

ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE

April 25, 2001
3:23 p.m.

MEMBERS PRESENT

Senator Robin Taylor, Chair
Senator John Cowdery
Senator Gene Therriault
Senator Johnny Ellis

MEMBERS ABSENT

Senator Donley

COMMITTEE CALENDAR

SENATE BILL NO. 142

"An Act giving notice of and approving a lease-purchase agreement with the City of Seward for the construction of an addition to the Spring Creek Correctional Center for the purpose of providing secure classroom facilities and housing for prisoners committed to the custody of the commissioner of corrections; and setting conditions and limitations on the facility's construction and operation."

MOVED SB 142 OUT OF COMMITTEE

CS FOR SENATE BILL NO. 176(L&C)

"An Act relating to distributorships."

MOVED CSSB 176(L&C) OUT OF COMMITTEE

SENATE BILL NO. 138

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

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

SB 138 - See Labor and Commerce minutes dated 3/20/01, 4/10/01 and 4/12/01.

SB 142 - See Judiciary minutes dated 3/21/01.

SB 176 - See Labor and Commerce minutes dated 4/19/01.

WITNESS REGISTER

Ms. Mary Jackson
Staff to Senator Torgerson
Alaska State Capitol
Juneau, Alaska 99801-1182
POSITION STATEMENT: Introduced SB 142

Mr. John Haxby
Wakasha Alaska Corporation
PO Box 111098
Anchorage, Alaska 99511
POSITION STATEMENT: Supported SB 176

Mr. Howard Yager
Alascal Inc.
4706 Harding Drive
Anchorage, Alaska 99517
POSITION STATEMENT: Supported SB 176

Ms. Deborah Luper
PO Box 771757
Eagle River, Alaska 99577
POSITION STATEMENT: Supported SB 176

Ms. Cinda Smith
Geiko
Chevy Chase, Maryland
POSITION STATEMENT: Supported SB 176

Mr. Bob Lohr, Director
Division of Insurance
Department of Community & Economic Development
3601 C Street, Suite 1324
Anchorage, Alaska 99503-5948
POSITION STATEMENT: Testified on SB 138

Ms. Linda Brunette, Licensing Supervisor
Division of Insurance
Department of Community & Economic Development
PO Box 110805
Juneau, Alaska 99811-0805
POSITION STATEMENT: Testified on SB 138

ACTION NARRATIVE

TAPE 01-23, SIDE A
Number 001

CHAIRMAN ROBIN TAYLOR called the Senate Judiciary Committee meeting to order at 3:23 p.m. Senator Therriault, Senator Cowdery, and Chairman Taylor were present. Senator Ellis arrived at 3:26 p.m. Chairman Taylor announced the first order of business would be SB 142.

#SB 142

SB 142-LEASE-PURCHASE CORRECTIONAL FACILITY

MS. MARY JACKSON, staff to Senator Torgerson, sponsor of SB 142, said she supplied the committee with the information that was requested at the last hearing and the Department of Education and Early Development (DOEED) supplied the committee with a fiscal note.

SENATOR COWDERY moved SB 142 out of committee. There being no objection, SB 142 moved from committee.

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The committee then took up SB 176.

#SB 176

SB 176-DISTRIBUTORSHIPS

MR. JOHN HAXBY, Wakasha Alaska Corporation, testifying via teleconference from Anchorage, expressed his support for SB 176. He said SB 176 would help prevent employers from unnecessarily laying their employees off and it would keep capital in the state.

MR. HOWARD YAGER, Alascal Inc., testifying via teleconference from Anchorage, said SB 176 was necessary for Alascal's well being and he urged the committee to support the bill.

MR. KURT WINKLER and MR. DON DUNNAVANT, from Anchorage, faxed their testimony in support of SB 176 to the committee.

MS. DEBORAH LUPER, testifying via teleconference from Anchorage, said she absolutely supported SB 176 because it would bring fairness to distributorship agreements. Large-scale manufacturers in the Lower 48 can turn the table on small Alaskan businesses because they have the resources to keep them tied up for many years. She said SB 176 would also help small Alaskan businesses in their relationships with outside entities.

