

SB

217

Alaska State Legislature

Out of Session:
PO Box 531
Golovin, Alaska 99762
(907) 443-5599

In Session:
State Capitol, Suite 510
Juneau, Alaska 99801-1182
(800) 597-3707
(907) 465-3707
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SENATOR DONALD C. OLSON

DISTRICT T

Alakanuk
Ambler
Anaktuvuk Pass
Atkasuk
Barrow
Brevig Mission
Browerville
Buckland
Chevak
Deering
Diomede
Elim
Emmonak
Golovin
Hooper Bay
Kaktovik
Kiana
Kivalina
Kobuk
Kotlik
Kotzebue
Koyuk
Mountain Village
Noatak
Nome
Noorvik
Nuiqsut
Nunam Iqua
Pilot Station
Pitka's Point
Point Hope
Point Lay
Savoonga
Scammon Bay
Selawik
Shaktolik
Shishmaref
Shungnak
St. Mary's
Teller
Unalakleet
Wainwright
Wales
White Mountain

January 28, 2004

MEMORANDUM

To: Senator Ralph Seekins, Chair
Senate Judiciary Committee

From: Senator Donald Olson



Re: Schedule hearing for SB 217, State Genetic Privacy Laws

I respectfully request a Senate Judiciary Committee hearing of SB 217 at your earliest convenience. I have attached my sponsor statement, a list of states that already have similar laws, and a sectional analysis. Please contact me if you need additional information.

Thank you for your attention to this request.

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Selawik
Shaktolik
Shishmaref
Shungnak
St. Mary's
Michael
Robbins
Teller
Unalakleet
Wainwright
Wales
White Mountain

SPONSOR STATEMENT

SB 217, State Genetic Privacy Laws

We are all familiar on how useful DNA identification has been for law enforcement and paternity disputes. But there is another side to this new technology and that is the special need for a genetic privacy law in Alaska.

On June 26, 2000, The Human Genome Project, a public consortium, and Celera Genomics, a private company, jointly announced the completion of a "working draft of the human genome." Spelling out the 3 billion "letters" of the human genome—the biochemical messages encoded in our DNA for manufacturing and operating a complete human being.

This is the stepping-stone in deciphering the blueprint that makes us human. Every human cell (hair, blood, fingernail parings, and body tissue) carries a complete set of our genes. Consequently, these genetic profiles will yield

information that could be used against us. For example, insurance companies can decide whether to issue life insurance based upon our gene make-up (i.e. predisposition to cancer, alcoholism, or other health concerns).

We have state laws to restrict access to medical records; however, the State of Alaska has yet to specify any protection of genetic information. Medical information is presumed confidential, but the increasing capability to store and rapidly transfer data escalates the challenge of protecting privacy.

At the present time, there is no national statute regarding genetic privacy laws. Fifteen states have required informed consent for a third party to perform or require a genetic test or to obtain genetic information. Twenty-three states require informed consent to disclose genetic information.

I have introduced SB 217 to give special consideration to the advancing biotechnology and protect our genetic privacy rights.

SECTIONAL ANALYSIS

CS SB 217 () "D" Version, Genetic Privacy

By Senator Olson's Office

Section 1. The legislative findings and purposes of the act are presented. In the first instance, it is acknowledged that the uniqueness of the DNA molecule contains information that is the very essence of an individual's being. Furthermore, laws to protect the privacy of this information from unwarranted or improper collection, retention, and disclosure are inadequate to protect an individual from potential stigmatization and discrimination.

The purposes of act are to define the rights of individuals to the privacy of their own genetic information, the circumstances under which they may be subject to genetic testing, and the circumstances under which DNA information may be collected, analyzed, retained, or disclosed.

Section 2. A new chapter is added to AS 18 entitled, **Chapter 13, Genetic Privacy**. It contains the following sections:

Sec. 18.13.010. Subsection (a) establishes a person's right to genetic privacy. It prohibits the collection, analyses, retention, and disclosure of DNA information without the written consent of the individual, their legal guardian, or authorized representative.

Subsection (b) provides a list of exceptions to the prohibition above. These exceptions are for DNA collection and analysis for law enforcement purposes, determination of paternity, medical procedures required by law or for emergency medical treatment purposes. Exception is also allowed for medical or scientific research and education if anonymity of the donor is preserved.

In subsection (c), the Department of Health and Social Services may develop a uniform written consent form. A person using the form to obtain the written consent requirements of this chapter is exempt from the civil and criminal liability actions that are established. An individual may revoke or amend their informed consent at any time.

Sec. 18.13.020. This section specifically creates a right of civil action for violations of an individual's right to genetic privacy in 18.13.010. Minimum liability for damages is set at \$5000 or \$100,000 if the profit or monetary gain resulted from the violation.

Sec. 18.13.030. In this section, a criminal action may be brought against person who knowingly violates an individual's right to genetic privacy in 18.13.030. Conviction of the crime is a class A misdemeanor.

Sec.18.18.040 is the definition section.

Section 3 establishes the applicability of the act.

SB 217 – An Act relating to genetic privacy.

States that require informed consent for a third party to either perform or require a genetic test or to obtain genetic information:

Arizona	New Jersey
Delaware	New Mexico
Florida	New York
Georgia	Oregon
Massachusetts	South Carolina
Michigan	South Dakota
Nebraska	Vermont
Nevada	

States that require informed consent to disclose genetic information:

Arizona	Missouri
Arkansas	Nevada
California	New Hampshire
Colorado	New Jersey
Delaware	New Mexico
Florida	New York
Georgia	Oregon
Hawaii	South Carolina
Illinois	Texas
Louisiana	Vermont
Maryland	Virginia
Massachusetts	

States that require written authorization to disclose genetic information:

Rhode Island
Washington

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB217CS(HES)-DHSS-DAS-01-28-04
() Publish Date: _____

Revision Date/Time (Note if correction):
Title GENETIC PRIVACY

Dept. Affected: Health & Social Services
RDU Departmental Support Services
Component Information Technology Services

Sponsor OLSON
Requester SENATE (HES)

Component No. 2754

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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)						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
1061 (CIP Receipts)						
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

If enacted, this bill will cost the Department of Health and Social Services approximately \$3.4 in legal services from the Department of Law. The Department of Law would have to create regulations and a uniform consent form and this would take approximately 30 hours of service. Funding for this is available internally within DHSS.

Prepared by: Janet Clarke, Director
Division Administrative Services
Approved by: Joel S. Gilbertson, Commissioner
Agency Department of Health and Social Services

Phone 465-1630
Date/Time 01/28/2004
Date 01/28/2004

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: SB217-LAW-LegsRegs-1
 Bill Version: SB 217
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to genetic privacy, and RDU Administration and Support
amending Rule 82, Alaska Rule of Civil Procedure...." Component Legislation & Regulations
 Sponsor Senator Olson
 Requester Senate Health, Education & Social Svces Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	****	****	****	****	****	****

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	****	****	****	****	****	****

Estimate of any current year (FY2004) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill adds Chapter 13 to AS 18 in order to define the rights of individuals whose genetic information is collected, retained, or disclosed and the rights of the individuals' blood relatives. It defines the circumstances under which an individual may be subject to genetic testing and the circumstances under which such genetic information may be collected, retained, or disclosed, and it protects against discrimination by an insurer or employer based upon an individual's genetic characteristics. It defines the circumstances under which a DNA sample or genetic information may be used for research. The bill allows the Attorney General to bring an action against a person who violates this chapter, or intervene in a civil action brought under this chapter, if in the opinion of the Attorney General, the action is of general public importance.

