SB

66

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 66
(S) Publish Date: 2/5/01

Revision Date/Time (Note if correction): 1/26/2001 3:28PM
Title: Gramm-Leach-Bliley Act Changes to Banking Statutes
Sponsor: Rules Committee
Requester: Governor

Dept. Affected: DCED
BRU: Banking, Securities, & Corps
Component: Banking, Securities, & Corps
Component Number: 1233

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 RSS						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill amends the banking code to conform with federal law changes in the Gramm-Leach-Bliley Act (GLBA) to provide for Financial Holding Companies and increased ability of banks to provide related financial services. The bill also includes industry-requested changes such as publishing information electronically. Also, the bill allows the department to react faster to federal law changes and industry requests to maintain parity and competition between national and state-chartered depository institutions. No negative fiscal impact of this bill is expected.

Prepared by: Franklin T. Elder, Division Director
Division: Banking, Securities, and Corporations
Phone: 465-2521
Date/Time: 1/26/2001 3:28PM

Approved by: Commissioner Deborah B. Sedwick
Agency: Department of Community & Economic Development
Date: 1/26/2001

For distribution information, call the Governor's Legislative Office

(Rev 11/2000 OMB)

COMMITTEE COPY

FISCAL NOTE(S)

TONY KNOWLES
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JUNEAU

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HB 66

February 2, 2001

The Honorable Rick Halford
President of the Senate
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear President Halford:

This bill I transmit today allows state financial institutions to compete on equal terms with their federal counterparts by removing current restraints on the state's financial industry. These changes are encouraged under the federal Gramm-Leach-Bliley Act which permits the combining of banking institutions with insurance and securities businesses. Previous federal law prohibited this practice.

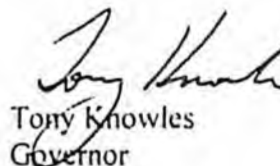
This bill allows the Department of Community and Economic Development to grant state banks those powers enjoyed by national banks in a simplified, efficient process.

The bill is patterned after federal law, but offers greater protection to depositor and consumer financial records. The state would use the more stringent practice of asking depositors and consumers to choose to allow specific disclosure of their records. Conversely, federal law and many other states allow disclosure unless the depositor or consumer specifically requests confidentiality.

The bill also clarifies and updates existing statutes, partly in response to discussions with the financial industry. For example, the bill allows state banks to publish their financial reports in electronic form or in a local newspaper, and simplifies the procedure by which state banks obtain authority to install off-premises automated teller machines. The bill also removes the statutory limitation on the interest rate and fees state banks may charge on credit cards and grants credit unions the authority to issue credit cards. These provisions will keep Alaska banks competitive with out-of-state banks.

As a means of modernizing Alaska's financial institutions, I urge your prompt and favorable action on this measure.

Sincerely,



Tony Knowles
Governor

Sponsor Statement/Sectional

Subject: SB 66 and the fake Opt Out option
Date: Tue, 03 Apr 2001 15:14:42 -0700
From: akpirg <akpirg@akpirg.org>
To: Senator_Robin_Taylor@legis.state.ak.us

P. Put in packet of Jud Com. when Bill is up for hearing! RT

April 3, 2001
To: Senator Robin Taylor and
Members of the Judiciary Committee
From: Steve Conn, Alaska Public Interest Research Group
Subject: Testimony on SB-66

In pending legislation regarding behavior of banks and insurance companies, the issue of whether consumers should be required to "opt out" of information shared within the bank's institutional family or with other third parties or whether state law should require an explicit "opt in" by the consumer has been addressed in hearings where there was no consumer advocate present.

Pleased be advised that every consumer group, including AkPIRG, believes that opt-ins should be required and that opt-out is often no choice at all. This information sharing relates directly to privacy and a heightened potential for information theft.

Notices to consumers to "opt out" are extremely obscure. I can provide you by fax with the notice I received from Key Bank. I challenge you to find the mechanism provided to "opt-out." For your further edification, I suggest that you or one of your staff use that option and discover how the consumer is dealt with by Key Bank. If you do, you will have strong evidence that opt-out choices are so obscured that they are rarely exercised. An "opt-in" right protects consumers.

During the recent speculative frenzy, important barriers between federally insured banking and stock brokers and insurance firms were pulled down. Most consumers do not realize this. This places a special burden on
Financial institutions to do more than pass information about clients to other
Corporate family members in order to sell risky financial products.
Consumers who want this help or information should ask for it. No burden should be placed on them to opt out of aggressive campaigns for their hard earned money- especially in today's dangerous economy.

INFORMATION STATEMENT

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April 5, 2001

VIA FACSIMILE: 907-465-3922
Original Via Regular US Mail

The Honorable Senator Robin Taylor
Chair, Judiciary Committee
State Capitol, Room 30
Juneau, AK 99801-1182

VIA FACSIMILE: 907-465-4979
Original Via Regular US Mail

The Honorable Senator Randy Phillips
Chair, Labor & Commerce Committee
State Capitol, Room 103
Juneau, AK 99801-1182

Re: SB 66, Financial Institutions; Bank Disclosure of Customer Records in Response to Clerk-Issued Subpoenas

Dear Senators Taylor and Phillips:

With SB 66, the legislature, at the request of the Governor, is advancing legislation to reinforce the confidentiality of bank records in Alaska. The latest version of the bill that I have seen, a draft of CSSB 66 prepared by Legal Services of the Legislative Affairs Agency, transmitted to Senator Phillips on March 29, 2001, has apparently been referred out of the Labor and Commerce Committee to the Judiciary Committee. I therefore write to both of you.