SENATOR ELLIS asked who requested that SB 176 be introduced.

MR. HAXBY said he had discussed the introduction of SB 176 with Senator Phillips, Chairman of the Senate Labor and Commerce Committee.

SENATOR ELLIS said the committee packet did not have a fiscal note, sponsor statement, sectional analysis, or any backup. He asked if this information could be provided for the committee's use.

CHAIRMAN TAYLOR said he would request that information from the Labor and Commerce Committee. He said he did not think that SB 176 would impact state agencies.

MR. HAXBY noted that Kim Ross from the Senate Labor and Commerce Committee had delivered a zero fiscal note that afternoon for the committee's use.

CHAIRMAN TAYLOR said he had not received the fiscal note and he would hold the bill until it was delivered to the committee room.
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The committee then took up SB 138.

#SB 138

SB 138-INSURANCE CODE AMENDMENTS

MR. BOB LOHR, Director, Division of Insurance, Department of Community and Economic Development (DCED), said a slide packet had been given to the committee that summarizes SB 138. The Gramm-Leach-Bliley Financial Services Modernization Act (GLBA), which was adopted by Congress in 1999, eliminated barriers between insurance, securities, and banking. As a result of that, there is a need to modernize and streamline regulations for each of those fields. He said the focus of SB 138 was the insurance regulatory provision. States have the authority to regulate insurance companies without intervention by the federal government. However, if states do not coordinate their regulatory approaches with each other, the federal government would make an effort to take over regulatory authority and preempt state authority. SB 138 was an effort by states to modernize their legislative approaches to insurance in a way that retains state authority.

MR. LOHR said there were three basic elements of SB 138: 1) Provisions dealing with licensing of agents and brokers - producer licensing; 2) Provisions dealing with privacy of insurance financial information; and 3) Consumer protection provisions dealing with banks who selling insurance.

MR. LOHR said Congress provided, in GLBA legislation, that a national approach to licensing would be put into effect if 29 states or territories did not adopt a reciprocal or uniform approach to licensing by a certain date. It is preferred that the authority be kept at the state level but in order to do that the process has to be simplified to make licenses available to nonresidents. The licensing provisions would provide reciprocity.

MR. LOHR said the Senate Labor and Commerce committee substitute, as well as SB 138, provide an approach toward privacy that would provide an opt-in approach toward health information and an opt-out approach toward financial information. Opt-out means that personal information may be shared with other companies unless a person opts-out. Opt-in means that personal information may not be shared unless explicit permission is given. There are exceptions to this standard that allow insurers to perform day-to-day operations, and there are also marketing exemptions. GLBA established an opt-out standard with initial and annual notices to the consumer regarding financial institutions' privacy practices, and policies. Specific provisions in SB 138 give the director of insurance authority to adopt privacy standards that are consistent with, but no less restrictive than, the minimum standards in GLBA. GLBA allows states to set standards that provide greater protection for consumer privacy and SB 138 would preserve that authority. Mr. Lohr said the House appears to be headed in a different direction on privacy than what is in SB 138, and the Division of Insurance supports the Senate approach.

MR. LOHR said consumer protections in financial institutions' sales of insurance, banks, and related institutions would occupy the 13 safe harbors that are provided under federal law and Section 305 of GLBA. The protections would apply to financial institutions that are not insurance companies transacting business in Alaska. There would be no need to have those provisions cover insurance companies because insurance companies are already covered by existing consumer protection laws. The provisions would provide important protection for Alaskans who purchase insurance through financial institutions, avoiding possible preemption and enforcement of those protections in Alaska. They make a strong statement that state regulation of insurance can work effectively to protect consumers while allowing the insurance industry to remain competitive.