Prepared by: Kathryn A. Daughettee, Director
 Division Administrative Services
 Approved by: Kathryn Daughettee for Gregg D. Renkes, Attorney General
 Agency Department of Law

Phone 465-3673
 Date/Time 1/23/04 11:39 AM
 Date 1/23/2004

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. _____

ANALYSIS CONTINUATION

In terms of actions brought or an intervention by the Attorney General, this legislation will have no foreseeable fiscal impact on the Department of Law. There is an indeterminable fiscal impact occurring contingent on to what extent regulations related to this new chapter impact Department of Law attorneys in their development and finalization.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB217-ACS-TC-1-22-04
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
Title Genetic Privacy BRU Alaska Court System
Component Trial Courts
Sponsor Senator Olson
Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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 ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The Alaska Court System does not anticipate any fiscal impact from the passage of SB 217.

Prepared by: Doug Wooliver Administrative Attorney
Division: Alaska Court System
Approved by: Stephanie Cole Administrative Director by Doug Wooliver
Agency: Alaska Court System

Phone: _____
Date/Time: 1/22/04 4:27 PM
Date: 1/22/2004

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB217-DPS-LS-1-23-04
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
Title An Act relating to genetic privacy RDU Statewide Support
Component Laboratory Services
Sponsor Senator Olson
Requester Senate Health, Educ. & Social Svcs Component No. 527

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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 ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
This bill requires informed consent of an individual before obtaining genetic information from the individual's DNA. The bill states that an individual's genetic information and DNA sample are private and must be protected, and requires that DNA samples from an individual be promptly destroyed upon the request of that individual. It provides for a criminal penalty for unlawfully obtaining, retaining, or disclosing genetic information (Class A Misdemeanor).

This bill does not appear to affect current DPS DNA collection and handling protocols because DNA and associated genetic information obtained in connection with AS 44.41.035 (the DNA Registration System) and criminal investigations are exempted (Sec. 18.13.020 27, Sec 18.13.030 12 and 28, Sec.18.13.040 12). It is noted that the criminal penalties for unlawful disclosure of DNA information under AS 44.41.035 are more severe.

No fiscal impact is anticipated for the Department of Public Safety.

Prepared by: Chris W. Beheim Phone 269-5743
Division Statewide Services Date/Time 1/23/04 8:50 AM
Approved by: Commissioner William Tandeske Date 1/23/2004
Agency Department of Public Safety

John L. George and Associates
3328 Fritz Cove Road
Juneau Alaska 99801
Tel.907 789-0172 Fax 907 789-6964

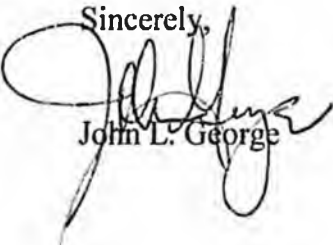
The Honorable Ralph Seekins, Chair
Senate Judiciary Committee
State Capitol
Juneau, Alaska 99801-1182

Dear Senator Seekins,

RE: SB 217

Last week I testified on behalf of American Council of Life Insurers on SB 217. In my testimony to the Senate Labor and Commerce Committee on SB 217, I referenced proposed regulations promulgated by the Alaska Division of Insurance. Enclosed for the Judiciary Committee bill folder is a copy of the regulation that is in the process of being adopted. The regulation covers privacy of financial and health information. The regulations closely follow the National Association of Insurance Commissioners privacy model. The NAIC model was developed with great thought and consideration, in order to safeguard the privacy of individuals, while providing the necessary access to certain information by insurers.

Sincerely,


John L. George

Title 3. Community and Economic Development.

Part 2. Division of Insurance.

Chapter 26. Trade Practices.

Article 4. Privacy of Consumer Financial and Health Information.

3 AAC 26 is amended by adding new sections to read:

Section

- 605. Purpose and scope
- 610. Initial privacy notice to consumers
- 615. Annual privacy notice to customers
- 620. Information included in privacy notices
- 625. Opt out notices and methods
- 630. Revised privacy notices
- 635. Privacy notices to group policyholders
- 640. Delivery of privacy notices
- 645. Limitation on disclosure of nonpublic personal financial information
- 650. Limitation on redisclosure and reuse of nonpublic personal financial information
- 655. Limitation on sharing account number information for marketing purposes
- 660. Exceptions to notice and opt out requirements for service providers and joint marketing
- 665. Exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information for processing and servicing transactions

- 670. Other exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information
- 675. Exceptions for surplus lines brokers, surplus lines insurers, and employees, agents, or other representatives of a licensee
- 680. Disclosure of nonpublic personal health information
- 685. Authorization to disclose nonpublic personal health information
- 690. Access to and maintenance of nonpublic personal information
- 695. Relationship to federal privacy laws
- 700. Nondiscrimination
- 705. Consumer information security program
- 710. Transition period for compliance
- 715. "Consumer" defined
- 749. Definitions

3 AAC 26.605. Purpose and scope. (a) The purpose of 3 AAC 26.610 - 3 AAC 26.749 is to protect the public by providing standards for the treatment by licensees of nonpublic personal information.

(b) The provisions of 3 AAC 26.610 - 3 AAC 26.675 apply only to nonpublic personal financial information.

(c) The provisions of 3 AAC 26.680 and 3 AAC 26.685 apply only to nonpublic personal health information.

(d) The provisions of 3 AAC 26.605 and 3 AAC 26.690 - 3 AAC 26.749 apply to both nonpublic personal financial and nonpublic personal health information. (Eff.

____/____/_____, Register _____)

Authority: AS 21.06.090 AS 21.36.162

3 AAC 26.610. Initial privacy notice to consumers. (a) A licensee shall provide a clear and conspicuous notice that accurately reflects the licensee's privacy policies and practices to

(1) a customer not later than when the licensee establishes a customer relationship, except as provided in (d) of this section; and

(2) a consumer before the licensee discloses nonpublic personal financial information about the consumer to a nonaffiliated third party, unless the disclosure is authorized under 3 AAC 26.665 and 3 AAC 26.670.

(b) A licensee is not required to provide an initial notice to a consumer under (a) of this section if

(1) the licensee does not disclose nonpublic personal financial information about the consumer to a nonaffiliated third party except as authorized under 3 AAC 26.665 and 3 AAC 26.670 and the licensee does not have a customer relationship with the consumer; or

(2) a notice is provided by an affiliated licensee and the notice

(A) identifies each licensee to whom the notice applies; and

(B) accurately states the privacy policies and practices of each licensee and other institution.

(c) When an existing customer seeks to obtain or obtains a new insurance product or service that is to be used primarily for personal, family, or household purposes from a licensee, the licensee meets the requirements of (a) of this section if

(1) the licensee provides a revised policy notice in compliance with 3 AAC 26.630 covering the new insurance product or service; or

(2) the most recent notice given to the customer by the licensee was accurate with respect to the new insurance product or service.

(d) A licensee may provide the initial notice under (a)(1) of this section within a reasonable time after the licensee establishes a customer relationship if

(1) establishing the customer relationship is not at the customer's election, including when a licensee acquires or is assigned a customer's policy from another financial institution or residual market mechanism and the customer does not have a choice about the acquisition or assignment; or

(2) providing the notice not later than when the licensee establishes a customer relationship as required under (a)(1) of this section would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time. (Eff.

