

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

April 5, 2002

3:25 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Andrew Halcro, Vice Chair

COMMITTEE CALENDAR

CS FOR SENATE BILL NO. 243(FIN)

"An Act extending the termination date of the Board of Chiropractic Examiners; and relating to chiropractors."

- MOVED CSSB 243(FIN) OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 38

Relating to urging the United States Congress to pass the Terrorism Risk Protection Act.

- MOVED CSHJR 38(L&C) OUT OF COMMITTEE

HOUSE BILL NO. 424

"An Act relating to title insurance; and providing for an effective date."

- HEARD AND HELD

PREVIOUS ACTION

BILL: SB 243

SHORT TITLE: CHIROPRACTORS: SUNSET/LICENSING

SPONSOR(S): SENATOR(S) THERRIAULT, TAYLOR, AUSTERMAN

Jrn-Date	Jrn-Page		Action
01/16/02	1962	(S)	READ THE FIRST TIME - REFERRALS

01/16/02	1962	(S)	L&C
01/31/02		(S)	L&C AT 1:30 PM BELTZ 211
01/31/02		(S)	Moved Out of Committee
01/31/02		(S)	MINUTE(L&C)
02/01/02	2082	(S)	L&C RPT 4DP
02/01/02	2082	(S)	DP: STEVENS, AUSTERMAN, DAVIS, LEMAN
02/01/02	2082	(S)	FN1: (CED)
02/01/02	2082	(S)	FIN REFERRAL ADDED AFTER L&C
02/12/02		(S)	FIN AT 9:30 AM SENATE FINANCE 532
02/12/02		(S)	Heard & Held
02/12/02		(S)	MINUTE(FIN)
02/28/02		(S)	FIN AT 9:00 AM SENATE FINANCE 532
02/28/02		(S)	Scheduled But Not Heard
03/05/02		(S)	FIN AT 4:00 PM SENATE FINANCE 532
03/05/02		(S)	Moved Out of Committee MINUTE(FIN)
03/06/02	2383	(S)	FIN RPT CS 7DP 1NR SAME TITLE
03/06/02	2383	(S)	DP: DONLEY, KELLY, GREEN, LEMAN,
03/06/02	2383	(S)	WILKEN, OLSON, WARD; NR: HOFFMAN
03/06/02	2383	(S)	FN1: (CED)
03/14/02		(S)	RLS AT 11:00 AM FAHRENKAMP 203
03/14/02		(S)	MINUTE(RLS)
03/20/02	2473	(S)	RULES TO CALENDAR 3/20/02
03/20/02	2473	(S)	READ THE SECOND TIME
03/20/02	2474	(S)	FIN CS ADOPTED UNAN CONSENT
03/20/02	2474	(S)	ADVANCED TO THIRD READING UNAN CONSENT
03/20/02	2474	(S)	READ THE THIRD TIME CSSB 243(FIN)
03/20/02	2474	(S)	PASSED Y15 N- E4 A1
03/20/02	2477	(S)	TRANSMITTED TO (H)
03/20/02	2477	(S)	VERSION: CSSB 243(FIN)
03/22/02	2635	(H)	READ THE FIRST TIME - REFERRALS
03/22/02	2635	(H)	L&C, FIN
04/05/02		(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HJR 38

SHORT TITLE:TERRORISM RISK PROTECTION ACT
SPONSOR(S): REPRESENTATIVE(S)HAYES

Jrn-Date	Jrn-Page		Action
02/11/02	2204	(H)	READ THE FIRST TIME - REFERRALS
02/11/02	2204	(H)	L&C
03/25/02		(H)	L&C AT 3:15 PM CAPITOL 17
03/25/02		(H)	<Bill Postponed>
04/01/02		(H)	L&C AT 3:15 PM CAPITOL 17
04/01/02		(H)	Scheduled But Not Heard
04/05/02		(H)	L&C AT 3:15 PM CAPITOL 17

BILL: HB 424

SHORT TITLE: TITLE INSURANCE PLANTS

SPONSOR(S): JUDICIARY

Jrn-Date	Jrn-Page		Action
02/13/02	2246	(H)	READ THE FIRST TIME - REFERRALS
02/13/02	2246	(H)	L&C
02/13/02	2246	(H)	REFERRED TO LABOR & COMMERCE
04/05/02		(H)	L&C AT 3:15 PM CAPITOL 17

WITNESS REGISTER

HEATHER BRAKES, Staff
to Senator Gene Therriault
Joint Committee on Legislative Budget & Audit
Alaska State Legislature
Capitol Building, Room 121
Juneau, Alaska 99801
POSITION STATEMENT: Testified on behalf of the sponsor of SB
243, the Joint Committee on Legislative Budget & Audit.

PAT DAVIDSON, Legislative Auditor
Legislative Audit Division
Alaska State Legislature
PO Box 113300
Juneau, Alaska 99811-3300
POSITION STATEMENT: Answered questions in regard to the audit
relating to the Board of Chiropractic Examiners Sunset Review.

CATHERINE REARDON, Director
Division of Occupational Licensing
Department of Community & Economic Development (DCED)
PO Box 110806
Juneau, Alaska 99811-0806
POSITION STATEMENT: Testified in support of [CSSB 243(FIN)].

CODY RICE, Intern
for Representative Joe Hayes
Alaska State Legislature
Capitol Building, Room 422
Juneau, Alaska 99801

POSITION STATEMENT: Testified on behalf of the sponsor of HJR 38.

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

POSITION STATEMENT: Testified that the division is in support of HJR 38. In regard to HB 424, chronicled the steps leading to the pending hearing and testified as to the process of review for title plants.

BRYAN MERRELL, State Counsel and Underwriter
First American Title Insurance Company;
Vice President, Alaska Land Title Association
3035 "C" Street
Anchorage, Alaska 99503

POSITION STATEMENT: Testified in support of HB 424.

PATRICK LAMB, President
Attorneys Title Guaranty Agency,
Attorneys Title Guaranty Services
3501 Denali Street, Suite 205
Anchorage, Alaska 99503

POSITION STATEMENT: Testified as to the use of the public records in title searches.

SARAH McNAIR-GROVE, Actuary P/C
Division of Insurance
Department of Community & Economic Development
PO Box 110805
Juneau, Alaska 99811-0805

POSITION STATEMENT: Testified that to the extent HB 424 clarifies issues [related to title plants], the division thinks the legislation is appropriate. However, the division believes HB 424 goes beyond fixing some of the issues.

BARB NORD, Chair
Issues Committee
Kenai Association of Realtors

690 Sycamore Circle
Kenai, Alaska 99669

POSITION STATEMENT: Testified in support of HB 424.

MICHAEL PRICE, Owner
Mat-Su Title Agency
951 E Bogard Road
Wasilla, Alaska State Legislature

POSITION STATEMENT: Testified in support of HB 424.

CHRIS RODRIGUEZ
Alaska Land Title Association
(No address provided)

POSITION STATEMENT: Testified in support of HB 424.

TERRY BRYANT, President
First American Title of Alaska
(No address provided)

POSITION STATEMENT: Testified on HB 424.

KIRK WICKERSHAM, Owner
Attorneys Title Guaranty Agency;
Attorney for Attorneys Title Guaranty Services
3501 Denali Suite 205
Anchorage, Alaska 99503

POSITION STATEMENT: Proposed substitute language for HB 424,
which he characterized as legislation to put ATGS out of
business.

ACTION NARRATIVE

TAPE 02-50, SIDE A
Number 0001

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

SB 243-CHIROPRACTORS: SUNSET/LICENSING

CHAIR MURKOWSKI announced that the first order of business would
be CS FOR SENATE BILL NO. 243(FIN), "An Act extending the
termination date of the Board of Chiropractic Examiners; and
relating to chiropractors."

Number 0084

HEATHER BRAKES, Staff to Senator Gene Therriault, Joint Committee on Legislative Budget & Audit, Alaska State Legislature, testified on behalf of the sponsor of SB 243, Joint Committee on Legislative Budget & Audit. Ms. Brakes explained that SB 243 was drafted based on an audit report released by the Joint Committee on Legislative Budget & Audit on December 5, 2001. Section 1 extends the termination date of the Board of Chiropractic Examiners from June 30, 2002, to June 30, 2006, which is the standard four-year extension. Section 2 restores the board's authority to license by credentials. Ms. Brakes pointed out that the committee packet should include the audit report. She directed the committee's attention to page 5 of the audit report, which is entitled "Report Conclusions". In that section the auditor, in part, stated:

In our opinion, the Board of Chiropractic Examiners is operating in an efficient and effective manner and should continue to regulate and license chiropractors. We believe the board is serving the public interest by promoting competence and integrity of individuals holding themselves out to the public as chiropractors. The Board of Chiropractic Examiners serves a public purpose by promoting the competent and safe practice of chiropractic therapy. The board does this through establishing standards for licensed professionals and monitoring the manner in which they practice. The board has carried out these responsibilities satisfactorily.