MR. LOHR noted there are two GLBA provisions in SB 138 that deal with felony convictions involving dishonesty or breach of trust. Under federal law the only way someone with a felony conviction for breach of trust can be allowed into the insurance business is with the consent of the director of insurance. The Division of

Insurance would like state authority to do the same thing so that the director can make waivers when appropriate. The Federal Bureau of Investigation does not share criminal background records with the Division of Insurance unless specific provisions in state law are adopted to authorize that. This information can be accessed through fingerprint cards but it cannot be accessed in a timely way. SB 138 would help expedite the enforcement of restrictions.

MR. LOHR suggested two amendments to SB 138. He said there was a current requirement on producer licensing under AS 21.27 requiring trust accounts. Payments for premiums go into trust accounts until they are transmitted to the insurance company and, if Alaska maintains that requirement, it may not qualify as one of the states to ward off a national takeover of licensing. That is because there is a prohibition on having additional licensing requirements beyond those necessary for reciprocal treatment of other applicants for nonresident purposes. The proposed amendment would delete the trust account requirement and substitute fiduciary responsibility. In addition this would authorize the director to adopt regulations under consumer protection provisions of the Alaska statute, which requires trust accounts. If the requirement is maintained in the licensing statute, Alaska may be declared nonreciprocal and therefore not be able to help get state regulation preserved.

Number 1200

SENATOR COWDERY asked if there were penalties for violations.

MR. LOHR replied that for purposes of insurance privacy a violation would be treated like a consumer protection violation. There is a higher penalty for a willful violation than for an inadvertent violation. An inadvertent violation would probably only receive a warning. Companies want to comply with the provisions but they want a nationally consistent approach. Insurance companies would like to do business in multiple jurisdictions without having a different set of rules for each jurisdiction, and SB 138 would accomplish that.

MR. LOHR said the amendment he submitted to the committee needs a correction. Instead of reading, "Page 18 after line 6," it should read "Page 18 after line 5." Page two of the same amendment should read, "Page 30, line 30," instead of "Page 30, line 29."

MR. LOHR said the second amendment he would like the committee to consider is a technical amendment that would add a delayed effective date of July 1, 2002 for a surplus lines bond provision. A drafting error, which excluded the word "limitation," also needs to be corrected in Section 50.

MR. LOHR said there was also a drafting recommendation for another amendment that would reword a regulatory authority.

CHAIRMAN TAYLOR asked Mr. Lohr to explain the two-page amendment.

Number 1353

MR. LOHR said that amendment would delete the references to trust account, and the language, "held by the licensee as a fiduciary," would be added. That language would confirm that a licensee must maintain the fiduciary responsibility toward the money, and the provision would be amended so that the word "fiduciary" would be substituted for trust account. This would remove the offending phrase that triggers the nonreciprocity determination at the national level. The change would not sacrifice consumer protection but would continue to hold a licensee to the same legal standard. Another subsection says the director of insurance may promulgate regulations to implement, define, and enforce regulations that would continue the requirement for the trust account.

SENATOR ELLIS moved to adopt CSSB 138(L&C), version 22-GS1025\F, as the bill before the committee.

SENATOR ELLIS moved to adopt amendment 1, for the purpose of discussion. There being no objection, amendment 1 was adopted.

SENATOR ELLIS asked about the technical amendment.

CHAIRMAN TAYLOR asked if the drafting recommendation for an amendment was a separate item, suggested by the drafter.

MR. LOHR replied yes.

SENATOR THERRIAULT said he did not understand why the drafting recommendation was made because it appears to make no difference in the bill.

Number 1591

MR. LOHR said the drafter was heavily involved in the development of the CS at the Labor and Commerce level, and he does not know why that particular amendment was suggested.

SENATOR THERRIAULT moved the drafting recommendation as amendment 2. There being no objection, amendment 2 was adopted.

MS. CINDA SMITH, Geiko, offered support for the language in Section

2 that allows customer service representatives to answer and implement changes to existing policies for policyholders. She said she also appreciated the opportunity to testify by teleconference because she does not have that opportunity to do so in any other state.

CHAIRMAN TAYLOR asked where the opt-in and opt-out provisions were in SB 138.