_____/_____/_____, Register _____)

Authority: AS 21.06.090 AS 21.36.162

3 AAC 26.615. Annual privacy notice to consumers. (a) A licensee shall provide clear and conspicuous notice to each customer that accurately reflects the licensee's privacy policies and practices at least once in every 12 consecutive month period in which a customer relationship exists.

(b) A licensee is not required to provide an annual notice to an individual who is no longer a customer. (Eff. ___/___/_____, Register _____)

Authority: AS 21.06.090 AS 21.36.162

3 AAC 26.620. Information included in privacy notices. (a) A licensee shall include in a privacy notice required under 3 AAC 26.610, 3 AAC 26.615, and 3 AAC 26.630 the following:

(1) the categories of nonpublic personal financial information that the licensee collects by source of information including, if applicable, information

(A) from the consumer;

(B) about the consumer's transactions with the licensee or the licensee's affiliates;

(C) about the consumer's transactions with nonaffiliated third parties; and

(D) from a consumer-reporting agency;

(2) the categories of nonpublic personal financial information that the licensee discloses by source, as categorized under (1) of this subsection, and examples that illustrate the types of information in each category including, if applicable

(A) information from the consumer including assets, income, and other information from an application;

(B) name, address, social security number, and other identifying information;

(C) account balance, payment history, and other transaction information including the parties to a transaction; and

(D) consumer creditworthiness, credit history, and other information from consumer;

(3) except for persons to whom the licensee discloses information as allowed under 3 AAC 26.665 and 3 AAC 26.670, the categories of affiliates and nonaffiliated third parties to which the licensee discloses a consumer's nonpublic personal financial information; a licensee may comply with this paragraph

(A) by identifying the types of businesses in which the licensee engages;

(B) by describing the types of businesses in which the licensee engages in general terms and providing examples that illustrate the significant lines of business; or

(C) by identifying the categories of affiliates and nonaffiliated third parties using more detailed categories than described in (A) and (B) of this paragraph;

(4) the categories of nonpublic personal financial information that the licensee discloses about a consumer who is no longer a customer of the licensee;

(5) except for persons to whom the licensee discloses information as allowed under 3 AAC 26.665 and 3 AAC 26.670, the categories of affiliates and nonaffiliated third parties

to whom the licensee discloses nonpublic personal financial about a consumer who is no longer a customer of the licensee;

(6) if a licensee discloses nonpublic personal financial information to a nonaffiliated third party under 3 AAC 26.660 and no other exception in 3 AAC 26.665 or 3 AAC 26.670 applies to the disclosure, a separate description of the categories of information that the licensee discloses and the categories of nonaffiliated third parties with whom the licensee has contracted;

(7) an explanation of the consumer's right under 3 AAC 26.645 to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may opt out;

(8) a disclosure that the licensee makes under 15 U.S.C. 1681a(d)(2)(A)(iii) (Fair Credit Reporting Act) regarding the ability of a consumer to opt out of disclosures of information among affiliates;

(9) a description of the licensee's policies and practices regarding the protection of the confidentiality and security of nonpublic personal financial information including

(A) a description in general terms of persons authorized to access nonpublic personal financial information; and

(B) a statement regarding whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy;

(10) a disclosure that the licensee makes under (b) of this section.

(b) If a licensee discloses nonpublic personal financial information as allowed under 3 AAC 26.665 or 3 AAC 26.670, the licensee

(1) is not required to list the persons subject to the exceptions in a notice required under 3 AAC 36.610 or 3 AAC 26.615; and

(2) shall state that the licensee makes disclosures to other affiliates or nonaffiliated third parties as allowed by law.

(c) If a licensee reserves the right to disclose all nonpublic personal financial information about consumers that the licensee collects, the licensee may comply with (a)(2) of this section by stating in the privacy notice that the licensee reserves the right to disclose all nonpublic personal financial information collected and is not required to describe each category and provide examples of nonpublic personal financial information disclosed.

(d) A licensee has not adequately categorized the information the licensee discloses under (a)(2) of this section, if the licensee uses only general terms.

(e) If a licensee discloses nonpublic personal financial information under 3 AAC 26.660 to a nonaffiliated third party to market products or services that the licensee offers alone or jointly with another financial institution, the licensee complies with (a)(6) of this section if in the privacy notice the licensee

(1) lists the categories of nonpublic personal financial information the licensee discloses using the same categories and examples the licensee uses to comply with the applicable requirements of (a)(2) of this section; and

(2) states whether the nonaffiliated third party is

(A) a service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution; or

(B) a financial institution with whom the licensee has a joint marketing agreement.

(f) If a licensee does not disclose and does not reserve the right to disclose nonpublic personal financial information to an affiliate or a nonaffiliated third party except as allowed under 3 AAC 26.665 or 3 AAC 26.670, the licensee may comply with the requirements of this section

(1) by stating in the privacy notice that the licensee does not disclose and does not reserve the right to disclose nonpublic financial information to an affiliate or a nonaffiliated third party except as allowed under state law; and

(2) by providing the information required under (a)(1), (a)(9), a(10), and (e) of this section in the privacy notice.

(g) A licensee meets the requirements in 3 AAC 26.610(a)(2) and 3 AAC 26.625(d) for a consumer who is not a customer if the licensee provides, at the same time that the opt out notice required in 3 AAC 26.625 is delivered, a short-form initial notice to the consumer that

(1) is clear and conspicuous;

(2) states that the licensee's privacy notice is available upon request; and

(3) explains a reasonable means for the consumer to obtain the privacy notice,

which may include providing

(A) a toll-free telephone number that the consumer may call to request the privacy notice; or

(B) if the consumer conducts business in the licensee's office, a copy of the privacy notice immediately upon request.

(h) A licensee may include in the notices required under 3 AAC 26.610, 3 AAC 26.615, and 3 AAC 26.630 the following:

(1) the categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose;

(2) the categories of affiliates or nonaffiliated third parties to whom the licensee does not currently disclose nonpublic personal financial information, but to whom the licensee may disclose nonpublic personal financial information in the future;

(3) other information that applies to the licensee and to the consumer.

(i) A licensee may use the sample statements provided in Appendix A of this section to comply with the applicable requirements regarding the content of notices in this section.

APPENDIX A – SAMPLE STATEMENTS

A licensee, including a group of financial holding company affiliates that use a common privacy notice, may use the following sample statements, if the statement is accurate for each institution that uses the notice. Disclosure of certain information, including assets, income, and information from a consumer-reporting agency, may give rise to obligations under 15 U.S.C. 1681 (Federal Fair Credit Reporting Act), such as the requirement to allow a consumer to opt out of disclosures to affiliates or through designation as a consumer-reporting agency if a disclosure is made to nonaffiliated third parties.

A-1–Categories of information a licensee collects (all institutions)

A licensee may use this statement to meet the requirement of 3 AAC 26.620(a)(1) to describe the categories of nonpublic personal financial information the licensee collects.

Sample Statement A-1:

We collect nonpublic personal financial information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates, or any others; and
- Information we receive from a consumer-reporting agency.

A-2–Categories of information a licensee discloses (institutions that disclose outside of the exceptions)

A licensee may use one of these statements, if applicable, to meet the requirement of 3 AAC 26.620(a)(2) to describe the categories of nonpublic personal financial information the licensee discloses. A licensee may use these statements if the licensee discloses nonpublic personal financial information other than as allowed by the exceptions in 3 AAC 26.660 - 3 AAC 26.670.