The latest version of the bill leaves unresolved the issue of whether financial institutions must disclose bank records if they receive a subpoena issued in civil litigation by the clerk of court, if the subpoena is not accompanied by a court order directing disclosure. While the latest version of the bill appears to make an attempt to resolve this issue, it does not accomplish the goal. As attorneys for banks, we are often asked to advise our clients on the proper course of action when the bank is served with clerk-issued subpoenas, and we believe the desired result must be clarified.

The bill should make it clear that financial institutions should only disclose bank records if a court has first considered the issue, and ordered the financial institution to disclose the records. Otherwise, banks will have to comply with clerk-issued subpoenas even when

they are not accompanied by court orders, unless they go to the trouble and expense of engaging counsel to seek a protective order in civil litigation in which the banks are not stakeholders.

That banks will have to comply unless they seek a protective order results from language in the latest version of SB 66 and operation of Rule 26 (c) of the Alaska Rules of Civil Procedure. If the language of SB 66 is not clear, Civil Rule 26 places the burden of seeking protection from disclosure on the party upon whom the subpoena is served, in this case on the financial institution who receives the clerk-issued subpoena not accompanied by a court order. Even though the financial institution is not a stakeholder in the litigation, under Civil Rule 26 it must engage counsel to seek an order protecting the records from disclosure, and it must frequently do so on very short notice, since civil litigation subpoenas most often set the date for production within a week to ten days after service of the subpoena. This is unfair to the bank.

The section of CSSB 66 that leaves the issue unresolved is Sec 06.01.028 (a) (2). This subsection declares that a financial institution's customer records, and the information in the records, are confidential, and may not be disclosed "except when, and only to the extent that, the disclosure is ... required by federal or state statute or regulation or by an order directed to the financial institution and issued by a court or administrative agency having jurisdiction of the financial institution[.]"

Subpoenas are routinely issued by the clerk of court in civil litigation without judicial oversight (under Alaska Civil Rule 45). The language of subsection (a) (2) requiring a court order appears to be an attempt to accomplish the goal of requiring court supervision before disclosure is allowed. But the other language of subsection (a) (2), requiring disclosure when "required by federal or state statute", will force disclosure in response to clerk-issued subpoenas because compliance with clerk issued subpoenas is "required by state statute".

This issue was considered by the US District Court for the District of Alaska, in the context of a criminal grand jury subpoena, in the case, In Re Grand Jury Subpoena 41 F. Supp. 2d 1026 (D. Alaska 1999). The court in this case suggested that the legislature "overlooked the significance" of sub-section (2) of present Sec 06.01.028, which mandates disclosure if "disclosure is required by federal or state statute or regulation". The court held that, even though sub-section (1) of the statute did not require compliance with a clerk-issued subpoena not accompanied by a court order, sub-section (2) did, because compliance with a subpoena "is required by federal or state statute or regulation". Id., at page 1031.

CSSB 66 should make it clear that financial institutions should not disclose financial records in response to a clerk-issued civil subpoena, unless disclosure is mandated by an accompanying court order. To accomplish this result, CSSB 66 should definitively state that

financial institutions can ignore clerk-issued subpoenas that are not accompanied by a court order.

The remedy is simple. An additional subsection should be added to Sec. 06.01.028 that provides:

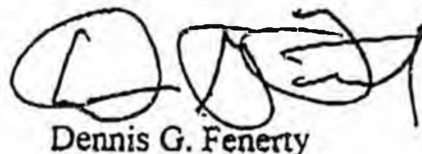
> Notwithstanding other provisions of law, a financial institution, and its employees and agents, are not obligated to comply with a subpoena issued in civil litigation directing disclosure of financial records or information of a depositor or customer, unless the disclosure is authorized in writing by the depositor or customer, or the subpoena is accompanied by an order of the court directing the financial institution to disclose financial records or information of the depositor or customer.

By making it clear that financial institutions need not honor subpoenas unless they are accompanied by court order, the law will, appropriately, place the onus on the third party seeking another person's bank records to ask the court's permission to gain access to them, and the person whose records are sought will have the opportunity to argue to the court against disclosure if the records are not relevant to the litigation. The bank will not be put to the unfair burden of having to seek an order protecting the records from disclosure each time it receives a civil subpoena. The party seeking records will also understand what is required to get at another persons bank records, they will have to ask the court for an appropriate order and demonstrate the relevance of the documents sought to the pending litigation, before disclosure will be ordered.

Thanks for your consideration of this important issue. I urge you to clearly address this issue in SB 66. Please call if you have any questions.