MR. LOHR said those provisions were on page 24, line 30, Section 45. He said the Gramm-Leach-Bliley Act sets out minimum standards for privacy and federal banking agencies were required to adopt privacy regulations under those provisions, which would take effect July 1, 2001. Those provisions would be enforced by federal agencies in the absence of state agencies adopting standards that are at least as strong as GLBA. If states provide protection for privacy that goes beyond the federal level of privacy, it would be upheld. This was an unusual provision that allowed states to exceed the federal level and not be preempted. However, if Alaska establishes a unique level of protection for privacy that was not found anywhere else in the country, it would be more difficult for insurance companies to do business in Alaska. It may also lead to additional pressure in trying to nationalize insurance regulations.

MR. LOHR said that under the current GLBA approach, financial information is opt-out, allowing customers to tell companies they do not want their information shared. The opt-in approach is more protective of privacy because it requires the company to have an affirmative statement that the customer is willing to have his or her information shared. The default is the difference, if a customer does not act under the opt-out, the company can share the information. However, there are exemptions that do not require opt-in or opt-out, such as administrative operations by a company that is using the information for the purpose it was intended for - processing claims and underwriting, for example, and there are also marketing exceptions. Because of the exceptions, the more restrictive opt-in can look less restrictive than opt-out. Subsection B, page 26, lines 5-10, mandates the adoption of regulations on privacy concerning insurance information, which is consistent with and at least as restrictive as the provisions of the GLBA. This would establish that there would not be a federal takeover of state authority with respect to privacy in Alaska, and it would allow the state to go beyond the level established by GLBA. It would also give the division the responsibility of sorting the process out and taking public comment.

CHAIRMAN TAYLOR asked if personal data was opt-in.

MR. LOHR replied yes. Proposed regulations have been developed by the National Association of Insurance Commissioners to try to flush out that authority and under their approach, opt-in is for health information, which is more protective. The limited amount of financial information that an insurance company gathers about an applicant would start out as an opt-out approach - a less restrictive level of protection.

CHAIRMAN TAYLOR asked about the House version of SB 138.

MR. LOHR noted that the House Labor and Commerce Committee was presently in a meeting and the discussion was to focus on banking and insurance legislation with a focus on privacy, trying to craft a consistent approach between both bills, which would likely provide opt-in for financial and health information. There would be a significant exemption from any notice required to the customer for purposes of joint marketing arrangements. Opt-in looks tighter but it depends how the exemptions are used. Companies would not be able to sell information to unrelated parties, there would have to be a marketing plan in place.

CHAIRMAN TAYLOR said that trying to figure out who would be an unrelated party would be very difficult.

CHAIRMAN TAYLOR asked if SB 138 only had an opt-in provision for health information.

MR. LOHR replied that GLBA provides for opt-out as the approach for financial information. GLBA does not explicitly address health information; however, the National Association of Insurance Commissioners' (NAIC) regulations that have been developed as a model do address health privacy and give it a higher degree of protection than financial information.

CHAIRMAN TAYLOR thought that state governments, and not the federal government, had the authority to regulate insurance, and GLBA was just saying it would be better to be more uniform with other states and the only penalty would be that the federal government would make it more difficult for an insurance company to do business in a particular state.

MR. LOHR said that was accurate.

Number 2063

SENATOR THERRIAULT asked about the indirect court rule in Section 55, page 10, line 9.

MR. LOHR said he believed the court rule amendment was designed to enforce the confidentiality of the notice of termination and keep it out of the court system.

SENATOR THERRIAULT asked for an example.

MS. LINDA BURNETTE, Division of Insurance, said that when it went through drafting, the attorney and legal drafter decided it would be an applicable change. She said that section specifically deals with the reasons for termination.

SENATOR THERRIAULT said, "I have a health insurance policy, my carrier terminates me, writes me a letter that explains why I'm terminated and that can't be brought into court."