MS. BRAKES explained that based on the above, the auditors recommended the board be extended for four years. Furthermore, the auditors recommended, on page 7 of the audit report, to restore the board's statutory authority to license professionals by credentials [and thus] expanding opportunities for licensure by experienced professionals from out of state.

CHAIR MURKOWSKI turned to Recommendation No. 2 of the audit that suggests that the governor expedite the appointment of vacant and expired board member positions. Currently, it appears that there are five board members [a full slate] and thus she asked if the suggestion mentioned in Recommendation No. 2 had been addressed recently.

Number 0310

PAT DAVIDSON, Legislative Auditor, Legislative Audit Division, Alaska State Legislature, answered that as of June 30, 2001, the Board of Chiropractic Examiners does have a full slate of members. However, the lag time between when members had resigned and the time of appointment was of concern.

CHAIR MURKOWSKI asked if these latest appointments addressed the audit's concern regarding the need for more representation from small rural areas, which was mentioned in Recommendation No. 2.

MS. DAVIDSON said that is still of concern and thus the recommendation would stand.

Number 0390

CATHERINE REARDON, Director, Division of Occupational Licensing, Department of Community & Economic Development (DCED), testified in support of [CSSB 243(FIN)]. Ms. Reardon informed the committee that the current board consists of one member from each of the following communities: Ketchikan, Fairbanks, Juneau, Anchorage, and Eagle River. Although the board currently has good geographic distribution, she acknowledged that such geographic distribution hasn't always been the case.

CHAIR MURKOWSKI turned to the issue of licensure by credential and asked if the changes in the legislation would address the licensure issues that were of concern.

MS. REARDON replied yes, and explained that there was a fair amount of work on that issue in the Senate. The current version of the bill is supported by the Board of Chiropractic Examiners. It also appears that the chiropractic community supports [CSSB 243(FIN)] as well.

Number 0469

REPRESENTATIVE KOTT moved to report [CSSB 243(FIN)] out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, [CSSB 243(FIN)] was reported from the House Labor and Commerce Standing Committee.

HJR 38-TERRORISM RISK PROTECTION ACT

CHAIR MURKOWSKI announced that the next order of business would be House Joint Resolution No. 38, Relating to urging the united states congress to pass the terrorism risk protection act.

Number 0553

CODY RICE, Intern for Representative Joe Hayes, Alaska State Legislature, explained that HJR 38 urges Congress to pass H.R. 3210, the Terrorism Risk Protection Act, which will create a backstop for potential losses in the event of a future national disaster, terrorist attack, or other large scale financial calamity. The [Act] will ensure that the losses sustained in the aforementioned events wouldn't be transferred to primary insurers and thus down to the policyholders. In response to Chair Murkowski, Mr. Rice informed the committee that H.R. 3210 is in the U.S. Senate Financial Services Committee where deliberations are revolving around [including] tort reform.

Number 0716

BOB LOHR, Director, Division of Insurance, Department of Community & Economic Development (DCED), testified via teleconference. He announced the division's support of HJR 38. Mr. Lohr noted appreciation for the committee's interest and concern in regard to the effects of the events of September 11th on Alaska's insurance market. Furthermore, Mr. Lohr noted appreciation for the committee's support in urging Congress to consider how it might help stabilize the insurance market. This resolution, HJR 38, is timely since President George W. Bush is scheduled to address the U.S. Senate in regard to the need for terrorism insurance on Monday.

MR. LOHR informed the committee that February 27th the Subcommittee on Oversight and Investigations of the Committee on Financial Services, held a hearing to assess how the market is reacting to issues related to terrorism insurance coverage. At this hearing, the General Accounting Office (GAO) prepared a report describing how, in the absence of federal legislation, insurance companies and the market place have reacted to the events of September 11th. This report points out that insurers and reinsurers are withdrawing from the market. Since this has been occurring gradually, the economic consequences are unclear. The report summarizes the situation as follows:

The ultimate scope of these effects is uncertain at this time, but they could become potentially significant in an economy recovering from a recession. Deciding whether Congress should act to help businesses obtain insurance against losses caused by terrorism is properly a matter of public policy.

Consequences of continued inaction, however, may be real and are potentially large.

MR. LOHR pointed out that Alan Greenspan, the National Football League, and the Risk Manager for the U.S. Olympic Committee has expressed support for the federal backstop legislation. Entities that have experienced difficulties in obtaining coverage or for an affordable price include the Mall of America, the Golden Gate Bridge, a large Manhattan real estate deal, and Alaska domesticated insurance carriers. Therefore, Mr. Lohr said that HJR 38 is a good resolution and thus he urges the committee's support. However, he noted that he would recommend a couple of amendments that speak to the congressional process.

Number 0897

CHAIR MURKOWSKI noted that the committee packet includes a letter from Mr. Lohr to Senator Stevens, which essentially urges quick action on this matter. The letter points out that "reinsurance contract renewals are now being renegotiated for an effective date of January 1, 2002." The letter also expresses concern [with the impact] that the renewal of the reinsurance contracts will have in Alaska. Although this is a gradual effect, Chair Murkowski asked if Mr. Lohr has noticed anything precipitous as the reinsurance contracts are renewed.

MR. LOHR said, "The sky didn't fall January 1st." Last fall, the insurance industry, many trade associations, and consumers and bankers made a concerted effort to say why this [federal] legislation was important. However, the actual effects have been subtle and thus there was concern that the [federal legislation] might languish. Mr. Lohr related his belief that with the President's renewed interest in this issue, the U.S. Senate will probably be more attentive to doing something with [H.R. 3210].

CHAIR MURKOWSKI surmised then that Alaska isn't in as serious shape as Mr. Lohr had anticipated.

MR. LOHR answered, "I think that the jury is still out on that one." He pointed out that currently [the division] is considering rate increase requests from Alaska-based insurers that are almost entirely based on the dramatic increase in terrorism coverage. Therefore, he said he didn't believe that the market has yet seen the impact of that. "If approved, the rate increase request would have a significant effect on the workers' compensation market. And there is tangible indication

of what's going on with respect to terrorism coverage in Alaska and its increased cost," he explained. He noted that how to handle the aforementioned as a regulatory rate making matter is debated. In response to Representative Kott, Mr. Lohr didn't know the specific time the President will speak on this matter and thus he offered to find out and inform the committee.

CHAIR MURKOWSKI announced that no one else had signed up to testify on HJR 38. Therefore, she turned to the technical amendments Mr. Lohr had mentioned.

REPRESENTATIVE KOTT inquired as to why the resolution included in the committee packet doesn't have a number.

The committee took a brief at-ease from 3:42 p.m. to 3:43 p.m.

CHAIR MURKOWSKI clarified that [the numbered version of HJR 38] is the same as the unnumbered version in the committee packet.

Number 1132

MR. LOHR explained that the resolution focuses on H.R. 3210 and support of H.R. 3210 could be controversial simply because of the latitude left to the other body in shaping the bill. One approach would be to amend the title to say, "Relating to urging the United States Congress to pass terrorism risk protection legislation." Furthermore, the two specific references to "H.R. 3210, the Terrorism Risk Protection Act" on page 1, lines 4-5, should be deleted and replaced with "terrorism risk protection legislation". Similarly, on page 2, line 14, the text "H.R. 3210, the Terrorism Risk Protection Act" should be replaced by "terrorism risk protection legislation". Therefore, the recommendation in HJR 38 would be generic and leave it to the [U.S. Senate] as to the particular form of the legislation. Mr. Lohr mentioned that H.R. 3210 contains some "quirks" that the U.S. Senate might or might not agree with in the course of the congressional process.

REPRESENTATIVE HAYES announced that he would accept Mr. Lohr's recommendations as friendly amendments.

Number 1241

REPRESENTATIVE HAYES moved that the committee adopt Mr. Lohr's aforementioned technical amendments to page 1, line 4; page 1, lines 1 and 2; page 2, line 14, to conform the language to urge passage of "terrorism risk protection legislation".

REPRESENTATIVE KOTT objected. He asked whether there is any other legislation pending in Congress that addresses the subject matter [addressed in H.R. 3210].

