ALASKA STATE LEGISLATURE
SENATE LABOR & COMMERCE COMMITTEE
March 29, 2001
1:35 pm

MEMBERS PRESENT

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

MEMBERS ABSENT

All Members Present

COMMITTEE CALENDAR

SENATE BILL NO. 66
"An Act relating to the authorizations for state financial institutions; relating to confidential financial records of depositors and customers of certain financial institutions; relating to the Alaska Banking Code, Mutual Savings Bank Act, Alaska Small Loans Act, and Alaska Credit Union Act; and providing for an effective date."

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

SB 66 - See Labor and Commerce minutes dated 2/20/01 and 3/15/01.

WITNESS REGISTER

Mr. Joe Schierhorn, Sr. Vice President
Northrim Bank
Alaska Bankers Association
3111 C Street
Anchorage AK 99503
POSITION STATEMENT: Supported general provisions of SB 66.

Ms. Julie Bailey, Assistant Vice President
Northrim Bank
3111 C Street
Anchorage AK 99503

POSITION STATEMENT: Supported SB 66.

Mr. David Lawer, Sr. Vice President and General Counsel
First National Bank of Anchorage
101 W. 36th
Anchorage AK 99503
POSITION STATEMENT: Supported SB 66.

Mr. Jerry Weaver, Sr. Vice President
National Bank of Alaska
Secretary, Alaska Bankers Association
305 Northern Lights Blvd.
Anchorage AK 99510
POSITION STATEMENT: Supported SB 66.

Ms. Renee Devereaux, Sr. Vice President
Residential Mortgage
President, Alaska Mortgage Bankers Association
1400 W. Benson Blvd, #200
Anchorage AK 99503
POSITION STATEMENT: Supported SB 66.

Ms. Lisa Bell, Sr. Vice President & COO
Alaska Pacific Bank
Alaska Bankers Association
POSITION STATEMENT: Supported CSSB 66.

Mr. Terry Elder, Director
Division of Banking, Securities and Corporations
Department of Community and Economic Development
P.O. Box 110807
Juneau AK 99811
POSITION STATEMENT: Commented on SB 66

ACTION NARRATIVE

TAPE 01-14, SIDE A
Number 001
#SB66

SB 66-FINANCIAL INSTITUTIONS

CHAIRMAN RANDY PHILLIPS called the Senate Labor & Commerce Committee meeting to order at 1:35 pm and announced SB 66 to be up for consideration.

MR. JOE SCHIERHORN, Senior Vice President, Northrim Bank, representing the Alaska Bankers Association, supported the primary provisions of SB 66. He said:

The idea behind the Bankers amended language is a desire to have state laws nearer the privacy requirements that have been passed at the national level by congress in the Gramm-Leach-Bliley (GLBA) bill. The issue revolving around this is the banks' desire to share information about products and services that they feel would be beneficial to their customers. The regulatory scheme proposed by the State Division of Banking is contrary to that in GLBA. Alaska banks will be treated differently than other financial institutions located outside the state that may choose to do business in the state. Banks will also be treated differently than insurance companies.

MR. SCHIERHORN said that the proposed regulatory scheme would treat smaller banks without affiliates differently than Alaskan banks with affiliates. This is because the Fair Credit Reporting Act preempts state law as it pertains to information sharing among affiliates. They feel it is unequal treatment and not a level playing field. They, therefore, firmly support language in the committee substitute.

CHAIRMAN PHILLIPS asked him if he was referring to the F version, 3/29/01. Mr. Schierhorn indicated that was correct, in particularly since it adopts the privacy provisions in GLBA.

MS. JULIE BAILEY, Vice President, said that GLBA already requires banks to protect their customers while providing them with choices that they want and expect. All banks are required to send out privacy notices to their existing customers annually. The notices have to include the categories of information a bank collects and discloses, categories of affiliates and non-affiliates, and categories of non-public personal information if the bank does that. It has to include information sharing practices including categories of service providers or joint marketing exceptions and it has provide the consumer with the right to opt-out. The notices must include any disclosures the bank makes under the Fair Credit Reporting Act and confidentiality and security of customer information at the particular institution and how they ensure that. At any point, if any information sharing practices should change, they are required to send out a new notice and give the customers a choice of what they want to do.

SENATOR LEMAN asked if the GLBA provisions require that notices contain identification of who the affiliates are?

MS. BAILEY answered yes.

MR. DAVID LAWER, Sr. Vice President, First National Bank, supported the SB 66, but Section 4 includes Subsection (b), which the

Bankers' Association doesn't object to, but thinks it is superfluous.

MR. JERRY WEAVER, Sr. Vice President and Manager Commercial Banking Group, National Bank of Alaska and Secretary, Alaska Bankers Association, said they support the draft version of SB 66.

MS. RENEE DEVEREAUX, President, Alaska Mortgage Bankers Association, and Sr. Vice President Residential Mortgage, said their main concern was that the opt-in feature was out of the bill, because that would affect their ability to sell services.

