ALASKA STATE LEGISLATURE
SENATE LABOR & COMMERCE COMMITTEE
March 20, 2001
1:30 p.m.

MEMBERS PRESENT

Senator Randy Phillips, Chair
Senator Alan Austerman
Senator Loren Leman
Senator Bettye Davis

MEMBERS ABSENT

Senator John Torgerson

COMMITTEE CALENDAR

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 - No previous action to consider.

WITNESS REGISTER

Mr. Bob Lohr, Director
Division of Insurance
3601 C St., Ste 1324
Anchorage AK 99503
POSITION STATEMENT: Commented on SB 138.

Ms. Patricia Parachini
Senior Director, State Relations
American Council of Life Insurers (ACLI)
1001 Pennsylvania Ave. NW.
Washington, DC 20004
POSITION STATEMENT: Supported intent of SB 138.

Mr. Michael Lovendusky, Senior Counsel
American Council of Life Insurers (ACLI)
1001 Pennsylvania Ave. NW.
Washington, DC 20004
POSITION STATEMENT: Supported intent of SB 138.

Mr. Michael Harrold, Northwest Regional Manager
National Association of Independent Insurers (NAII)
Chicago IL
206-910-3692
POSITION STATEMENT: Commented on SB 138.

Ms. Cinda Smith
Government Employees Insurance Company (GEICO)
Chevy Chase, MD
1-800-824-5405
POSITION STATEMENT: Commented on SB 138.

Mr. Michael Combs, President
Combs Insurance Agency
Alaska Independent Insurance Agents
P.O. Box 2702
Palmer AK 99654
POSITION STATEMENT: Commented on SB 138.

Mr. John George
American Council of Life Insurance
National Association of Independent Insurers
3328 Fritz Cove Rd.
Juneau AK 99801
POSITION STATEMENT: Commented on SB 138.

Mr. Sheldon Winters
State Farm Insurance
613 W. Willoughby Ave.
Juneau AK 99801
POSITION STATEMENT: Commented on SB 138.

Ms. Katie Campbell, Assistant Actuary
Department of Commerce and Community Development
333 Willoughby Ave
Juneau AK 99801
POSITION STATEMENT: Commented on SB 138.

ACTION NARRATIVE

TAPE 01-12, SIDE A
Number 001
#SB138

SB 138-INSURANCE CODE AMENDMENTS

CHAIRMAN RANDY PHILLIPS called the Senate Labor & Commerce Committee meeting to order at 1:30 pm and announced SB 138 to be up for consideration.

MR. BOB LOHR, Director, Division of Insurance, said Gramm-Leach-Bliley (GLBA) is the term for the Financial Service Modernization Act of 1999, legislation that basically removed the barriers among insurance, banking and securities. He explained that back in the depression era, one of the responses of congress to 1929 depression was to erect some walls among the different sectors of the economy and have restrictions on cross-ownership, the Glass-Steagall Act. Those barriers were broken down by this revolutionary legislation, which repeals the Act.

Unlike other types of regulation, there's relatively little involvement by the federal government in regulation of insurance, MR. LOHR said. "We believe that is a very worthwhile goal to preserve and continue. GLBA does provide that continued state regulation of insurance will occur only if certain conditions are met by the states in the way that they regulate insurance."

MR. LOHR said:

> The primary goal of state regulators is to protect insurance consumers, taking a pro-active and flexible approach to regulation. State regulators must streamline the processes and become more efficient in the highly competitive world economic environment. If you are going to allow insurance companies to compete with banks, compete with securities firms, allow mergers and acquisitions among those different categories, then if any one sector is at a disadvantage because of the way it's regulated in competing with those other sectors, that's not a level playing field and that's not a fair opportunity to compete. The goal of Gramm-Leach-Bliley and the goal of the state legislation is to try to insure that there is a level playing field there; that regulatory restriction will not impair the ability to compete openly and freely. State regulators must work cooperatively with other state officials, federal officials, consumers, and interested parties.
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> A primary goal of this legislation is to simplify the process of licensing insurance producers, protect the privacy of consumer information and to protect consumers who buy insurance through banks.