Sample Statement A-2. Alternative 1:

We may disclose the following kinds of nonpublic personal financial information about you:

- Information we receive from you on applications or other forms, such as [provide illustrative examples, such as “your name, address, social security number, assets, income, and beneficiaries”];
- Information about your transactions with us, our affiliates, or any others, such as [provide illustrative examples, such as “your policy coverage, premiums, and payment history”];
and

- Information we receive from a consumer-reporting agency, such as [provide illustrative examples, such as “your creditworthiness and credit history”].

Sample Statement A-2, Alternative 2:

We may disclose all of the information that we collect, as described [describe location in the notice, such as “above” or “below”].

A-3—Categories of information a licensee discloses and parties to whom the licensee discloses (institutions that do not disclose outside of the exceptions)

A licensee may use this statement to meet the requirements of 3 AAC 26.620(a)(2), (3), (4), and (5) to describe the categories of nonpublic personal financial information about customers and former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses. A licensee may use this statement if the licensee does not disclose nonpublic personal financial information to any party, other than as allowed by the exceptions in 3 AAC 26.665 and 3 AAC 26.670.

Sample Statement A-3:

We do not disclose any nonpublic personal financial information about our customers or former customers to anyone, except as allowed by law.

A-4—Categories of parties to whom a licensee discloses (institutions that disclose outside of the exceptions)

A licensee may use this statement to meet the requirement of 3 AAC 26.620(a)(3) to describe the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information. This statement may be used if the licensee discloses nonpublic

personal financial information other than as allowed by the exceptions in 3 AAC 26.660 - 3 AAC 26.670, as well as when allowed by the exceptions in 3 AAC 26.665 and 3 AAC 26.670.

Sample Statement A-4:

We may disclose nonpublic personal financial information about you to the following types of third parties:

- Financial service providers, such as [provide illustrative examples, such as “life insurers, automobile insurers, mortgage bankers, securities broker-dealers, and insurance agents”];
- Non-financial companies, such as [provide illustrative examples, such as “retailers, direct marketers, airlines, and publishers”]; and
- Others, such as [provide illustrative examples, such as “non-profit organizations”].

We may also disclose nonpublic personal financial information about you to nonaffiliated third parties as allowed by law.

A-5-Service provider/joint marketing exception

A licensee may use one of these statements to meet the requirements of 3 AAC 26.620(a)(5) related to the exception for service providers and joint marketers in 3 AAC 26.660. If a licensee discloses nonpublic personal financial information under this exception, the licensee shall describe the categories of nonpublic personal financial information the licensee discloses and the categories of third parties with which the licensee has contracted.

Sample Statement A-5. Alternative 1

We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements:

- Information we receive from you on applications or other forms, such as [provide illustrative examples, such as “your name, address, social security number, assets, income, and beneficiaries”];
- Information about your transactions with us, our affiliates, or any others, such as [provide illustrative examples, such as “your policy coverage, premium, and payment history”]; and
- Information we receive from a consumer-reporting agency, such as [provide illustrative examples, such as “your creditworthiness and credit history”].

Sample Statement A-5. Alternative 2

We may disclose all of the information we collect, as described [describe location in the notice, such as “above” or “below”] to companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements.

A-6—Explanation of opt out right (institutions that disclose outside of the exceptions)

A licensee may use this statement to meet the requirement of 3 AAC 26.620(a)(7) to provide an explanation of the consumer’s right to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the method by which the consumer may exercise that right. The licensee may use this statement if the licensee discloses nonpublic personal financial information other than as allowed under 3 AAC 26.660 - 3 AAC 26.670.

Sample Statement A-6:

If you prefer that we not disclose nonpublic personal financial information about you to nonaffiliated third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures, other than disclosures allowed by law. If you wish to opt out of

disclosures to nonaffiliated third parties, you may [describe a reasonable means of opting out, such as "call the following toll-free number: (insert number)].

A-7-Confidentiality and security (all institutions)

A licensee may use this statement to meet the requirement of 3 AAC 26.620(a)(9) to describe the licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information.

Sample Statement A-7:

We restrict access to nonpublic personal financial information about you to [provide an appropriate description, such as "those employees who need to know that information to provide products or services to you"]. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal financial information. (Eff. ___/___/_____, Register _____)

Authority: AS 21.06.090 AS 21.36.162

3 AAC 26.625. Opt out notices and methods. (a) If a licensee is required to provide an opt out notice under 3 AAC 26.645, the licensee shall provide to each of the licensee's consumers a clear and conspicuous opt out notice that accurately explains the consumer's right to opt out under 3 AAC 26.645.

(b) The opt out notice required in (a) of this section must

(1) state that the licensee discloses or reserves the right to disclose nonpublic personal financial information about a consumer to a nonaffiliated third party;

(2) identify the categories of nonpublic personal financial information that the licensee discloses or reserves the right to disclose as described in 3 AAC 26.620(a)(2);

(3) identify the categories of nonaffiliated third parties to which the licensee discloses nonpublic personal financial information as described in 3 AAC 26.620(a)(3);

(4) state that a consumer can opt out of disclosure of the nonpublic personal financial information identified in paragraphs (2) and (3) of this subsection;

(5) identify the insurance products or services that a consumer seeks to obtain or obtains from the licensee for which the consumer may opt out;

(6) provide a reasonable means for a consumer to opt out, which may include

(A) providing check-off boxes in a prominent position on the opt out notice or on a separate form provided with the opt out notice;

(B) providing a separate reply form with the opt out notice that does not contain check-off boxes;

(C) if a consumer agrees to electronic delivery of information, providing an electronic opt out form that the consumer can send by electronic mail or can process through the licensee's web site; or

(D) providing a toll-free telephone number that a consumer may call to opt out.

(b) A licensee does not meet the requirements of (a)(6) of this section if a consumer is required

(1) to write a letter in order to opt out; or

(2) to use check-off boxes that the licensee provided with the initial notice in order to opt out, but the licensee did not include check-off boxes with a subsequent notice.

(c) A licensee may provide the opt out notice required under 3 AAC 26.645 at the same time and on the same written or electronic form as the initial notice required under 3 AAC 26.610 is provided.

(d) If a licensee provides an opt out notice to a consumer after the initial notice required under 3 AAC 26.610 is provided, the licensee shall provide the consumer the opt out notice and a copy of the initial notice in writing or electronically, if the consumer agrees to electronic delivery of that information.

(e) If two or more consumers jointly obtain an insurance product or service from a licensee

(1) the licensee may provide a single opt out notice;

(2) the licensee shall provide an explanation in the opt out notice of how the licensee will treat a direction by a consumer to opt out;

(3) each consumer may individually opt out either

(A) by one consumer's direction to opt out as applying to all of the consumers who jointly obtain an insurance product or service from the licensee; or

(B) by each consumer's direction to opt out as applying only to that consumer; and

(4) a licensee may not require all consumers to opt out before the licensee implements a direction by one consumer to opt out.

(f) If a consumer opts out, the licensee shall comply with the opt out direction as soon as reasonably practicable after the licensee receives the opt out direction from the consumer.

(g) A consumer may opt out of disclosure at any time.