Very Truly Yours,

GROH EGGERS, LLC



Dennis G. Fenerty

cc: Theresa L. Bannister – Via Fax: 907-465-2029
Legislative Counsel
Division of Legal and Research Services
Legislative Affairs Agency

Michael J. Burns
District President

KeyBank
P.O. Box 100420
Anchorage, AK 99510

April 13, 2001

Senator Robin Taylor, Chairman
Senate Judiciary Committee
Alaska State Legislature
State Capital (MS 3100)
Juneau, AK 99801-1182

Re: SB 66

Dear Senator Taylor:

I appreciated the opportunity to meet with you in Juneau recently. SB66, which at the time was in the Labor & Commerce Committee, is now in your jurisdiction. We support SB66 as passed by Labor & Commerce. Our most important asset is the relationship we have with our customers. These relationships are the only real value that our company has. Any activity that we might undertake that would undermine that trust would be foolhardy. The continued trust and confidence of our customers is paramount.

We are very comfortable in supporting provisions that would allow our customers to "opt out" of information-sharing, both with our corporate affiliates and third parties. It is not just our commitment to perpetuating this trust relationship, but there also exists a substantial body of Federal law that would protect privacy.

- Gramm-Leach-Bliley Financial Modernization Act
  Provisions of this Act provide significant, effective protection for personal privacy. The new law permits a financial institution to transfer any "non-public personal information" to non-affiliated third parties so long as the institution "clearly and conspicuously" provides consumers with notice about its policies and practices for disclosing personal information, and an opportunity to "opt out" of such transfers. The law further requires financial institutions to inform customers of their policies toward sharing information among affiliates, but it wisely imposes no restrictions on such information-sharing. SB 66, as presented by the Administration, would require customers to "opt in" to both of these practices, a clearly unworkable standard. Federal laws in this area, in addition to Gramm-Leach, are as follows:

- Fair Credit Reporting Act
  Prohibits financial service companies from sharing third-party, credit-related information about consumers with affiliates without first providing consumers with "clear and conspicuous notice" and an opportunity to "opt out" of the information-sharing.

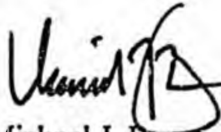
- <u>Electronic Funds Transfer Act</u>
  Requires that financial institutions notify their customers about circumstances, under which those institutions, in the ordinary course of business, will disclose information about customer accounts to any other party, including affiliates.

- <u>The Federal Trade Commission Act</u>
  Prohibits "unfair and deceptive practices in or affecting commerce" – including failing to abide by a stated privacy policy or other activities that violate privacy promises, contracts, and disclosures – by any business, specifically including banks.

We feel very strongly that we do not need more government regulations, concerning management of our most prized asset - the trust of our customer.

Thank you for your consideration of this complex and easily misconstrued issue.

Respectfully,



Michael J. Burns
President

MJB:ss

Northrim Bank
Customer First Service

RECEIVED
APR 9 2001
Ans'd............

April 4, 2001

Senator Robin Taylor
Chairman
Senate Judiciary Committee
State Capitol, Room 30
Juneau, Alaska 99801-1182

Re: SB 66

Dear Chairman Taylor:

We would like to provide your committee with comments regarding Senate Bill 66. We appreciate the fact that SB 66 was introduced to "ensure there are no conflicts in the state banking code with GLBA" (Gramm-Leach-Bliley Act.) A second reason for the bill is listed as, "to ensure that state banks are given comparable powers to the powers granted national banks as a result of the implementation of GLBA."

We were concerned that the contents of one section, proposed section 06.01.028 "Depositor and customer records confidential," posed conflicts between the state banking code and GLBA, and did not grant us comparable powers to national banks. Since that time, the Labor and Commerce Committee passed a substitute bill that incorporated language that aligns this bill with the federal legislation in GLBA. This removed the two standards of privacy – one for state banks and one for national banks.

The privacy and confidentiality of our customers' personal information has always been of great concern to us at Northrim and to all Alaskan banks. Not only do we have strict federal laws and regulations already in place to regulate privacy, but we also recognize that keeping our customers' information confidential provides them with the great "Customer First Service" that they expect from us. The Federal Regulations already in place, which affect privacy in various ways, are Children's Online Privacy Protection Act, Electronic Funds Transfer Act, Fair Credit Reporting Act, Right to Financial Privacy Act, Telemarketing and Consumer Fraud and Abuse Prevention Act of 1991, Telephone Consumer Protection Act of 1991, and Gramm-Leach-Bliley Act. In addition, the federal banking regulators have issued final guidelines regarding Customer Data Security Standards that we must comply with by 7/1/2001. It becomes difficult and complicated when our state laws are not consistent with the federal laws with which we are already required to comply. It is also inefficient and burdensome to maintain bank policies and procedures for the state that conflict with the standards set by the federal regulators.

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We hope that you will take all of these things into consideration when reviewing the Labor and Commerce Committee's substitute bill, which aligns state law with the requirements of GLBA. We feel that the standards set forth in GLBA are beneficial to financial institutions and consumers alike because they provide the financial industry with the flexibility to provide customers with additional beneficial information without added, costly regulations.

Sincerely,

Marc Langland
President and CEO