REPRESENTATIVE HAYES answered that he didn't believe so. Representative Hayes related his belief that if H.R. 3210 reaches the conference committee stage, the U.S. House of Representatives has latitude that far exceeds "our" latitude. Therefore, changes that exceed the structure for the Alaska State Legislature could occur at that point in the process.

REPRESENTATIVE KOTT remarked that he prefers to provide specific guidance to Congress. If H.R. 3210 is the only legislation that addresses the issue, then it will be the vehicle. Therefore, Representative Kott didn't see any reason to eliminate the reference to "H.R. 3210" in HJR 38.

Number 1338

CHAIR MURKOWSKI suggested that the first "WHEREAS" read as follows: "**WHEREAS** the United States House of Representatives has passed H.R. 3210, the Terrorism Risk Protection Act; and the United States Senate is considering terrorism risk protection legislation;". She asked if the aforementioned language, with the other changes recommended by Mr. Lohr, as well as the title change would address Representative Kott's concern.

REPRESENTATIVE KOTT replied that it would be acceptable. He expressed the need for the [U.S.] Senate to be able to know the vehicle for which the resolution urges support.

MR. LOHR informed the committee of his belief that there has been a turf war in the [U.S.] Senate in regard to which committee has jurisdiction. Furthermore, he reiterated that the U.S. House version of [H.R. 3210] attempted to include tort reform. Mr. Lohr said that the approach by Chair Murkowski would work.

REPRESENTATIVE HAYES, in response to Chair Murkowski, said that he would accept Chair Murkowski's suggestion for the first "WHEREAS" clause.

REPRESENTATIVE KOTT withdrew his objection.

CHAIR MURKOWSKI clarified the amendment. The first "WHEREAS" clause would read as follows: "**WHEREAS** the United States House

of Representatives has passed H.R. 3210, the Terrorism Risk Protection Act; and **WHEREAS** the United States Senate is considering terrorism risk protection legislation;". The amendment would also [replace "the Terrorism Risk Protection Act" language with "terrorism risk legislation"] and incorporate the recommendations by Mr. Lohr to change the title and page 2, line 14. There being no objection, the amendment was adopted.

Number 1517

REPRESENTATIVE MEYER moved to report HJR 38, as amended, out of committee with individual recommendations and the accompanying zero fiscal note.

REPRESENTATIVE HAYES announced a conflict of interest because he works in the insurance industry.

CHAIR MURKOWSKI asked if there was any objection to moving HJR 38 as amended from committee. There being no objection, CSHJR 38(L&C) was reported from the House Labor and Commerce Standing Committee.

HB 424-TITLE INSURANCE PLANTS

Number 1580

CHAIR MURKOWSKI announced that the final order of business would be HOUSE BILL NO. 424, "An Act relating to title insurance; and providing for an effective date."

Number 1596

REPRESENTATIVE ROKEBERG, Chair, House Judiciary Standing Committee, Alaska State Legislature, testified on behalf of the bill sponsor, the House Judiciary Standing Committee. Representative Rokeberg informed the committee that this situation was brought to his attention by the Land Title Association and the legislation was introduced at their request. He explained that a lawsuit was filed against the government in order to get the government to enforce their regulations. The [Land Title Association] had reason to believe that the Division of Insurance wasn't enforcing its statutes and regulations. This legislation increases the amount of time information mandated by statute to be kept by a title insurance company from 25 years to 40 years. The legislation also includes a "**title insurance limited producer**", which is defined in statute as basically an agent not a title insurance underwriter.

Representative Rokeberg directed attention to page 2, line 3, where the language "from public records or" is deleted. That language has created some ambiguity in its interpretation.

REPRESENTATIVE ROKEBERG turned attention to page 1, Section 1, AS 21.66.200, which establishes the provisions under which a title insurance company under current statutes shall have a title plant in this state. In Section 2, AS 21.66.210, allows for two or more title companies to combine to form a joint title plant. There was concern with regard to the public records language that was [originally] included in [AS 21.66.210]. Representative Rokeberg characterized [the original language] of the statutes to be inconsistent because it would seem that a title company would need a title plant while a joint title plant wouldn't have to have a title plant but rather could use the recorder's office. The latter is the interpretation of the new firm [involved in the aforementioned lawsuit].

REPRESENTATIVE ROKEBERG pointed out that the committee packet should include an opinion from Assistant Attorney General Signe P. Andersen to which is attached an April 5, 2002, memorandum from Heather Nobrega, Staff to the House Judiciary Standing Committee. Representative Rokeberg paraphrased from Ms. Nobrega's memorandum, which reads as follows:

Signe's memo [addresses] two statutes:

AS 21.66.200. Title Plant Requirements

This statute lists the requirements for a title plant.

AS 21.66.210. Joint Plant Companies

This statute is an organizing statute that lists what must be done to create a joint title plant. It does not reach the content of the plant.

Signe: It does not amend, abridge, or create an exception to the content requirements for title plants imposed on insurers in AS 21.66.200.

The bottom line:

Signe concludes that any title plant in Alaska must meet the content requirements of AS 21.66.200 to satisfy a title insurer's requirements under AS 21.66.200. AS 21.66.210 should be [viewed] as an organizing statute that does not reach the content of the plant.

In addition, Signe states that she does not believe the phrase "from public records or from records owned by the entity" is intended to permit alternative methods for operating a title plant that are different from the standards expressed in AS 21.66.200.

REPRESENTATIVE ROKEBERG noted that the committee packet should also include an e-mail from Sharon Young, State Recorder, Division of Support Services, Department of Natural Resources. Per Representative Rokeberg's request Ms. Young's e-mail outlines the problems with using the recorder's office for a title plant.

Number 2009

CHAIR MURKOWSKI pointed out that the legislation has an immediate effective date and the requirement to have information from the past 40 years. She questioned how that could be accomplished.

REPRESENTATIVE KOTT inquired as to the status of the pending litigation.

REPRESENTATIVE ROKEBERG answered that he couldn't inform the committee of the status of the litigation. Representative Rokeberg noted that he is a "free enterprise guy." However, the title insurance industry is so regulated that each company has to charge the same rate. Therefore, everyone entering the field should have the same capital investments and barriers to entry. "Other than that, we should deregulate it all together," he said.

Number 2116

REPRESENTATIVE CRAWFORD estimated that changing the requirement from 25 years to 40 years would create more of an expense, which would be passed along to the consumer. He questioned why [the legislature] would want to have extra requirements in Alaska.

REPRESENTATIVE ROKEBERG stressed that the fundamental purpose of the regulation is consumer protection. With regard to the costs, it's a result of the regulatory and statutory scheme. In regards to the litigation, Representative Rokeberg explained that the company being sued is using the recorder's office.

Number 2250

BRYAN MERRELL, State Counsel and Underwriter, First American Title Insurance Company; Vice President, Alaska Land Title Association, testified via teleconference. He informed the committee that First American Title Insurance Company, an underwriter of title insurance, has been underwriting title insurance since 1965. He noted that he was involve in writing HB 424. Mr. Merrell explained that the requirement to have the title plant records for 40 years merely brings the statute to the reality of what the title plant owners in Alaska already have. In order to do a thorough search one would want to have records far enough back. If a search was done only for 25 years, one might not catch the typical 30-year mortgage. Mr. Merrell related his understanding that the trend is toward having title plant requirements [as specified in HB 424]. Laws in the Northwest require at least 40 years of records. Requiring keeping records [for 40 years] protects the public. With regard to allowing agents or underwriters to own the title plants, this legislation clarifies that as it is the general practice.

MR. MERRELL turned to the requirements for a joint title plant and noted agreement with Representative Rokeberg that a single owner plant and a joint owner plant should face the same requirements. Mr. Merrell related his belief that the statutes already say that because of the language defining a title plant in [AS 21.66].200. Furthermore, the Division of Insurance believes this to be the case as well, which is why it issued the cease and desist order [to the company in litigation].

TAPE 02-50, SIDE B

MR. MERRELL recalled that the Director of the Division of Insurance had testified before this committee in February and indicated that the public records language of this statute may need clarification. That comment was the impetus for adding that into the legislation.

MR. MERRELL turned to comments that this legislation is anti-competitive and protective of the industry and charged, rather, that this legislation is protective of the public. Clearly, a proper title search can't be done using the records from the recorder's office as is evidenced on the website for the recorder's office. He informed the committee that prior to the litigation there had been discussion regarding increasing the number of years of records. The other changed encompassed in

the legislation arose after the litigation came forward. Mr. Merrell related his understanding that a fiscal note had been attached to the legislation, which he didn't understand.

REPRESENTATIVE ROKEBERG interjected that the fiscal note had been zeroed out.