(h) When a customer relationship terminates, a consumer's opt out direction

(1) continues in effect unless revoked by the consumer in writing or electronically, if the consumer agrees to electronic delivery of information;

(2) remains in effect for all nonpublic personal financial information that the licensee collected during or related to the customer relationship; and

(3) does not apply to a new customer relationship established after termination of the customer relationship to which the opt out direction applied. (Eff. ___/___/___,

Register _____)

Authority: AS 21.06.090 AS 21.36.162

3 AAC 26.630. Revised privacy notices. (a) A licensee may not directly or through an affiliate disclose nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice provided to the consumer under 3 AAC 26.610 unless

(1) the licensee has provided the consumer a clear and conspicuous revised notice that accurately describes the licensee's privacy policies and practices;

(2) the licensee has provided the consumer a new opt out notice that complies with 3 AAC 26.625;

(3) the licensee has given the consumer a reasonable opportunity to opt out before disclosing information to a nonaffiliated third party; and

(4) the consumer does not opt out.

(b) Except as allowed under 3 AAC 26.660 - 3 AAC 26.670, a licensee shall provide a revised notice to a consumer before

(1) disclosing a new category of nonpublic personal financial information to a nonaffiliated third party;

(2) disclosing nonpublic personal financial information to a new category of nonaffiliated third party; and

(3) disclosing nonpublic personal financial information about a consumer who is no longer a customer to a nonaffiliated third party, if that consumer has not had an opportunity to opt out.

(c) A licensee is not required to provide a revised notice to a consumer if the licensee discloses nonpublic personal financial information to a new nonaffiliated third party that the licensee has adequately described in the licensee's initial notice under 3 AAC 26.610 or a prior revised notice under this section. (Eff. ___/___/_____, Register _____)

Authority: AS 21.06.090 AS 21.36.162

3 AAC 26.635. Privacy notices to group policyholders. (a) Unless a licensee provides the privacy notices required under 3 AAC 26.610, 3 AAC 26.615, and 3 AAC 26.630 directly to a covered individual described in 3 AAC 26.715(d), the licensee shall provide the privacy notices

to the plan sponsor, group or blanket insurance policyholder, group annuity contract holder, or workers' compensation policyholder in the manner described in 3 AAC 26.610 - 3 AAC 26.630.

(b) The privacy notice provided under (a) of this section must describe the licensee's privacy practices with respect to nonpublic personal financial information about individuals covered under the policies, contracts, or plans. (Eff. ____/____/_____, Register _____)

Authority: AS 21.06.090 AS 21.36.162

3 AAC 26.640. Delivery of privacy notices. (a) A licensee shall provide a notice required under 3 AAC 26.610 - 3 AAC 26.749 to each consumer in the manner each consumer elects to receive the notice.

(b) A licensee may meet the requirements of (a) of this section

(1) by delivering a printed copy of the notice by hand to the consumer;

(2) by mailing a printed copy of the notice to the last known address of the consumer;

(3) if a consumer agrees to electronic delivery of information, by providing the notice by electronic mail or by posting the notice on the licensee's web site and requiring the consumer to acknowledge viewing the notice before obtaining a particular insurance product or service;

(4) for an isolated transaction with a consumer, by posting the notice on the licensee's web site and requiring the consumer to acknowledge viewing the notice before obtaining the insurance product or service;

(5) for annual notices,

(A) by making the licensee's current privacy notice available to the customer upon request, if a customer has directed the licensee to refrain from sending the customer information regarding the customer relationship; or

(B) by continuously posting the licensee's current privacy notice in a clear and conspicuous manner on the licensee's web site, if the customer uses the licensee's web site to access insurance products or services and the customer has agreed to receive notices on the web site.

(c) A licensee may not meet the requirements of (a) of this section

(1) by only posting a sign in the licensee's office of the licensee's privacy policies and practices;

(2) by generally publishing advertisements of the licensee's privacy policies and practices; or

(3) by sending a notice by electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

(d) A licensee shall provide notices required under 3 AAC 26.610, 3 AAC 26.615, and 3 AAC 26.630 in a manner that allows the customer to retain the notice or to obtain a written notice in the future, which may include

(1) hand-delivering a printed copy of the notice to the consumer;

(2) mailing a printed copy of the notice to the last known address of the customer;

or

(3) for a customer who obtains an insurance product or service electronically and agrees to receive notice on the licensee's web site, continuously publishing the licensee's current privacy notice on the web site.

(f) A licensee may provide a joint privacy notice from the licensee and the licensee's affiliates or other financial institutions identified in the notice, if the notice accurately reflects the privacy policies and practices of the licensee, the licensee's affiliates, and the other financial institutions.

(g) A licensee may provide a notice on behalf of another financial institution.

(h) If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may comply with the notice requirements in 3 AAC 26.610, 3 AAC 26.615, and 3 AAC 26.630 by providing a single notice to the consumers. (Eff. ___/___/_____,

Register _____)

Authority: AS 21.06.090 AS 21.36.162

3 AAC 26.645. Limitation on disclosure of nonpublic personal financial information. (a) Except as allowed under 3 AAC 26.605 - 3 AAC 26.749, a licensee may not directly or through an affiliate disclose to a nonaffiliated third party nonpublic personal financial information unless

(1) the licensee has provided the consumer the initial notice required under 3 AAC 26.610;

(2) the licensee has provided the consumer the opt out notice required under 3 AAC 26.625;

(3) the licensee has given the consumer a reasonable opportunity to opt out by a means that may include the following:

(A) by mailing the notices to the consumer and allowing the consumer to opt out by mailing a form, calling a toll-free telephone number, or other reasonable means within 45 days from the date the licensee mailed the notices;

(B) if a customer opens an on-line account with the licensee and agrees to receive the notices electronically, and the customer is allowed to opt out by any reasonable means within 30 days from the date the customer acknowledges receipt of the notices sent in conjunction with opening the account;

(C) for an isolated transaction with a consumer, by providing the notices at the time of the transaction and requesting that the consumer decide whether to opt out before completing the transaction; and

(4) the consumer does not opt out.

(b) A licensee may allow a consumer to opt out of disclosure

(1) of certain nonpublic personal financial information;

(2) to certain nonaffiliated third parties; or

(3) both (1) and (2) of this subsection. (Eff. ____/____/____, Register

____)

Authority: AS 21.06.090

AS 21.36.162

3 AAC 26.650. Limitation on redisclosure and reuse of nonpublic personal financial information. (a) If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in 3 AAC 26.665 or 3 AAC 26.670, the licensee may only disclose or use the information by

(1) disclosing the information to the affiliates of the nonaffiliated third party from which the licensee received the information;

(2) disclosing the information to the licensee's affiliates only if the affiliates agree to disclose and use the information only to the extent that the licensee may disclose and use the information; or

(3) disclosing and using the information under an exception in 3 AAC 26.665 or 3 AAC 26.670 in the ordinary course of business to carry out the activity for which the licensee received the information.

(b) If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in 3 AAC 26.665 or 3 AAC 26.670, the licensee may disclose the information only

(1) to an affiliate of the nonaffiliated financial institution;

(2) to an affiliate of the licensee if the affiliates agree to disclose the information only to the extent that the licensee is allowed to disclose the information; or

(3) to any other person, if the disclosure is allowed by law when made directly to the person by the nonaffiliated financial institution.