Producer licensing - one of these restrictions that I mentioned - If a total of 29 jurisdictions do not achieve either uniformity or reciprocity for their non-resident licensing process by three years from the adoption of GLBA, then a national system of licensing will be put in place. This essentially states we'll lose authority over licensing to the national government. This is in response to a perception by national companies that getting licensed in every single state is a very cumbersome, difficult process that involves different rules in different states and is extremely slow.

NAIC refers to the National Association of Insurance Commissioners. This is the gathering of the chief regulators for insurance purposes from each of the different jurisdictions around the country. It is our national organization, which serves a quasi-governmental function. It is because there is no federal insurance regulatory entity, the NAIC is the closest thing to a national perspective on insurance regulation that there is. It's also complimented by the National Conference of Insurance Legislators that has a national focus from the point of view of legislators involved in the regulation of insurance.

In October 2000, the NAIC adopted the Producer Licensing Model Act for states to use as a guideline for developing legislation to meet the reciprocity elements of GLBA. I mentioned the two choices of either reciprocity or uniformity that 29 jurisdictions have to achieve one or the other of those. Reciprocity basically means that if another state accepts a licensee as acceptable under their rules, that we will accept them as a non-resident license applicant under our rules and vice versa.

Uniformity, in essence, means that those states would have the same conditions for licensing for an agent. It would essentially be national legislation replicated in each of the 50 jurisdictions. Alaskan licensee include a total of over 10,700 of which 2,900 are residents, 7,800 are non-residents. We have noticed a dramatic growth in the non-resident licensees in the last three years and pretty much a level trend for the purposes of the resident licensees - 38 percent increase.

Based on the NAIC model with the goal of achieving reciprocity and moving toward uniformity later, these licensing provisions in SB 138 would give licenses on a

reciprocal basis. A non-resident applicant would receive a license upon request for licensure and payment of a fee. The fees would be collected at one central point nationally and the applications would be turned in nationally, but processed electronically, if a producer is licensed and in good standing in the home state.

Basically, we envision a system where an applicant for a license in Alaska, if there are no regulatory issues, such as previous administrative or criminal background, could be processed within a 24-hour period. That would be a dramatic change from the current system. We would accept the home state's continuing education requirement as they would accept ours. Any retaliatory provisions that Alaska might apply to others would be eliminated by this bill. It would remove all discriminatory requirements based on the place of residency or operations. We would use and accept the National Uniform License Application.

A consistent approach on a national basis would truly simplify the task of getting multiple licenses. Some of the benefits of enacting the producer licensing provisions would include:

- Streamlining the license process and eliminating duplicative requirements for licensure.
- It would be a more efficient and a cheaper process.
- There would be no requirement to apply retaliatory fees
- We would level the playing field
- We would work collaboratively to identify rogue agents. If one state was able to identify problems in the background of a licensee, other states would have access to that information on a confidential basis.

Number 700

SENATOR AUSTERMAN asked if there was no federal oversight or regulation of the insurance agency.

MR. LOHR answered that is basically correct. At the federal level there is the McCaren Ferguson Act, which provides that if states are regulating the business of insurance, then insurance companies are protected from the anti-trust provisions in federal law. This was in response to a U.S. Supreme Court case. It is truly a state's rights or state regulated business.

SENATOR AUSTERMAN asked if GLBA allows everyone to come together and do a national standards of insurance.

MR. LOHR answered that was correct and that they are trying to get closer to a national approach so that companies doing business on a multi national basis will not face the quirks and warts of all the different systems.

SENATOR AUSTERMAN asked if the national approach was based upon state laws or insurance standards as well.

MR. LOHR answered that it is based typically on model legislation and regulations developed by the NAIC that takes input from interested parties. He said there are privacy provisions in this bill and he referred to the Alaska Constitutional Right to Privacy, Article 1, Section 22 which states, "The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section." This is a more stringent privacy standard than is found in the U.S. Constitution.

> The consumer privacy provisions of this bill confirm the Director of Insurance's authority to adopt privacy standards that are consistent with, but no less restrictive than the NAIC model regulation.