Number 2254

MR. MERRELL addressed the comment that this [legislation] will result in higher rates by pointing out that the rates are a separate issue. The increase in the number of years of records shouldn't impact the rates because these are records that everyone has or can easily obtain an index. In fact, using the inadequate information from the recorder's office could give rise to higher rates because of the potential claims related to the use of inadequate records. Using properly indexed, easily searchable title plants is a much better method to keep costs down rather than using the records from the recorder's office. Mr. Merrell informed the committee that the division is in the process of reviewing the rates and claims of [First Title Insurance Company]. Only through such a detailed, factually driven statistical analysis can one develop a proper methodology for determining the rate.

Number 2197

CHAIR MURKOWSKI returned to the 40-year requirement for the title plant. She inquired as to how a title plant would obtain the records dating back to statehood.

MR. MERRELL explained that when building a title plant, people actually review the documents in order to ensure that the documents are indexed with the proper names and tracts of real property. Essentially, a trained individual would have a stack of papers of everything that has been recorded and go through those documents and file and index them either on computer or in a paper plant. Sure, the documents recorded in the public record are used, but the public indexes aren't being used alone. The documents are being carefully reviewed in order to ensure proper indexing. Mr. Merrell pointed out that the research of the state recorder's office hasn't been as accurate as that of a title company's research.

CHAIR MURKOWSKI returned to the fiscal note and highlighted that there are ten physical title plants in Alaska. She inquired as

to what would be done in those communities that don't have a physical title plant.

MR. MERRELL said that he didn't believe that number to be accurate because it depends upon how one would count the number of title plants. All of the recording districts in the state have at least one title company that has created a title plant with records and data that it has indexed. Therefore, there are at least 34-37 actual title plants.

Number 2065

REPRESENTATIVE KOTT returned to the 40-year requirement and inquired as to why the standard 30 years with a deed of trust wasn't used. He also inquired as to the average requirement in other states with title plants.

MR. MERRELL said that he didn't know the average. However, Washington and Oregon have similar title plant laws. In Washington, the title plant [documentation] goes back to the original documentation or patent. In Oregon, the requirement is 40 years. Mr. Merrell explained that it made sense to him to follow the requirements of state's with similar laws. Furthermore, there are things such as easements that are theoretically forever as is ownership of the property. There has been discussion of having everything go back to the patent, which is what most everyone does because that's what the underwriter requires.

Number 1992

REPRESENTATIVE ROKEBERG turned to the issue of transition and asked if the July 1 effective date provides enough time.

MR. MERRELL related his understanding that most everyone's records already go back to the patent. In further response to Representative Rokeberg, Mr. Merrell said that the cost of developing a title plant depends upon the location. In Anchorage, creation of a title plant could be a relatively expensive undertaking given the number of documents involved. Whereas smaller areas might not take too long to put together. He related that he has heard that it costs from \$40-80,000 to acquire copies of the documents.

Number 1886

REPRESENTATIVE CRAWFORD remarked that for every company to have a title plant seems duplicative. It would seem more efficient and cheaper to have a centralized title plant that each issuer could use per a fee. Representative Crawford related his desire to have more people entering this business in order to create more competition. Would one centralized title plant for the state be better, he asked.

MR. MERRELL agreed that it might be administratively cheaper if everyone agreed to [use a centralized title plant]. However, not everyone has agreed nor is there a requirement to operate a joint title plant. Mr. Merrell pointed out that other states such as Louisiana do this process differently, that is the attorneys do the search and closings. In Alaska the title companies do the searches and closings and are agents for underwriters for [insurance] and thus an individual doesn't have to only rely on an attorney.

Number 1746

PATRICK LAMB, President, Attorneys Title Guaranty Agency and Attorneys Title Guaranty Services (ATGS), which is the title plant company that's the subject of this legislation. Mr. Lamb provided the following testimony:

For the past 25 years, I have been a title examiner and manager with many of the title companies in Southcentral Alaska. I have built title plants for some of these companies ... in the Bethel, Kuskokwim, Valdez, and Chitina recording districts. I am familiar with the title records, title plant maintenance procedures and title search procedures used by those companies, including the ones that belong to the Alaska Joint Plant in Anchorage, such as First American.

As president of ATGS since last August, I've conducted, or supervised other title examiners in conducting, hundreds of title searches using only the indices available through Motznik Computer Services, and the records available through the public records, such as the Anchorage Public Recorder's Office, BLM [the Bureau of Land Management], State Division of Lands, the Municipality, and the state and federal courts. I am familiar with title searches using both proprietary title plants and the title records, and I am one of the few people now working in the state ...

who has used many of these proprietary title plants that are available, as well as the public records.

I would like to explain the process of conducting a title search, both using a title plant and using the public records; pitfalls using both the public records and title plants; and ... every title company's practice of using the public records when it's in their economic interest to do so.

First I would like to describe the process of conducting a title search. Briefly, a title search consists of accessing an index, often on line such as the Public Recorder or Motznik, or a proprietary index, to find citations to documents that may affect title, such as deeds, easements, mortgages, or judgments. Then you go to where the documents are stored - either your own title plant or the Public Recorder's Office - and make Xerox copies of them. Then an experienced title person examines each document to determine the effect, if any, on title. Finally, the examiner prepares a title report or commitment for title insurance.

A title plant is nothing more than a proprietary copy of the documents, maps, and plats in the public records, and a system of indexing the documents so they can be retrieved so that you can make copies of them.

As to Indices: Motznik Computer Services has an on-line index of the public records, as does the Public Recorder's Office. Most title companies, including Attorneys Title, use Motznik as either their primary or secondary index system. This widely used index is not in dispute, and this bill does not affect use of Motznik as a viable index.

As to Documents: Right now a title plant should have copies of the documents from the public records going back 25 years. The bill would force all title companies to make a copy of every document of public record going back 40 years. There are over 10 million pages of documents for the Anchorage Recording District alone. The only reason to have your own copy of these records is convenience of access for Xeroxing. There's no difference between using the

public records and using your own title plant to make the Xerox copies.

Number 1582

A title plant is a derivative of the public record. The public records are the only official, legally binding documents. If there is a problem with the public records, it will either be caught when the title plan is posted or when the title search is performed. If there's a difference between the public records and the title plant records, the public records prevail.

A 10 million document title plant is so expensive to create and maintain that Section 200 of the statute has served as a complete barrier to entry in the Anchorage title insurance market for 20 years. The only company that sells copies of the public records - Western Microfilm - is owned by the same people that own First American. They ask newcomers for eight times their normal price (\$80 vs. \$10.50 for a roll of microfilm), and if you ask to purchase the film, they tell you they don't have time to make the copies. Or, if you ask to purchase one of their extra title plants that are around, they want to know who will use them before considering their sale or lease.

Both a proprietary title plant and the public records can have errors. The Public Recorder has outlined some of the problems inherent in using the public records for title searches. For instance, she mentions the inability of the system, prior to 1999, to accommodate and index documents with more than 999 entries. However, the only such document is the Anchorage Tax Delinquency Notice that's put out about every two years. This is remedied by the tax reporting services that all title companies use. Other issues with the Public Recorder's tract or geographic index are remedied by the grantor-grantee index. All experienced title examiners, not just me, are familiar with these shortcomings and know how to work [with] them. The letter from the Recorder, Sharon Young, specifically states at the top of it, that the recorder's office has no authority to indicate whether or not their records can be used for title insurance purposes. That's because they've

never done a search ... for title insurance purposes. She also says that until 1996, the location index was a courtesy index only and that many indexing variations have occurred over the years.

On the other hand, the proprietary title plants are just as inadequate for conducting complete title searches. Exhibit 1 ... is a partial litany of title plant kirks and problems that I'm personally familiar with. All title plants have some errors or holes, and most are missing large groups of information, such as PLO roads, section line easements, and RS2477 rights-of-ways. I've personally corrected hundreds of mispostings in the Anchorage and Valley title plants owned by First American and other companies that I've worked in since 1976. Most Alaska title companies rely on the public records for at least some of their information. In other words, having a title plant is no guarantee that your title searches will be right every time.

Number 1437

A title search is both a science and an art, and different title examiners may view the same documents differently, and prepare slightly different title reports. Even the most experienced title examiner can make mistakes. Our underwriter, Old Republic National Title Insurance Company, has examined our title search procedures using the public records, and found that we meet their standards. If our examiners make a mistake, Old Republic has to pay the claim. Again, a mistake in the title examination does not adversely affect the public, it affects only the underwriter. All of the title insurance representatives listening in and here in this room can tell you stories of mistakes, using their title plants, that resulted in payment of claims.

