board's position is that they would like to wait, discuss the bill through the interim, and provide technical assistance to Representative Harris if there are any problems.

MR. KALEN responded yes.

Number 2179

BARBARA HUFF, Legislative Director, Teamsters Local 949, came forth in support of HB 227. From discussions with Teamster representative surveyors, she said the concept is that this bill does not draft the regulation that would be left up to the board. [The Teamster's] surveyors think it is a good idea to have at least minimum standards set for the entire state of Alaska, instead of the Municipality of Anchorage and Fairbanks.

REPRESENTATIVE HAYES asked Ms. Huff what the harm would be in letting the bill wait for the interim, having the AELS board actually take a look at it, and getting consistency all around.

MS. HUFF replied that she does not think there would be a problem.

MR. COLVER stated that if the problem is with the as-built surveys, he would recommend including minimum standards for as-built surveys in the title.

REPRESENTATIVE CRAWFORD stated that neither his as-built survey nor the original survey from when the property was first sold was deemed legal. He said it seems to him that if a little more money were spent at the beginning, it might be advisable. He asked Mr. Colver if his suggestion would take care of the problem for the people in Rabbit Creek Heights.

MR. COLVER remarked that there is no other problem that he knows of in Alaska that rises to the level of [the Rabbit Creek Heights] problem. He stated that he doesn't know whether the

implementation of any kind of legislative standard would have prevented that from happening.

[HB 227 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 6:05 p.m.