MR. LOHR summarized information that is protected in the NAIC Privacy Model:

- Personally identifiable financial or health information
- Has standards for protected financial information that are consistent with Gramm-Leach-Bliley Act and they are opt-out provisions. Opt-put means if you don't want to share your non-public personal information with insurance companies with other companies, then you must tell them you don't want to share. That means if you don't exercise your option to opt-out in the little billing stuffers, you are giving them the right to share that information. That is a lower form of protection for that information than opt-in. Opt-in information means that the company may not share that information with other companies except affiliates unless you give them permission to do so. Opt-in is a tighter form of control with respect to protecting privacy.

MR. LOHR said the current proposal is that health information be protected on an opt-in basis.

MR. LOHR reiterated:

- Opt-out standard means that insurers may share protected financial information unless the consumer

affirmatively says they do not want the information shared.

- Insurers must provide notices to consumer describing their privacy policies.
- Protected financial information may be shared among affiliates without restriction.

MR. LOHR explained the opt-in standard means insurance companies:

- May not share protected health information without explicit permission from the consumer.
- Exceptions to this standard allow insurers to perform day-to-day operations.
- Unlike the financial standards, insurers are not required to provide notices describing their privacy policies.

MR. LOHR said the health information standards do not apply to insurers who are in compliance with the newly developed U.S. Department of Health and Human Services regulations, which implement the Health Insurance Portability and Accountability Act (HIPAA) taking effect in 2002. Sharing among both affiliates and non-affiliates is restricted. He explained if you don't want insurance companies making decisions about whether to write insurance for you based on your health history and prescriptions you may have taken, these are important provisions.

MR. LOHR said it's important to have strong privacy standards for health insurance and the Gramm-Leach-Bliley standard is geared toward banks and securities firms, not the insurance industry. There is a much larger volume of health information and greater sensitivity. There is a greater sharing of information among banks, securities firms and insurance companies who are now allowed to affiliate. Reasons in support of the NAIC Privacy Model include:

- Preserves the insurance industry's ability to transact insurance while protecting consumers.
- Broad support from industry, consumer groups and others, although there are diverging points of view on the privacy issue.
- Makes a strong statement that state regulation of insurance can work effectively to protect consumers while allowing the insurance industry to remain competitive in a changing financial services marketplace.

Number 1200

MR. LOHR said consumer protections in financial institutions' sales of insurance are consistent with Sections 104 (often referred to as

the 13 safe harbors) and 305 of GLBA. SB 138 expands applicability beyond depository institutions as provided in GLBA to all financial institutions that may transact insurance business in Alaska.

> There are four major areas of protection relating to licensing, misrepresentations, disclosure, anti-tying and anti-coercion. There are two other GLBA related provisions. One requires that a person with a felony conviction involving dishonesty or a breach of trust obtain consent of the director before transacting insurance as required by a provision in the Federal Violent Crime Control Act, Section 1033, Title 18 USC 1033 and 1034. Basically the federal government says that anyone engaged in the business of insurance, certainly a licensee, but also anyone working in an insurance office who has been convicted of a felony involving dishonesty, cannot work in the business of insurance without approval of the state insurance regulator.

MR. LOHR said that currently the federal government has much better information in its criminal data basis than is readily available to states. States do not have access to the FBI data base that includes non-criminal information on applicants, because our state laws are not consistent with the requirements that the FBI and U.S. Department of Justice. This bill includes language that conforms to those federal requirements and would give us direct access to those data bases. "This would really enhance law enforcement in the business of insurance in Alaska."

MR. LOHR said it also removes barriers in current law to allow for electronic submissions.

Number 1500

MS. PATRICIA PARACHINI, Senior Director, American Council of Life Insurers (ACLI), said they have 275 member companies who do business in Alaska out of 426. They account for 97 percent of the life insurance and 85 percent of the annuity business in Alaska.

MS. PARACHINI said that they are very supportive of the general intent of SB 138, particularly in the areas of producer licensing and privacy. "Compliance with GLBA is very important to us, as is uniformity in this area. Our competitors who are regulated by federal entities have one regulator to issue rules to them. We have a more difficult time with 50, so uniformity becomes critical.