While no system is perfect, all of the title records I've used, including the public records, are good enough for an experienced title examiner to prepare competent title searches. After 20 years of using proprietary title plant records, and five years of using the public records, it's my professional opinion that the title examiners using public records, such as those at ATGS, conduct title searches that are at

least as good as those of our competitors who use the private title plants, and better than some.

Next, I would like to tell you that all title companies conduct title searches from the public records when it is in their financial interest to do so. No title company owns a title plant for all the recording districts in the state. So when a title company gets a [routine] transaction out of their area, usually they'll refer that to another company that works in that area. But when the transaction is a big one that they want to keep the entire fee for themselves, they usually would send an examiner. Often fly them to that district recorder's office and conduct their own title search in the public records so they can keep the transaction and retain the entire fee. For instance, when working for other companies, I personally have flown to Fairbanks on many occasions ... to conduct title searches using public records for areas such as Prudhoe Bay ... and ... big box stores; and I've flown to Kenai to search a \$20 million [private] prison site from the public records; I've flown to Homer to use the public records for multiple refis [refinances]. And these have been for various title agencies, and all these using the public records and Motznik index.

It's important to note that these title companies use the public records for the big transactions, the ones with the most complicated title issues and the highest liability and risk. Their underwriters know of this procedure or they should know, and as far as I know, there is no [higher] incidence of claims when the title companies have used the public records. So, it's hypocritical to say the public records are not good cause they all do it -- at least the companies I've worked for.

So, as one of the few title examiners who has used both title plants and the public records on an extensive basis, I want to assure each of the members of this committee that there is no crucial difference between using a private title plant and using the public records. Therefore, in my opinion, this bill does nothing to protect the public from bad or erroneous title policies. Its only effect is to act

as a barrier to entry in the field and eliminate competition, price competition also.

Number 1237

MR. LAMB concluded by informing the committee that virtually all the title searches for the oil companies, such as for the Trans-Alaska Pipeline, used the public records. Furthermore, the oil companies use the public records to perform some of the most difficult searches, such as mineral searches. Mr. Lamb informed the committee of five examples of title plant issues. He explained the first example in which First American Title Plant used the state recorder's tract book location index, public records, exclusively for subdivided land from 1915-1968. He noted that during the years he worked with [First American Title Plant], it didn't use the backup Grantor Grantee Index. In the second example, the Trans America Anchorage Plant (ph) that is owned by Trans Alaska First American (ph) was known for its many indexing variations, not the least of which was the Assignment and Reconveyance Index that was its only search method for certain documents recorded in the 1980s. With regard to the third example, First American's Palmer and Talkeetna title plants are so poor in the section land searches that in his recent 14 months as their manager, Mr. Lamb backed up their work on section land searches by using the public record or Motznik Indices. For the fourth example, Mr. Lamb informed the committee that McKinley's title plant [McKinley Title & Trust Inc.] is a paper or insertion system in which documents are stuffed into file folders where they can and do fall between the cracks. In the last example, Mr. Lamb informed the committee that he was the land manager for Land Title [Company of Alaska Inc.] in most of the early 1990s. This company does most of its business in the rural areas. This company relies on Motznik and the public record in areas outside of Anchorage and Valdez.

Number 1112

CHAIR MURKOWSKI surmised then that so long as there is an experienced title examiner who knows where to go and look, that examiner can provide the same consumer protection as an entity with a full and complete title plant.

MR. LAMB replied yes. Furthermore, the Division of Insurance has reviewed the procedures of [Attorneys Title Guaranty Agency and Attorneys Title Guaranty Services] and determined that it's no threat to the public.

CHAIR MURKOWSKI posed a situation in which the title company makes a mistake with the title report during a title search. She related her understanding that the financial backer would "eat the mistakes."

MR. LAMB agreed. Mr. Lamb informed the committee that Old Republic [the financial backer for Attorneys Title Guaranty Agency and Attorneys Title Guaranty Services] has received Standards and Poor's highest rating awarded to a title insurance company for the eighth consecutive year. Since the financial backer would pay the claim, there is no risk to the public.

Number 1018

REPRESENTATIVE CRAWFORD surmised from Mr. Lamb's testimony that one could do business anywhere in the state, only with a partial title plant for the area.

MR. LAMB agreed, adding that most title companies do so. Mr. Lamb explained that most title companies will have a title plant in an area, but virtually never refuse a search. Usually, it's not financially feasible to go to the area and perform the search and thus the search is usually farmed out to a company in the area. However, when it's a large search, the company does go to the area because it doesn't want to share the premium.

REPRESENTATIVE ROKEBERG inquired as to whether Mr. Lamb has a joint title plant.

MR. LAMB clarified that he has a certificate of authority to operate a joint title plant. In further response to Representative Rokeberg, Mr. Lamb specified that Old Republic National, Attorneys Title Guaranty Agency, and [Attorneys Title Guaranty Services] form the joint title plant.

REPRESENTATIVE ROKEBERG inquired as to the location of the title plant.

MR. LAMB explained that [the joint title plant with which he is involved] received its certificate of authority from the Division of Insurance in order to use the public records, which the statute allows. He further explained that this joint venture uses about 30 years of title searches of an abstract that is on-line in the office. The recording office is then used to finish the search and go back to patent and obtain copies. He confirmed that Attorneys Title Guaranty Agency [the joint title plant] is, per statute, a title insurance limited

producer while Attorneys Title Guaranty Services is the title plant company. This joint title plant is the only plant that has ever been issued a certificate. He related his understanding that the joint title plant in Anchorage has never applied for or received a certificate to operate.

Number 0880

REPRESENTATIVE ROKEBERG related his assumption then that the company's file cabinet is its title plant.

MR. LAMB answered that [the joint title plant] has some plats and is building subdivision folders as time passes and records are being purchased as they are available. He noted that the company is being blocked from buying most records. He explained that Western Microfilm, the one company that has copies of the records, is owned by First American. [Western Microfilm] wanted \$80 a roll for its microfilm, which [the joint title plant] viewed as unreasonable. Western Microfilm agreed to sell the microfilm for \$10.50 a roll and [the joint title plant] agreed to purchase it, but Western Microfilm then said it didn't have time to make the copies.

REPRESENTATIVE ROKEBERG asked if he understood Mr. Lamb to mean that he couldn't go into the recorder's office and make copies.

MR. LAMB answered that he could go into the recorder's office and make copies. However, the private company, Western Microfilm, that has the microfilm won't sell it to [the joint title plant].

Number 0794

SARAH McNAIR-GROVE, Actuary P/C, Division of Insurance, Department of Community & Economic Development (DCED), related that HB 424 has been presented as clarifying some of the issues resulted in the litigation. To the extent this legislation does so, the division thinks the legislation is appropriate. However, the division believes HB 424 goes beyond fixing some of the issues, specifically the 40-year requirement and the deletion of the public records requirement.

CHAIR MURKOWSKI requested that Ms. McNair-Grove elaborate with regard to the 40-year requirement. She asked if the division is of the opinion that it's not necessary to go back that far or should it not be required to be in the title plant [because] one

should be allowed to rely on the public record for that information.

MS. McNAIR-GROVE reiterated that the purpose of HB 424 is to clarify the issues causing confusion, and the [40-year requirement] is an additional issue beyond that.

REPRESENTATIVE ROKEBERG requested that Ms. McNair-Grove expand on the issue of deleting the public records.

MS. McNAIR-GROVE said that deletion of the public records also appears to go beyond what is necessary to offer clarity.

REPRESENTATIVE ROKEBERG related his belief that [the public record] has caused some of the confusion with the interpretation of the statutes.

MS. McNAIR-GROVE specified her belief that some of the confusion is related to whether [AS 21.66].210 speaks to the requirements of a title plant or whether it's merely a process for putting together an entity.

Number 0634

REPRESENTATIVE MEYER inquired as to who is involved with the litigation.

MS. McNAIR-GROVE deferred to the director of the division.

CHAIR MURKOWSKI asked if Ms. McNair-Grove was involved with the certification of ATG.

MS. McNAIR-GROVE responded not directly, although she noted her involvement with some of the preliminary discussions.

Number 0564

BOB LOHR, Director, Division of Insurance, Department of Community & Economic Development, testified via teleconference. With regard to the litigation, Mr. Lohr informed the committee that the administrative litigation continues. Mr. Lohr explained that when the complaint is resolved by a hearing officer under contract for the division, he [the director] will be the ultimate decision-maker. Therefore, Mr. Lohr specified that he couldn't say anything that would pre-judge those matters before the hearing officer. The issues before the hearing officer are close to the heart of HB 424.