(c) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in 3 AAC 26.665 or 3 AAC 26.670, the nonaffiliated third party may disclose and use the information only by

(1) disclosing the information to the licensee's affiliates;

(2) disclosing the information to the nonaffiliated third party's affiliates but only if those affiliates agree to disclose and use the information only to the extent that the nonaffiliated third party may disclose and use the information; and

(3) using the information under an exception in 3 AAC 26.665 or 3 AAC 26.670 in the ordinary course of business to carry out the purpose for which the nonaffiliated third party received the information.

(d) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception in 3 AAC 26.665 or 3 AAC 26.670, the nonaffiliated third party may disclose the information only

(1) to an affiliate of the licensee;

(2) to an affiliate of the nonaffiliated third party, if the affiliate agrees to disclose the information only to the extent that the nonaffiliated third party is allowed to disclose the information; or

(3) to any other person, if the disclosure is allowed by law when made directly to the person by the nonaffiliated third party. (Eff. ___/___/_____, Register ____)

Authority: AS 21.06.090 AS 21.36.162

3 AAC 26.655. Limitation on sharing account number information for marketing purposes. (a) Except as provided in (b) of this section, a licensee may not disclose directly or through an affiliate a policy number or similar form of access number or access code for a consumer's policy or transaction account to a nonaffiliated third party for use in telemarketing, direct mail marketing, or electronic mail marketing to a consumer.

(b) A licensee may disclose a policy number or similar form of access number or access code for a consumer's policy or transaction account

(1) to a consumer-reporting agency;

(2) to a licensee's service provider for the sole purpose of marketing the licensee's own products or services only if the service provider is not authorized to directly initiate charges to the account;

(3) to a licensee who is a producer for the sole purpose of marketing the licensee's own products or services; or

(4) to a participant in an affinity or similar program if the participants in the program are identified to the customer at the time the customer enters into the program.

(c) For purposes of this section

(1) policy number or similar form of access number or access code for a consumer's policy or transaction account does not include a number or code that is in an encrypted form, only if the licensee does not provide the recipient with a means to decode the number or code; and

(2) "consumer's policy or transaction account" means an account other than a deposit account or a credit card account; "consumer's policy or transaction account" does not include an account to which a third party cannot initiate charges. (Eff. ___/___/_____, Register ____)

Authority: AS 21.06.090 AS 21.36.162

3 AAC 26.660. Exceptions to notice and opt out requirements for service providers and joint marketing. (a) A licensee is not subject to the requirements in 3 AAC 26.625 and 3 AAC 26.645 when the licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee or on behalf of the licensee, if the licensee

(1) has provided the initial notice as required under 3 AAC 26.610; and

(2) enters into a contractual agreement with the nonaffiliated third party that prohibits the nonaffiliated third party from disclosing or using the information, including using the information under an exception in 3 AAC 26.665 or 3 AAC 26.670, other than to carry out the purpose for which the licensee disclosed the information.

(c) For purposes of this section

(1) "services" may include marketing the licensee's own products or services or marketing financial products or services offered under a joint agreement between the licensee and one or more financial institutions; and

(2) "joint agreement" means a written contract under which a licensee and one or more financial institutions jointly offer, endorse, or sponsor a financial product or service. (Eff.

____/____/____, Register _____)

Authority: AS 21.06.090 AS 21.36.162

3 AAC 26.665. Exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information for processing and servicing transactions. (a) A licensee is not subject to the requirements for initial notice in 3 AAC 26.610(a)(2), the opt out requirements in 3 AAC 26.625 and 3 AAC 26.645, or the requirements in 3 AAC 26.660 if the licensee discloses nonpublic personal financial information to a nonaffiliated third party and

(1) the information is necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes; or

(2) the information is used in connection with,

(A) servicing or processing an insurance product or service that a consumer requests or authorizes;

(B) maintaining or servicing a consumer's account with the licensee or with another entity as part of a private label credit card program or other extension of credit on behalf of the entity

(C) a proposed or actual securitization; secondary market sale, including the sale of servicing rights; or similar transaction related to a transaction of a consumer;

(D) acquiring reinsurance, stop loss insurance, or excess loss insurance; or

(E) soliciting insurance quotes on behalf of a consumer from an insurance producer.

(b) For purposes of this section, "necessary to effect, administer, or enforce a transaction" refers to a disclosure of information that is

(1) required to enforce a licensee's rights or the rights of another person engaged in carrying out the financial transaction or providing the product or service;

(2) required to

(A) carry out a transaction or service business of which the transaction is a part and record, service, or maintain the consumer's account in the ordinary course of providing an insurance product or service;

(B) administer or service benefits or claims relating to a transaction or a product or service business of which the transaction is a part;

(C) provide a confirmation, statement, or other record of a transaction or information on the status or value of an insurance product or service to the consumer or the consumer's producer;

(D) accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or other party;

(E) underwrite insurance at the consumer's request or for the following purposes in relation to a consumer's insurance:

(i) account administration;

(ii) reporting;

- (iii) investigating or preventing fraud or material misrepresentation;
- (iv) processing premium payments;
- (v) processing insurance claims;
- (vi) administering insurance benefits, including utilization review activities;
- (vii) participating in research projects;
- (ix) as required or specifically allowed by federal or state law; or

(3) made in connection with

(A) the authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid by using a debit, credit, or other payment card, check or account number, or other means of payment;

(B) the transfer of receivables, accounts, or interest in the receivables or accounts; or

(C) the audit of debit, credit, or other payment information. (Eff.

_____/_____/_____, Register _____)

Authority: AS 21.06.090 AS 21.36.162

3 AAC 26.610. Other exceptions to notice and opt out requirements for disclosure of nonpublic personal financial information. A licensee is not subject to the requirements for initial notice in 3 AAC 26.610(a)(2), the opt out requirements in 3 AAC 26.625 and 3 AAC

26.645, and the requirements in 3 AAC 26.660 if the licensee discloses nonpublic personal financial information

(1) with the consent or at the direction of the consumer, unless the consumer has revoked the consent or directive;

(2) to protect the confidentiality or security of the licensee's records pertaining to the consumer, service, product, or transaction;

(3) to protect against or to prevent fraud or unauthorized transactions;

(4) for required institutional risk control or for resolving consumer disputes or inquiries;

(5) to a person holding a legal or beneficial interest related to the consumer;

(6) to a person acting in a fiduciary or representative capacity on behalf of the consumer;

(7) to provide information to an insurance rate advisory organization, a guaranty fund or agency, an agency that rates the licensee, a person assessing the licensee's compliance with industry standards, or the licensee's attorney, accountant, or auditor;

(8) to the extent specifically allowed or required under other provisions of law or in accordance with 12 U.S.C. 3401 (Right to Financial Privacy Act of 1978)

(A) to law or regulatory enforcement agencies, including the following:

(i) Federal Reserve Board;

(ii) Office of the Comptroller of the Currency;

(iii) Federal Deposit Insurance Corporation;

- (iv) Office of Thrift Supervision;
- (v) National Credit Union Administration;
- (vi) Securities and Exchange Commission;
- (vii) Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping);
- (viii) state insurance authority;
- (ix) Federal Trade Commission;
- (B) to a self-regulatory organization; or
- (C) for an investigation of a matter related to public safety;
- (9) to a consumer-reporting agency in accordance with 15 U.S.C. 1681 (Federal Fair Credit Reporting Act);
- (10) from a consumer report reported by a consumer-reporting agency under 15 U.S.C. 1681 (Federal Fair Credit Reporting Act) to a nonaffiliated third party;
- (11) in connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit, if the disclosure of nonpublic personal financial information concerns only consumers of the business or unit;
- (12) to comply with federal, state, or local laws or other applicable legal requirements;
- (13) to comply with a properly authorized civil, criminal, or regulatory investigation or a subpoena or summons issued by a federal, state or local authority;