She said it is their view that state regulators are not required to do anything by GLBA where federal regulators are. She said:

There are two areas in which, if the states do not act, their authority may be preempted by federal regulators. One area has to do with internal data security requirements to try to avoid hacking. This is an area that is not addressed in SB 138. The NACI have not looked at this area.

MS. PARACHINI said the second area that is addressed in SB 138 is if a majority of states fail to achieve either uniform standards for producer licensing or reciprocity among states for non-resident applicants by November 2002, then the National Association of registered Agents and Brokers (NARAB) would be created. It would issue non-resident licenses to applicants, which the states would be forced to honor. They, therefore, encourage the adoption of the first part of the bill.

Their three areas of concern are:

In producer licensing, which is based on the NAIC Model. We're very supportive of this section. The way that Alaska adopted this model was to retain a lot of current law and go ahead and adopt pieces of the model and that's an absolutely fine way to do it. In our view there are a couple of areas that, from the model, we weren't sure were picked up when this was drafted and we were having very productive discussions with Linda Brunette at the Division about that. It's our view that they would like to see three areas of the model put into the statute.

The second area on privacy where, in fact, the industry asked the NAIC to do a model on financial and health privacy. The ACLI worked very hard with NAIC to adopt this and we, in fact, support this model. We support both the financial and health information provisions. The only concern we have really with the way part of the statute is drafted is that it says that, "Alaska's privacy regulations must be consistent with, but no less restrictive than, the NAIC model." To us that means you can go beyond the NAIC model. We would rather see that word "less" be changed to "more" because the model should be the ceiling, because it's a very conservative model the way it is. That would be the only change we would ask for.

The final section of consumer protection is regarding insurance sales by banks. We have a difference of opinion with the division and with the NAIC, in fact, on whether there's really any need for a state to adopt these consumer protections, because if banks sell insurance,

they are required to meet all the laws and regulations that insurance companies currently meet and we think there are already provisions in the code for this. However, if Alaska would like to adopt these provisions, what we respectfully ask is that the NAIC, which is meeting next weekend, is currently drafting amendments to their Unfair Trade Practices Act. The Alaska wording in front of you is an older version. The NAIC has since changed the version to different language, which does address some of the industry's concern.

My understanding is that after next weekend, they will have close to a final amendment to that model and we would prefer that Alaska wait, if you have the time, until that's done so that there is uniformity. Otherwise, Alaska will be the only state that is putting these into statute this year. It would be out of sinc with the rest of the nation, uniformity being very important to us here.

MS. PARACHINI said she looked forward to working with the committee on some of these concerns.

SENATOR AUSTERMAN asked her to comment more on the opt-in/out issue.

MR. MICHAEL LOVENDUSKY, Senior Counsel, ACLI, responded:

The previous comment that opt-in provides greater consumer protection is something of the mythology that goes along with the discussion, but it's never been empirically demonstrated that that's true. In any of these privacy regulatory schemes, there balancing that has to be undertaken with regard to the degree of protection that will be awarded to consumers with the legitimate business uses of information. What has to be discussed and looked at is not so much what is opt-in or opt-put, but what the exceptions are to either the opt-in or opt-out statute or regulations that allows the transfer of information among businesses. And so the environment that is imagined by the federal law, Title 5 of the GLBA, carefully weighs the benefits of the opt-out approach of information sharing with a variety of business exceptions for the permissive exchange of information among both affiliated entities and non-affiliated third parties. To come up with a plan that satisfies congress would be a good plan for all financial service sectors, both federally regulated as well as state regulated. It is the achievement of a coherent

national plan that will achieve for all Americans the first systematic protection of their privacy right. This is one of the reasons why we are so supportive of the model regulation development by the NAIC and ACLI and other interested parties for the states.

SENATOR AUSTERMAN asked if the national standards are opt-out, is everyone opt-out?

MR. LOVENDUSKY answered yes.

The goal of Title 5 is to have an opt-out environment for the exchange of information. The seldom discussed elements of Title 5 are: the requirement that every financial institution for the first time will have to have a privacy policy and: secondly, they will have to disclose those privacy policies to all consumers, not just at the first time of their relationship, but annually thereafter, once the consumer becomes a financial institution's customer. These are the two most important changes in this law. Financial institutions know who knows what about whom and what can be done with that information to deliver better products and information to American consumers in the responsible way.