REPRESENTATIVE MEYER inquired as to who brought forward the complaint.

MR. LOHR answered that the Attorneys Title Guaranty Agency and Attorneys Title Guaranty Services filed the complaint based on the division's cease and desist order preventing use of the certificate that the division had previously granted under AS 21.66.210. In mid-August 2001 the division issued a certificate of authority under AS 21.66.210. Then, based on Assistant Attorney General Andersen's legal opinion the division issued a cease and desist order, which is the subject of the appeal by Attorneys Title Guaranty Agency and Attorneys Title Guaranty Services. Mr. Lohr noted that the hearing officer has granted a request to intervene to others, including the Land Title Association as an amicus curiae. Furthermore, the Attorneys Title Guaranty Association has been guaranteed leave to intervene as a party. There is a pending motion from Land Title for intervention in the case. Mr. Lohr informed the committee that the central issues, as specified by the hearing officer, are AS 21.66.200 and AS 21.66.210. However, no conclusions have been reached in those matters. Mr. Lohr also informed the committee that this matter has a hearing scheduled for late May of this year. Moreover, he expected to receive a recommended decision by the end of June.

REPRESENTATIVE MEYER questioned whether this matter should be taken up while there is related litigation.

REPRESENTATIVE ROKEBERG clarified that this isn't in the courts but rather is a hearing through the APA (Administrative Procedure Act).

CHAIR MURKOWSKI requested that Mr. Lohr speak to the certificate issued by the division under AS 21.66.210.

MR. LOHR answered that he believes that to be at the heart of the case and thus he said he couldn't answer. However, he directed attention to Assistant Attorney General Andersen's opinion.

Number 0177

CHAIR MURKOWSKI inquired as to the procedure the division would go through in examining a title company in order to ensure it operates in the best interest of the public. She asked if the division has examiners review their documentation or process.

MR. LOHR confirmed that the division does send examiners to review the documentation or process of a title company. He explained that the division receives an application, which is reviewed according to the statutory standard with regard to what the application must contain. If the application is incomplete or questions are raised to the reviewing staff, the applicant would be contacted for additional information. Based on that information a physical field visit to the offices of the applicant would be conducted and an evaluation would be done based on that.

REPRESENTATIVE HAYES echoed Representative Meyer's contemplation with regard to whether this legislation is too soon [in light of the litigation].

MR. LOHR said that is a legislative policy call.

TAPE 02-51, SIDE A

REPRESENTATIVE ROKEBERG commented that the legislature has the prerogative [to bring forth legislation], particularly when there are claims of ambiguity or requests by courts for corrections or if there is the need for curative legislation. However, he acknowledged that there is the question as to whether it's a good tactic to offer legislation during litigation or whether there are separation of powers issues. Representative Rokeberg noted that he has passed a handful of bills that have specifically overturned supreme court cases and other case law, which he viewed as part of a legislator's job. Representative Rokeberg said that he didn't believe it was inappropriate to attempt to fix a situation and perhaps make further expenses with regard to the hearing moot.

REPRESENTATIVE MEYER inquired as to whether this would be retroactive. He pointed out that this company went into business based on a certain statute, which is being changed in this legislation. Could this case cost the state more because the company could have litigation against the state, he asked.

REPRESENTATIVE ROKEBERG opined that the hearing will find that it's interpretative of the statute and the cease and desist order will remain in place. Representative Rokeberg remarked that [were the legislation to pass], the hearing officer could take notice of legislative intent.

Number 0282

BARB NORD, Chair, Issues Committee, Kenai Peninsula Association of Realtors, testified via teleconference. Ms. Nord announced the association's wholehearted support of HB 424 because it is viewed as public protection legislation. She related that the current 25-year requirement isn't viewed as a significant amount of time, considering that most mortgages last for 30 years and up to 33 years in the Kenai Peninsula area and other rural areas. She concluded by urging the committee's support of HB 424.

Number 0330

MICHAEL PRICE, Owner, Mat-Su Title Agency, testified via teleconference. As a real estate attorney and title agency insurance company owner, Mr. Price emphasized his support for HB 424 and encouraged its passage. Mr. Price remarked that the controversy itself has seemed to over take the substance of what what is being reviewed. In Mr. Price's opinion, the legislature appropriately made Alaska a title plant law state. He said he didn't believe anyone could refute that a title plant state results in the best service to the individual consumer with the lowest amount of claims. Mr. Price related his belief that the title plant statutes speak to quality and service.

MR. PRICE directed attention to AS 21.66.170 of which the very first sentence says, "(a) A policy or contract of title insurance may not be written until the title insurance company conducts or has conducted a reasonable search and examination of the title and has made a determination of insurability of title in accordance with its established underwriting practices." Furthermore, compiling records for the past 25 years would only take one back to 1977, which he didn't believe to be appropriate. He discussed the need to compile records for a lengthier time period due to the various easements, covenants, et cetera. Mr. Price stressed that HB 424 standing alone, regardless of the recommendation of the hearing officer, makes sense. In conclusion, Mr. Price encouraged the committee to support HB 424.

CHAIR MURKOWSKI returned to AS 21.66.170 and said she didn't see the definition of "reasonable search and examination". However, AS 21.66.200 provides that "A title company shall own and maintain in the recording district" [a title plant consisting of records] for a period of 25 years, although it doesn't require searching records back to [25] years. Furthermore, it doesn't seem to indicate the need to reference those [records]. She

asked if the statutes provide for what a "reasonable search and examination" of title is.

MR. PRICE said that there is no other provision in statute. Although the title industry has been woefully short of regulations, there have been a number of orders from the director of the Division of Insurance. By implication, the statutes were tied together such that a reasonable search had to be a search of at least 25 years. When these statutes were originally passed that 25 years went prior to statehood. In the context of a title plants, [records] go back to the patent, which he characterized as a reasonable search. Mr. Price related his understanding that current statutory language could be interpreted to mean that a reasonable search only goes back to 1977.

Number 0920

CHRIS RODRIGUEZ, Alaska Land Title Association, testified via teleconference. He informed the committee that the 13 board members of the Alaska Land Title Association unanimously voted to support HB 424. Mr. Rodriguez turned to his experience as a former manager of the Kenai, Wasilla, and Homer offices for First American Title. With regard to the testimony that title companies do searches in areas in which they don't own a plant, he said as a manager he has never dealt with that situation. Mr. Rodriguez informed the committee of his personal support of HB 424 because without clarification now, the statute could become misinterpreted by others entering the title industry.

Number 1094

TERRY BRYANT, President, First American Title of Alaska, testified via teleconference. Mr. Bryant informed the committee that he is responsible for ten of its offices around the state. First American Title of Alaska owns and operates 20-plus title plants that go back 40-plus years. Mr. Bryant echoed earlier testimony that Alaska is clearly a title plant state. This legislation merely clarifies who owns the title plant and the requirement for a title plant to maintain records. Mr. Bryant pointed out that establishment of indexes, the purchase of maps, and infrastructure such as computers and microfilm is the cost of entering the industry. The years worth of documents is a very minute portion of entering the industry.

MR. BRYANT noted that he built the last title plant established in the state. Although the statutory requirement was for 25

years worth of data, he went back 40 years. This title plant has been in operation for two-and-a-half years and has become self-supporting. As a member of the board of the Alaska Land Title Association, Mr. Bryant relayed that discussions regarding the 40-year plant requirement or back to statehood requirement occurred in the board meetings months before the litigation was known about. Furthermore, Mr. Bryant related his belief that every licensed title company, save the title company under a cease and desist order, currently maintains 40 years of records. Therefore, there would be no start-up expense because it would merely be a statutory requirement.

MR. BRYANT turned to an earlier comment that the underwriter would pay for a mistake. However, he refuted that. He informed the committee that a homeowner in Fairbanks couldn't sell her house for four years due to a title mistake. After filing for bankruptcy, the underwriter defends the homeowner who ends up destitute. Regardless of who pays the bill if an individual can't sell their home until litigation is complete, the individual is at a disservice. The exposure consumers receive is inappropriate. Mr. Bryant related his understanding that Oregon has increased its title plant requirement to 50-plus years.

MR. BRYANT recalled comments indicating that one can't do business because Western Microfilm is owned by First American Title. He highlighted that he is the president of First American Title of Alaska, Summit Title of Alaska, TransAlaska Title Inc., and Title Group. Therefore, he has total authority for First American Title of Alaska, which has absolutely no relationship with or ownership in Western Microfilm. However, he noted that one of the minority owners of [First American Title of Alaska's] LLC is personally involved.