MS. LISA BELL, Sr. Vice President, Alaska Pacific Bank, supported the committee substitute to SB 66. However, she thought language on page 3, line 2, "when disclosure is required or permitted under (a)(2) or (3)", (the exceptions to when it is allowable to release information) was superfluous, since (a)(3) is a direct reference back to GLBA. If institutions are working towards an opt-out situation, they wouldn't want to be notifying the customer within three days that they have just sent them a mailing. It doesn't make sense," she said.

Number 1100

MR. TERRY ELDER, Director, Division of Banking, Securities and Corporations, said he had just received the draft committee substitute and there wasn't sufficient time to look it over, although a number of areas look fine. He said the only significant difference they had with the Bankers Association is on the privacy provision. The other differences were primarily wording and not substantive. Page 2, line 26, includes a reference to GLBA and provides an opt-out for sharing of non-public, personally identifiable information with non-affiliated third parties.

> We continue to take the position that that should be opt-in. GLBA does allow, under Section 524, states to have a more stringent privacy policy and given the fact that we've had for over 30 years, that kind of protection with Alaska depositors and given the fact that we have the provision in the state constitution that we have, those two reasons are reasons enough, in this case, not to be national in scope, but to be Alaskan in scope and protect more than the GLBA provides for. Ordinarily, in many cases, whether we're talking here about banking regulations or securities regulations, the division takes the position quite often that we want to be as uniform as we can and we want to be as like the federal law as we can. So this is a different position for the division than it usually takes. The fact that current banking code

has that provision and the state constitution has that provision, we think it's called for in this case.

The other thing I'll point out in the documents that we've provided the committee that I've referenced this afternoon, whether it's opt-in or opt-out, they are just mechanisms. Regardless of how, every institution is going to have to have two lists of customers, an okay to share list and a not okay list. So opt-in and opt-out are just the mechanisms by which their customers are going to get themselves on one of those lists. It's not like, whether you pick opt-out or opt-in, the institutions can share or not share the information. There is actually no restriction on the sharing of that information. The only thing we're really talking about here is the mechanism. We understand and probably agree with the Bankers Association that opt-in is more expensive than opt-out, because people who don't respond, if you want to require them to make a choice, you're going to have to go back to those people more often in an opt-in situation than in an opt-out situation. In an opt-out situation, you never have to contact them again, until the next year when you're required to. In an opt-in, of course, if you want them to be in, you are going to have to do that. However, under both scenarios, the institution is going to have to maintain two separate lists and make sure they don't share information for people who have opted out.

MR. ELDER concluded saying that the legislature would ultimately have to make the policy decision. He also recommended deleting "having jurisdiction of the financial institution;" on page 2, line 25. He explained that language could be interpreted to require his agency to issue orders even when it's not the division doing the investigation.

MR. LAWER responded that language was suggested because all banks very often receive process issued by courts that do not have jurisdiction over the bank from whom records are being sought.

Number 1600

MS. BELL agreed with Mr. Lawer's comments.

MR. ELDER responded that as Mr. Lawer stated, the banks routinely resist doing those kinds of things, so he didn't think it would be a problem to delete it. He said that (a)(3) on page 3, line 2, needs to be deleted and recommended leaving section (d) on page 3, line 8, in. Comments from Anchorage suggested that was superfluous because of (a)(3), which references GLBA, but (d) provides an

exception to the disclosure and approval requirement for financial institutions' disclosure to any person. They are not saying "affiliated" or "non-affiliated" person; they are saying both. It obviates the problem that under opt-in, you might have smaller institutions that couldn't compete. Section (d) allows them to disclose information that's necessary for providing services to customers. This includes things like printing statements and checks and to the extent of marketing services. He thought this would be an advantage to an institution without a lot of affiliates.

MR. LAWER responded that these matters are covered by GLBA and this language is an unnecessary complication. There are two concepts in (d)(1); disclosure must be necessary. He questioned, "How is anybody to reckon necessity with respect to disclosure?" and asked, "What are the essential services of a financial institution? Every bank in the state offers a different array of financial services and no two of them are alike."

MR. ELDER responded that he wouldn't object to the elimination of the word "essential", if they kept "services". GLBA only talks about sharing with non-affiliated third parties. It's the Fair Credit Reporting Act that deals with the affiliates. Language in SB 66 doesn't make the distinction and he thought it was important to do that.

CHAIRMAN PHILLIPS asked Mr. Lawer if he objected to deleting "essential".

MR. LAWER reiterated that he thought it brought on unnecessary complications. The Bankers will not oppose it, if it includes this provision.

MS. BAILEY commented that this would be covered under GLBA and she didn't know why it was listed again.

MR. ELDER said he noticed on page 2 that (a) has (1)(2) and (3) and he wasn't sure of the purpose, since banks would continue to verify sufficient funds. "Perhaps they'll say it is covered under (a)(3), but my recollection on GLBA is that it does not cover commercial accounts, for example, and agricultural accounts. So GLBA does not cover all account and I'm not sure there's any value to dropping the current provisions of (a)(4) and (5).

CHAIRMAN PHILLIPS said he intended to work on the bill further and move it out of committee on Tuesday and adjourned the meeting at 2:13 pm.