MS. BURNETTE said insurance companies appoint licensed agents and that appointment allows them to underwrite or write that insurance company's particular product. The company may terminate that contract, sometimes with reasons for cause, and it is the reasons for cause that are confidential, depending on what the reasons are.

SENATOR THERRIAULT clarified that it was not the individual Alaskan getting coverage but the agent who was to be covered.

MS. BURNETTE said yes.

SENATOR THERRIAULT asked if an agent's contract was terminated for unfair reasons, why shouldn't the letter be used in a court proceeding for an appeal.

MS. BURNETTE said the provision, in addition to allowing the information to be retained as confidential, also allows the agent to rebut and respond to the termination for cause. That information would also be submitted and, depending on the circumstances, the division would evaluate that information to determine if appropriate civil action would be taken.

SENATOR THERRIAULT asked if the civil action taken by the state would be against the company.

MS. BURNETTE said it would be against the agent.

CHAIRMAN TAYLOR asked why there was a need to amend the law at this time on evidence that may be presented in an Alaskan court today, to exclude from presentation in evidence the communication between a company and an agent, changing existing law on the subject. There would be reason to change court rules if this section were not enacted.

MR. LOHR said the division wants to make sure an insurance company gives it a straight answer on the company's reason for letting someone go. If the division does not agree to treat the information as confidential, and the company fears litigation, the chances are the full truth would not be presented.

SENATOR THERRIAULT asked if the confidentiality requirement would only be for the state agency handling the information and not for the broker who lost his agreement, because the division would not want them to have a copy.

MR. LOHR said that was accurate.

CHAIRMAN TAYLOR said an agent may be able to get a copy in a deposition or discovery but they cannot use it in court.

MR. LOHR said that was precisely the point.

TAPE 01-23, SIDE B

CHAIRMAN TAYLOR said there is a law that already protects companies as long as they honestly reveal to the division what happened with an employee, and the company cannot be sued.

SENATOR THERRIAULT asked if the division was trying to get the honest information so it could make a determination of whether to let an agent continue operating in Alaska.

MR. LOHR said that is correct. He said these would be independent contractors and not employees under a typical relationship. If terminations of employment were occurring for impermissible reasons, the division would have ample enforcement authority.

CHAIRMAN TAYLOR commented that companies would only write termination letters with permissible reasons for the termination.

Number 2265

CHAIRMAN TAYLOR said he could not imagine the provision being added if there had not been situations where a termination occurred and the terminated person discovered the reasons were not acceptable and then brought suit and used that letter in his suit.

MR. LOHR said the division has ample authority to initiate an investigation if there is a suspect element for the reasons given.

SENATOR ELLIS requested that SB 138 be held so the committee could

see what the House was doing with the legislation.

CHAIRMAN TAYLOR said SB 138 would be held until a later time.

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#SB 176

The committee then took up SB 176.

SB 176-DISTRIBUTORSHIPS

SENATOR ELLIS asked if Mr. Haxby was representing an organization.

MR. HAXBY responded that he represented Wakasha Alaska Corporation.

CHAIRMAN TAYLOR said he had talked with Senator Wilken and he was delighted with SB 176.

SENATOR ELLIS said he did not want to hold the bill up but he was curious whether the Alaska Chamber of Commerce and the Alaska Chapter of National Federation of Independent Business had a position on the legislation.

CHAIRMAN TAYLOR said he would ask staff to inquire and report back to the committee.

SENATOR ELLIS asked if SB 176 was based on a model act from other states.

MR. HAXBY said almost all states have acts similar to SB 176. SB 138 was tailored more to Alaska because recent bills in other states have made some of the acts criminal, which were not sustainable in Alaska.

MR. HAXBY noted that he had been in Juneau recently and had talked with Thyes Shaub, National Federation of Independent Businesses (NFIB), and NFIB was in support of SB 176.

SENATOR COWDERY moved CSSB 176(L&C) from committee and asked for unanimous consent. There being no objection, CSSB 176(L&C) moved from committee with individual recommendations.

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There be no further business to come before the committee, Chairman Taylor adjourned the meeting at 4:24 p.m.