MR. BRYANT turned to the term "reasonable search" and said that he would defer to the industry [for its definition]. He emphasized that the Alaska Association of Realtors, the Alaska Homebuilder's Association, the Alaska Land Title Association, and the Alaska Mortgage Banker's Association have unanimously voted to support HB 424.

Number 1447

REPRESENTATIVE MEYER asked if the support from the aforementioned groups was given verbally or is there written documentation.

MR. BRYANT answered that he has seen documentation [to that effect], although he noted that he doesn't represent those organizations. He pointed out that the Alaska Homebuilder's Association noted its support in their March 2002 newsletter. The committee should have copies of letters of support from the Alaska Land Title Association and the Alaska Association of Realtors. He clarified that he wasn't sure of the status of the Alaska Mortgage Banker's Association's formal support.

Number 1540

KIRK WICKERSHAM provided the following testimony:

I'm an Anchorage attorney and real estate broker, and I'm a former vice chair of the Alaska Real Estate Commission. I own the For Sale By Owner Assistance Program, a company that helps people sell their property on their own.

I also own Attorneys Title Guaranty Agency, which is a title agency, and I represent Attorneys Title Guaranty Services, which is its title plant company. ATGA and ATGS are the companies and the only companies that would be put out of business by this bill.

This afternoon I'd like to discuss the current title statutes and the provisions of the bill, protection of the public, competition in the industry, fairness, and the public policy implications of the bill.

I'd like to begin with the current law. There are three interrelated statutes. The first is ... AS 21.66.170, which requires title companies to conduct a title search before issuing a title insurance policy. I think that there is a provision in that statute that says that the standards for that title search are to be established by the underwriter. And that's why there are no uniform standards in the state. ... And that would make sense because the underwriter is whose paying the bill if something goes wrong. Then there are two sections relating to how that title search can take place. AS 21.66.200 requires title companies to have a title plant, which is a set of proprietary copies of the public records that go back 25 years. That is the statute that all title companies and their agents have relied on for the past 26 years. A title plant is so expensive to create and maintain that it

has served as a barrier to entry in the Anchorage title insurance market for over 20 years. However, AS 21.66.210, which was passed at the same time as Section 200, ... allows title companies and agents to join together to form a joint title plant, and then allows the joint title plant to use the public records for title searches. This is an alternative that no one used until last summer, when the state certified ATGS as the first title plant to use the public records. The rest of the title industry, and especially the biggest statewide company, First American, exploded with a lawsuit, a license action, and this bill.

Number 1669

House Bill 424 would do two main things: the first is to abolish the right to use the public records for title searches, leaving us with no choice but to build and maintain a title plant. Because this is economically infeasible, which is a fact that is well known to the members of the title insurance industry, the only purpose of that provision is to put ATGS out of business. The second provision would raise the requirement for proprietary title records from 25 years to 40 years. Since 25 years has already proven to be an effective barrier to entry into the industry, the purpose of that provision could only be to absolutely ensure that there will be no further competition in the title insurance industry in Alaska, or at least in Anchorage and the big markets. And actually, 40 years is as irrelevant as 25 years, because in most instances, a good title report will go back to the U.S. Patent. And I would like to also comment that statehood is irrelevant. The U.S. Patent is where the title record begins. And I would also like to explain that maintaining 40 years' worth of records is not the same as requiring a 40-year search or limiting the search to 40 years. You've got to go back as far as you've got to go back to do a competent title search

Some people have suggested that virtually all states require title companies to maintain a complete set of proprietary records in their title plant. ... [Exhibit 2] shows the actual situation - only six states have a statutory requirement similar to HB 424.

Five others require an index but not a copy of the records and 39 states plus the District of Columbia and Puerto Rico have no statutory requirement. I did this analysis in February of 2002, and the most recent action that I found among the 50 states was that Montana ... dropped their requirement last year. ... Also, there is no title plant requirement in any of the various model acts promulgated by the American Land Title Association or the National Association of Insurance Commissioners.

Number 1782

I'd like to turn to the purpose of this bill. AS 21.66.170 specifically provides that a title search must be done to a standard established by the underwriter. And it's the underwriter that takes the financial risk of a mistake. In the case of ATGS, Old Republic National Title Insurance Company, one of the nation's largest and highest rated title companies, underwrites our policies. The public is not at risk from a bad title search from us, or from any other title companies in the state. Moreover, the Division of Insurance spent three days examining our process of conducting title searches, specifically our use of Motznik and the public records, and gave us the green light. And I would like to quote from a document signed by Director Lohr on December 10th:

"On October 3rd and 4th 2001, Ted Laurbach(ph), Chief of Market Conduct for the division conducted an on-site inspection of ATGS. This inspection reviewed the contents of the plant and the manner in which ATGS performed title searches. ATGS owns some subdivision records, but primarily relies on searches of public records and Motznik when completing a title search. The inspection observed that based on the experience of Mr. Lamb, neither he nor ATGS is a threat to the consumer."

And I'd also like to point out that a joint title plant, licensed under Section 210 has requirements for experience in financial responsibility that are not found for proprietary title plants under Section 200. So if you're using the public records, you have to have an experienced title examiner like Mr. Lamb and

the other people on our staff. And that's not a requirement of a title agency or a title company that maintains its own proprietary plant.

Number 1859

The fact is that we are conducting competent title searches using the public records, and there is no valid public purpose to requiring us to make a copy of the 10,800,000 pages of documents in the Anchorage recorder's office. If this bill becomes law, it would be subject to serious constitutional challenge because it denies substantive due process as guaranteed by the state and federal constitutions. That would not only be ATGS but all the future companies that emulated in the future.

Now, as to the issue of competition in the industry. Practically speaking, title insurance is a necessity in real estate transactions. But there has never been price competition in the Alaska title industry. Over the years, the large title companies have gobbled the small agencies up ... [as illustrated by Exhibit 3]. Counting us there are only five title agencies in Anchorage compared to about 30 mortgage companies. Competition has been artificially constrained by the perception that any new title agency had to have a title plant - a practical impossibility that will be cemented into law if this bill passes.

Number 1934

... Think of the impact on the legal profession, and on attorney's fees, if you were to require all lawyers to make their own copy of the courthouse law library. Or, if you required all auto insurance agencies to maintain their own copy of the DMV records. Before we even opened for business, we asked the Division of Insurance for a rate decrease, which the first in recent memory. While they initially turned us down because of a lack of operating history, if we are allowed to survive we will bring increased consumer choice and price competition to the Alaska market for the first time.

I'd like to address the issue of fairness to the existing title companies ... the so-called "level

playing field." The proponents of this bill suggest that ATGS is competing unfairly because it does not bear the burden of maintaining a title plant. We are not competing unfairly. The [statute] we operate under has remained unchanged for over 28 years, and the other title companies could have used it and the public records at any time. And they still can. Industry representatives claim that ATGS' operations have reduced the value of their title plants. This, too, is not true. The decrease in value is due, not to competition, but to technological innovations in the public recorder's office that make their title plants obsolete. For instance, the public recorder has begun digitizing all public records on a go-forward basis. In this wallet, two CDs produced by the Municipality of Anchorage hold all the tract maps of Anchorage. ... These are produced by the Public Recorder's Office at taxpayer expense. These CDs contain the public records from Southcentral Alaska since July 1, about 200,000 pages, ... all produced by public agencies and available for just a few hundred dollars. All are easily accessed on a home computer. Eventually the public recorder will do this for all records.

Number 2024

The public recorder recently put out a request for proposals to assist in digitizing the past five years of Southcentral records. ATGS was the only title company that initially responded. Why? We believe that it's not in the other title company's interest to have the public records widely available in a convenient and inexpensive format. These companies are locked into an obsolete and redundant system. They want you to pass a bill to put somebody who is more efficient and technologically adept out of business. Oddly, this bill would not outlaw the use of the public records for title searches, including the out-of-town title searches described by Pat Lamb. The bill would require a title company to own a set of records, but it does not require the title company to use those records to prepare a title search. Thus, this requirement would be a barrier to entry, not a real public policy measure.

These companies claim that they have been damaged because the state has removed the so-called "requirement" to maintain a title plant. There is no such requirement, but what if there was? In other words, what if the bill is defeated, and these other companies would have to compete with us? Well, if it is true that they can do a better title search with their own title plant, then they could continue to use their title plants and charge higher rates for a supposedly better product, and the plant would still have value to them. However, if the bill fails, they will apparently write off their title plants as worthless. In other words, they would start using the public records like we do. And that's an admission that the public records would work for title searches, and so their title plants have already lost their value. In truth, their only value is to preclude competition under Section 200. This illustrates that this bill has no public purpose, only a private purpose.