SENATOR AUSTERMAN said he could argue just the opposite of that. We could set standards saying that the government is responsible rather than the industry being responsible.

MR. LOVENDUSKY responded that either way they would still have to look at what the business exceptions for the use of information are, whether it's for opt-in or opt-out. "When you think of the billions of information transactions that occur every year in the United States for many years already, and compare that to the number of problems that have actually arisen, the problems are really very small, while the benefits that have arisen from these kinds of information transfers have been tremendous. It's been a responsible use of information by and large by American financial institutions. Title 5 of the federal law recognized that in fashioning and accepting the opt-out regime and balancing it with a variety of business exceptions for use."

SENATOR AUSTERMAN asked if it totally excludes opt-in.

MR. LOVENDUSKY answered that it doesn't exclude opt-in, except in two respects.

One is that there is a provision of federal law that permits states that have more protective regimes on the books to exist so long as they work within the Title 5

scheme. The second aspect is something that was bequeathed to the insurance industry from the federal regulators and that was that federal regulators, on their own initiative, decided to expand their interpretation of non-public personal information under the federal statute to include health information. That was a relatively easy thing to do for the banks and their federally regulated entities because they don't have a lot of health information, but insurers do have a lot of health information. So when the issue was presented to the state regulators at the National Association of Insurance Commissioners, there was a large contention that is still going on today about whether health insurance should be proactively addressed by the NAIC model regulation. It was decided that it would be. Then, if it was to be addressed, whether it would be addressed on an opt-in or an opt-out basis. The model regulation addresses the disclosure of health information on an opt-in basis, which is, in fact, a continuation of many policies in many states with regard to treatment of medical record information and health information. The ACLI is supportive of the approach of the NAIC model with regard to health information and so that is a second area that has evolved from the Title 5 interpretation by the federal banks and regulators that is not opt-out based.

Number 2000

MR. MICHAEL HARROLD, Northwest Regional Manager, National Association of Independent Insurers, said in terms of producer licensing that they are committed to preserving state insurance regulation and this is an important component of that. They are especially appreciative that they have the customer service representative exemption in there which allows CSRs to service existing policy holders with questions on existing policies.

MR. HARROLD said they are concerned with the privacy language in the bill and think it's important to try to have the regulations in the state as close as possible to GLBA to keep the playing field as level as possible, particularly when you get into the health privacy aspect. He said that companies could become very confused about how to respond to this. "Property and casualty insurers do not have to comply with HSS rules per se, but they do have interactions with a number of others who do. We think holding off on that and waiting for the federal rules to be promulgated and to let them settle a little bit might be more helpful as far as letting states know how they may best proceed from that point on.

MR. HARROLD said the final area is in Sections 49 and 59 that

involve the victims of domestic violence. It's not clear exactly what the division is trying to do and they are looking forward to hearing more on that issue.

MS. CINDA SMITH, Government Employees Insurance Company, said they support language in section 2, which allows employees of an insurer to respond to a request from a simple policy holder for existing policies without the necessity of a license.

> We feel the language simply recognizes the way the insurers conduct their business now. Insurers presently use consumer representatives, CSRs, to respond to phone calls or other enquiries made by existing policy holders when they call to implement changes on their existing policy. These people do not sell new policies [indisc.] or contact people who are not policy holders by making cold calls. They implement such changes as adding or deleting a vehicle or adding a collision coverage or comprehensive coverage when a new company replaces a clunker. The reason we think this is important is because now, with a computer, a customer is able to make changes to his or her insurance policy at any hour of the day or night, seven days a week. They can do that without interaction with a licensed agent. The convenience of this has raised consumer's expectations to a new level. They want to be able to conduct their business by computer, by telephone or in person about 24 hours a day, seven days a week. The use of CSRs allows insurers to provide the level of service at a minimum cost. We simply want to be able to allow by telephone or person what you can already do over the Internet.
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> Maintaining this language allows insurers to continue to modernize the marketplace, maintain a more low cost insurance environment and keep the ease and convenience that consumers have come to expect. SB 138 clarifies the permissible activities of CSRs and sets the uniform standards for regulators.