(14) to respond to judicial process or a government regulatory authority that has jurisdiction over a licensee for examination, compliance, investigation, or other purpose authorized by law; or

(15) for a purpose related to the replacement of a group benefit plan, group health plan, group welfare plan, or workers' compensation plan. (Eff. ___/___/_____, Register _____)

Authority: AS 21.06.090 AS 21.36.162

3 AAC 26.675. Exceptions for surplus line brokers, surplus lines insurers, and employees, agents, or other representatives of a licensee. (a) A person licensed, registered, or authorized under AS 21 is not subject to the notice and opt out requirements in 3 AAC 26.610 - 3 AAC 26.670, if the person is an employee, agent, or other representative of another licensee and

(1) the licensee for whom the person is acting as an employee, agent, or other representative complies with and provides the notices required in 3 AAC 26.610 - 3 AAC 26.670; and

(2) the person does not disclose nonpublic personal financial information to anyone other than the licensee for whom the person is acting as an employee, agent, or other representative or that licensee's affiliate, except as allowed under 3 AAC 26.660 - 3 AAC 26.670.

(b) A surplus lines broker or surplus lines insurer is not subject to the notice and opt out requirements under 3 AAC 26.610 - 3 AAC 26.670, if

(1) the surplus lines broker or surplus lines insurer does not disclose nonpublic personal information of a consumer to a nonaffiliated third party for any purpose, including joint servicing or marketing under 3 AAC 26.660, except as permitted under 3 AAC 26.665 or 3 AAC 26.670; and

(2) the surplus lines broker or surplus lines insurer delivers a notice to the consumer at the time a customer relationship is established that states in 16-point type the following: "PRIVACY NOTICE: Neither the U.S. broker that handled this insurance nor the insurer that has underwritten this insurance will disclose nonpublic personal information concerning the buyer to a non-affiliated broker or insurer except as permitted by law."

(c) For purposes of this section, "employee, agent, or other representative of another licensee" includes

(1) an insurance producer acting as a broker, an independent adjuster, or other licensee who is employed by another insurance producer, adjuster, or licensee;

(2) an independent adjuster adjusting a claim or benefit on behalf of an insurance company;

(3) an agent as defined in AS 21.90.900;

(4) an insurance producer acting as a broker as described under AS 21.27.560; or

(5) a subagent of a managing general agent. (Eff. ____/____/_____, Register

_____)

Authority: AS 21.06.090 AS 21.36.162

3 AAC 26.680. Disclosure of nonpublic personal health information. (a) Except as provided in (b) of this section a licensee may not disclose nonpublic personal health information about a consumer unless authorization that complies with 3 AAC 26.685 is obtained from the consumer whose nonpublic personal health information the licensee seeks to disclose.

(b) A licensee may disclose a consumer's nonpublic personal health information without obtaining authorization from the consumer if the disclosure

- (1) is required by federal or state law or regulation or is otherwise allowed by law;
- (2) is in response to a governmental regulatory authority with jurisdiction over a licensee for examination, investigation, compliance, or other purposes authorized by law;
- (3) is compelled by a subpoena, search warrant, or other order issued by a court or administrative agency of competent jurisdiction;
- (4) is for detection, investigation, or reporting of fraud, misrepresentation, or other violation of law;
- (5) is for the performance of the following insurance functions by or on behalf of the licensee:
 - (A) claims administration;
 - (B) claims adjustment or management;
 - (C) underwriting;
 - (D) policy placement or issuance;
 - (E) loss control;
 - (F) rate development;

- (G) guaranty fund functions;
- (H) reinsurance, stop loss insurance, or excess loss insurance;
- (I) risk management;
- (J) case management;
- (K) disease management;
- (L) quality assurance or improvement;
- (M) performance evaluation;
- (N) verification of provider credentials;
- (O) utilization review;
- (P) peer review activities;
- (Q) actuarial, scientific, medical, or public policy research;
- (R) grievance procedures;
- (S) internal administration of compliance, managerial, and information systems;
- (T) policyholder service functions;
- (U) auditing;
- (V) reporting;
- (W) database security;
- (X) administration of consumer disputes and inquiries;
- (Y) external accreditation standards;

(Z) replacement of a group benefit plan or workers compensation policy or program;

(AA) activities in connection with the sale, merger, transfer, or exchange of all or part of a business or operating unit;

(6) is required, the disclosure is a lawful or appropriate method to enforce the licensee's rights or the rights of other licensees engaged in carrying out an insurance transaction or providing an insurance product or service that a consumer or customer requests or authorizes;

(7) is allowed without requiring authorization under 45 C.F.R. Parts 160 and 165 (Standards for Privacy of Individually Identifiable Health Information). (Eff.

____/____/____, Register _____)

Authority: AS 21.06.090 AS 21.36.162

3 AAC 26.685. Authorization to disclose nonpublic personal health information. (a)
Authorization to disclose nonpublic personal health information under 3 AAC 26.680 must be in written or electronic form and must contain

(1) the identity of the consumer who is the subject of the nonpublic personal health information;

(2) a description of the types of nonpublic personal health information that may be disclosed;

(3) a description of the person to whom the licensee intends to disclose nonpublic personal health information, the purpose of the disclosure, and how the recipient of the information will use the information;

(4) the signature of the consumer who is the subject of the nonpublic personal health information or an individual who is legally empowered to grant authority for the consumer and the date signed;

(5) the length of time that the authorization is valid; and

(6) a statement to the effect that the consumer may revoke the authorization at any time along with a clear and easy-to-follow description of how the consumer may revoke the authorization.

(b) The duration of an authorization under (a) of this section may be no more than 24 months.

(c) A consumer may revoke an authorization at any time but the revocation may not take effect before the date the licensee receives the revocation.

(d) A licensee shall retain the authorization or a copy of the authorization in the licensee's records of the consumer.

(e) A licensee is not required to deliver an authorization form to a consumer or to include an authorization form in any other notice unless the licensee intends to disclose nonpublic personal health information under 3 AAC 26.680. (Eff. ___/___/_____, Register ____)

Authority: AS 21.06.090 AS 21.36.162

3 AAC 26.690. Access to and maintenance of nonpublic personal information. (a)

Within 30 working days from the date a licensee or insurance support organization receives a written request from a consumer for recorded nonpublic personal information about the consumer that adequately describes the information requested, if the licensee or insurance support organization can locate and retrieve the information, the licensee or insurance support organization shall

(1) provide to the consumer a description of the nature and substance of the requested information in writing or in electronic form, if the consumer agrees to electronic delivery of information;

(2) as directed by the consumer,

(A) send the requested information, including the source of the information, to the consumer by mail or electronically; or

(B) allow the consumer to see and copy the requested information in person;

(3) provide to the consumer

(A) if recorded, a listing of the identities of each person to whom the licensee or insurance support organization has disclosed nonpublic personal information within the two years before the date of the consumer's request; or

(B) if not recorded, a listing of the names of the persons to whom the information is normally disclosed; and

(4) provide to the consumer a summary of the procedure the consumer may use to request correction, amendment, or deletion of recorded nonpublic personal information.