Number 2095

Now I'd like to deal with the next 28 years rather than the last 28 years. And this is a stark public policy issue for you. Are you for free enterprise or are you for protectionism? You have the future of this industry in your hands. On the one hand, you adopt the approach of this industry bill, which is to require title agencies to maintain a not very useful copy of millions of pages of public records. And, since the current 25-year requirement has been sufficient to preclude any new title plant in the Anchorage market for 20 years, raising the requirement to 40 years will ensure that the existing agencies will never face competition. You will be protecting the existing agencies from new competitors and price competition. That provision may also impact the ... operations of one of the Anchorage agencies as well as the other agencies in the smaller communities of this state. And sometimes there's only one agency in those smaller communities.

First American's actions are especially important in this regard. In recent years, First American has engaged in an aggressive program of buying or assimilating independent title agencies in Anchorage

and throughout the state. [Exhibit 3] shows that consolidation of the title industry in ... Anchorage in recent years. First American already has 48 percent of the market share in Anchorage and about the same shares statewide. It's actions indicate an intention to make Alaska a one-company market. Already title insurance is so expensive that lenders are going bare. Wells Fargo has their own contract employee sitting at the recorder's office five days a week, doing title searches. Key Bank has dropped title search requirements for home equity loans under \$500,000. American Title Insurance out of Nebraska, which is a First American subsidiary, sells unlicensed title evidence from Alaska obtained under the guise of property profiles. First American recently took over all the office in the Alaska Land Title Association ... , and just short of a majority of board positions. It has filed suit, which is now dismissed. It has lobbied the Division of Insurance and proposed this bill just to get ATGS out of business.

Number 2179

If you pass this bill, you will have less competition and no price competition at all in this industry. On the other hand, you could embrace free enterprise. In industry after industry, monopoly practices have been bad for Alaskans. Competition has brought consumer choice and lower prices. I urge you to envision a future where there are many title agencies, all competing for the consumer's dollar. You should embrace the cutting edge digital technology being implemented at taxpayer expense by the Public Recorder. And again, there is no risk to the public That has been specifically determined in our case by the Division of Insurance. Claims by homeowners are covered by the underwriter.

But there is even a better way than this bill. The Division of Insurance examined ATGS' use of public records and issued us a certificate of authority. Our company is legal and fully operational using the public records. Old Republic, our underwriter, is a member of ATGS, and Section 210 clearly states that it has the legal right to use ATGS' title searches to issue title insurance policies. Nevertheless, under ... pressure from the other title companies, the

division has filed a license action ... against Old Republic for not having its own redundant title plant under Section 200. Since you can do competent title searches under either Section 200 or Section 210, common sense holds that you'd only have to comply with one of the statutes and not both. Put another way, if you're legal under 210, what's the point of requiring you to make a copy of over 10,000,000 documents? We believe this makes no sense, and the division simply gave in to pressure from the other title companies.

Number 2243

While we are confident that Old Republic will ultimately prevail, it could take years and hundreds of thousands of dollars to make our way through the court system. We have comparatively meager resources to fight First American and the rest of the industry. Our customers as well as theirs will be paying as much for litigation as for title insurance. We have prepared a committee substitute and provided to the Chair that would make it clear to the Division of Insurance that title companies have the choice of complying with either the title plant statute, Section 200, or the joint title plant statute, Section 210. Either is adequate for title searches. Requiring both is redundant and imposes an impossible barrier to entry in the field. We urge you to substitute our proposal for the existing language in House Bill 424.

MR. WICKERSHAM, in response to Representative Rokeberg, confirmed that he is a practicing licensed attorney who is the principle owner of For Sale By Owner Real Estate.

REPRESENTATIVE ROKEBERG asked if Mr. Wickersham is suing the State of Alaska on the grounds that his firm can give "kick backs" to homebuyers.

MR. WICKERSHAM replied no. Mr. Wickersham clarified that he has a company called Discount Buyers Realty that has filed suit against the State of Alaska in order to allow that company to provide price competition for buyers. This price competition would be provided in the same way that it's provided for sellers for real estate, which is the same way in which ATGS and ATGA hope to provide price competition for consumers of title insurance.

REPRESENTATIVE ROKEBERG surmised then that Mr. Wickersham is applying the methods he uses in the real estate business to the title insurance business.

MR. WICKERSHAM emphasized his belief in price competition and consumer choice.

TAPE 02-51, SIDE B

REPRESENTATIVE ROKEBERG asked if Mr. Wickersham has offered to bundle real estate sales with title insurance sales.

MR. WICKERSHAM replied no. In further response to Representative Rokeberg, Mr. Wickersham said that he hasn't offered any discounts for title insurance premiums. Mr. Wickersham informed the committee that when ATGA was in the final process of getting licensed, the Real Estate Procedures Settlement Act (RESPA) requires disclosure if the owner of a real estate firm also has a title firm and specifically requires offering the choice of not bundling the services. At the time [For Sale By Owner Assistance Program] was trying to get licensed, it also applied for a rate reduction in title insurance. Therefore, the contract for [For Sale By Owner Assistance Program] specified that using ATGA may result in a reduction in the consumer's title insurance fees. This notice was provided to anyone using ATGA. However, the state turned down the rate reduction request and that provision was eliminated from the contract.

REPRESENTATIVE ROKEBERG related his understanding that Mr. Wickersham used [rate reduction] notice in a contract before there was approval from the division to lower insurance rates.

MR. WICKERSHAM agreed, but emphasized that the notice used the word "may." Furthermore, when the division denied the rate reduction, the entire sentence was eliminated from the contract.

Number 2241

REPRESENTATIVE MEYER asked if his understanding that the realtor or buyer chooses the title company was correct.

MR. WICKERSHAM answered that under RESPA the buyer has the choice.

CHAIR MURKOWSKI recalled testimony regarding situations in which a title company has a transaction in an area where that title

company didn't have a title plant. If HB 424 passed, would the title companies be unable to use the public records in the areas in which the title companies don't have title plants, she asked.

MR. WICKERSHAM pointed out that such would be governed by [AS 21.66].170. In the State of Alaska there is no minimum standard for the title search. Therefore, under present law and under HB 424 title companies could use the public records. This legislation would only require that a title company own a copy of the records in the community where the company has an office. Nothing requires the title company to use its title plant records.

Number 2124

MR. LOHR offered the following correction to his earlier testimony. He clarified that Mr. Wickersham is correct that the cease and desist order issued by the division was issued to Old Republic National Title Insurance Company in San Francisco, California.

CHAIR MURKOWSKI announced that she didn't believe HB 424 would be moved from committee today.

REPRESENTATIVE ROKEBERG offered to bring some clarity to HB 424. He explained that Section 1 of the bill clarifies that Alaska is a title plant state. He pointed out that page 2, line 2, specifies "for the purpose of engaging in the business of preparing abstracts of title searches [FROM PUBLIC RECORDS OR] from records to be owned by the entity ... upon the basis of which a title insurance limited producer or a title insurance company will issue title policies." Page 2, line 8, specifies: "The application must contain". Representative Rokeberg explained that [AS 21.66].200 is about the title plant and [AS 21.66].210 speaks to how to apply to obtain a certificate to operate. Representative Rokeberg clarified that Mr. Lamb and Mr. Wickersham are inferring that the recorder's office is a title plant. However, [AS 21.66].210 is the application process under which [Mr. Lamb and Mr. Wickersham] applied and the division issued a certificate.

Number 1970

CHAIR MURKOWSKI related her understanding that [AS 21.66].210 is a joint plant as opposed to a title plant.

REPRESENTATIVE ROKEBERG agreed, but reiterated that it speaks to the application.

CHAIR MURKOWSKI related that she read [AS 21.66.200] to address a title plant and [AS 21.66.210] addresses those applying to be a joint plant.

REPRESENTATIVE ROKEBERG emphasized that [AS 21.66.210] is referring to the application. The AS 21.66.170 and AS 21.66.200 are the operative statutes. He directed attention to page 2, lines 3-4, "to be owned by".

CHAIR MURKOWSKI highlighted the "or" [language in the current statute].

REPRESENTATIVE ROKEBERG indicated that he had no problem with using the public records. Due to the huge investment in a title plant, one doesn't invest in a title plant until approval is gained from the Division of Insurance. He continued to emphasize that [AS 21.66.210] speaks to an application.

[HB 424 was held.]

ADJOURNMENT

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