MR. MICHAEL COMBS, President, Combs Insurance Agency, Alaska Independent Insurance Agents, said they have no opposition to the bill as presented.

TAPE 01-12, SIDE B

MR. JOHN GEORGE, American Council of Life Insurance, National Association of Independent Insurers, said his organization had already testified and he would be available to answer questions.

MR. SHELDON WINTERS, State Farm Insurance Co., asked that they be given time to work with the division before the bill is passed. He thought there would be positive comments.

SENATOR AUSTERMAN said he has a couple of inherent problems with talking about federal laws that create national standards that don't have any federal regulation to control them. He needs to know how the final decisions are made on national standards and how that affects what is passed in Alaska. He also wanted to know more about the National Insurance Commissioners Association - who they are, how they're appointed and what control they have, etc. He also has concerns with the opt-out provision. "I think if we do something like this, it's the industry's responsibility to make sure the customer is protected, rather than the customer having to make sure he protects himself from the industry."

Number 2249

SENATOR PHILLIPS asked how the governor, who introduced the bill, circulated the bill prior to introduction.

MR. LOHR answered that the Division drafted the bill, submitted it to the Department of Law for legal review and circulated copies of the work draft of the bill to the known interest groups. They tried to provide to Mr. George, insurance industry, the interest and focus groups. They did not distribute the bill to consumers as it is harder to identify who the groups would be for that type of distribution. He said that he had discussed privacy provisions with Mr. Conn.

SENATOR PHILLIPS asked what anti-tying was.

MS. KATIE CAMPBELL, State Actuary, explained that it is tying insurance to a financial transaction. "So if you go in to get a loan and they're saying no, you can't get the loan unless you buy insurance from us."

MR. LOHR added that the National Association of Insurance Commissioners consists of the chief insurance regulator in each of the 50 states, the territories and the District of Columbia; typically those are at the department level, like the commissioner of Insurance. "We review draft regulations, draft statutes, model statutes, that are prepared by staff based on consensuses developed from different states of approaches. For example, there's a model act for consumer protection; there's a model act that deals with the privacy provisions. Those are developed according to extensive testimony from members of the public, from funded consumer representation, to that national group from insurance companies. There's active participation by insurance companies in those provisions and they truly do represent a consensus of what the best form of regulation of the industry is. Typically, with witnesses

that diverse, there's a very balanced approach there. There's a very middle ground approach toward trying to get insurance regulations and statutes that are both workable and going to provide solid consumer protection. There's a very extensive hearing process. Some of those regulations and bills take literally years to develop until a consensus is achieved. Then they are made available to states as possible models for state legislation."

SENATOR AUSTERMAN asked if that means the commissioners agreed with the federal legislation that the opt-out provision is better than the opt-in for consumers.

MR. LOHR answered:

> For purposes of financial information held by insurance companies, the commissioners did agree that that was the best approach. That doesn't mean that would necessarily be the best approach for financial information held by banks, for example. You could get a very different answer in that regard. One of the reasons we recommended the language in SB 138 is to establish a floor rather than a ceiling using the NAIC model precisely to address the reality that Alaskan's concerns about privacy typically are far more focused and developed than they may be elsewhere in the country. That's why we didn't want to have something that would set a ceiling using the national model. We felt like at a minimum, there needs to be a floor there. The federal law, fairly uniquely in this area, does provide that if state laws are more protective of privacy than the federal regulations adopted on this subject, the state laws will be upheld. They will not be preempted by federal law. If there is a debate about whether a state provision is more protective of privacy than a federal regulation, the Federal Trade Commission actually sits as a court and decides which provision is more protective. So by having a floor there, we do believe it allows the NAIC model regs as a starting point for public promulgation as a proposed regulation, taking public comment on that, making sure there's ample consumer participation as well as interested party insurance industry participation in that discussion and debate; and development of a good solid set of privacy regulations.

CHAIRMAN PHILLIPS asked if anyone had any final comments and said he wanted to bring this bill up again next week. There were no further comments and he adjourned the meeting at 2:30 pm.
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