(b) A licensee or insurance support organization may charge a fee sufficient to cover the costs of providing a copy of the nonpublic personal information to the consumer under (a) of this section.

(c) Within 30 working days from the date a licensee or insurance support organization receives a written request from a consumer to correct, amend, or delete any recorded nonpublic personal information about the consumer that is in the possession of the licensee or insurance support organization, the licensee or insurance support organization shall

(1) correct, amend, or delete the portion of the information as requested; or

(2) notify the consumer

(A) that the licensee or insurance support organization refuses to make the requested correction, amendment, or deletion;

(B) why the licensee or insurance support organization refuses to make the correction, amendment, or deletion; and

(C) of the consumer's right to file a statement as provided under (e) of this section.

(d) If a licensee or insurance support organization corrects, amends, or deletes recorded nonpublic personal information under (c) of this section, the licensee or insurance support organization shall provide written or electronic notification that includes the correction, amendment, or deletion to

(1) a person specifically designated by the consumer who may have received the recorded nonpublic personal information within the two years before the date the licensee or insurance support organization made the correction, amendment, or deletion;

(2) except for an insurance support organization that no longer maintains recorded nonpublic personal information about the consumer, an insurance support organization whose primary source of nonpublic personal information is the licensee if the insurance support organization systematically received recorded nonpublic personal information from the licensee within seven years before the date the licensee made the correction, amendment, or deletion; and

(3) an insurance support organization that provided to the licensee the nonpublic personal information that the licensee corrected, amended, or deleted.

(e) If a consumer disagrees with a licensee or insurance support organization's refusal to correct, amend, or delete recorded nonpublic personal information, the consumer may file with the licensee or insurance support organization

(1) a statement listing the information the consumer believes is the correct, relevant, or fair information; and

(2) a statement of the reasons why the consumer disagrees with the licensee's or insurance support organization's refusal to correct, amend, or delete recorded nonpublic personal information.

(f) If a consumer files a statement under (e) of this section, the licensee or insurance support organization shall

(1) file the statement with the disputed nonpublic personal information and ensure that anyone who reviews the disputed nonpublic personal information is aware of and has access to the statement;

(2) when disclosing disputed nonpublic personal information to a person, clearly identify the information in dispute and provide the consumer's statement to the person; and

(3) provide the consumer's statement to the persons and in the manner specified in (d) of this section.

(g) For purposes of this section, "insurance support organization" means a person who regularly engages in the practice of assembling or collecting information about an individual to provide the information to a licensee for purposes of transacting insurance including

(1) providing consumer reports or investigative consumer reports to a licensee;

(2) collecting information from a licensee or another insurance support organization to detect or prevent fraud, material misrepresentation, or material nondisclosure.

(Eff. ___/___/_____, Register _____)

Authority: AS 21.06.090 AS 21.36.162

3 AAC 26.695. Relationship to federal privacy laws. (a) If a licensee complies with all requirements of 45 C.F.R Parts 160 and 165 (Standards for Privacy of Individually Identifiable Health Information) even though the licensee is not required to comply, the licensee is not required to comply with 3 AAC 26.680 and 3 AAC 26.685.

(b) 3 AAC 26.605 - 3 AAC 26.749 may not be construed to modify, limit, or supercede the operation of 15 U.S.C. 1681 - 1681u (Federal Fair Credit Reporting Act) and no inference may be drawn on the basis of the provisions of 3 AAC 26.605 - 3 AAC 26.749 regarding whether information is transaction or experience information under of 15 U.S.C. 1681 - 1681u, Section 603. (Eff. ___/___/_____, Register _____)

Authority: AS 21.06.090 AS 21.36.162

3 AAC 26.700. Nondiscrimination. (a) A licensee may not unfairly discriminate against a consumer because the consumer opts out of disclosure of nonpublic personal financial information under 3 AAC 26.645.

(b) A licensee may not discriminate against a consumer because the consumer has not authorized the disclosure of nonpublic personal health information under 3 AAC 26.680. (Eff. ___/___/_____, Register _____)

Authority: AS 21.06.090 AS 21.36.162

3 AAC 26.705. Consumer information security program. A licensee shall develop and implement a comprehensive written consumer information security program that

(1) includes administrative, technical, and physical safeguards for the protection of consumer information;

(2) is appropriate for the size and complexity of the licensee and the nature and scope of the licensee's activities; and

(3) is designed to

(A) ensure the security and confidentiality of consumer information;

(B) protect against any anticipated threats or hazards to the security or integrity of the consumer information; and

(C) protect against unauthorized access to or use of consumer information that could result in substantial harm or inconvenience to a consumer. (Eff.

____/____/_____, Register _____)

Authority: AS 21.06.090 AS 21.36.162

3 AAC 26.710. Transition period for compliance. A licensee must comply with 3 AAC 26.605 - 3 AAC 26.749 no later than 90 days after the effective date of this regulation.

(Eff. ____/____/_____, Register _____)

Authority: AS 21.06.090 AS 21.36.162

3 AAC 26.715. "Consumer" defined. (a) In 3 AAC 26.605 - 3 AAC 26.749, "consumer" means an individual who seeks to obtain, obtains, or has obtained or is a claimant or beneficiary of an insurance product or service that provides coverage primarily for personal, family, or household purposes, including employee job-related injury and disease, and about whom a licensee has nonpublic personal information.

(b) As defined under (a) of this section, "consumer" includes

(1) a legal representative of an individual defined under of this section;

(2) an individual who provides nonpublic personal information to the licensee in connection with obtaining or seeking to obtain financial, investment, or economic advisory services relating to an insurance product or service, regardless of whether the licensee establishes an ongoing advisory relationship;

(3) an applicant for insurance before the effective date of insurance coverage;

(4) an individual about whom a licensee discloses nonpublic personal financial information to a nonaffiliated third party or nonpublic personal health information other than as allowed under 3 AAC 26.660 - 3 AAC 26.670 and 3 AAC 26.680; and

(5) an individual who is

(A) a beneficiary of a life insurance policy underwritten by the licensee;

(B) a claimant under an insurance policy issued by the licensee;

(C) an insured under an insurance policy issued by the licensee;

(D) an annuitant under an annuity contract issued by the licensee; or

(E) a mortgagor of a mortgage covered under a mortgage insurance

policy.

(c) As defined under (a) of this section, "consumer" does not include

(1) an individual who is a consumer of another financial institution for which the licensee

(A) acts solely as an agent of the financial institution; or

(B) provides only processing or other services to the financial institution;

(2) an individual whose sole relationship with the licensee is that of a beneficiary of a trust for which the licensee is a trustee; or

(3) an individual whose sole relationship with the licensee is due to the individual designating the licensee as a trustee for a trust.

(d) If a licensee provides the notices required under 3 AAC 26.610, 3 AAC 26.615 and 3 AAC 26.630 to a plan sponsor, group or blanket insurance policyholder, group annuity contract holder, or workers compensation policyholder, and the licensee does not disclose nonpublic personal information about an individual described in this subsection to a nonaffiliated third party except as allowed under 3 AAC 26.660 - 3 AAC 26.670, an individual is not a consumer as defined under (a) of this section solely because the individual is

(1) a participant or beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer, or fiduciary;

(2) covered under a group or blanket insurance policy or group annuity contract issued by the licensee; or

(3) a claimant under a workers compensation plan. (Eff. ____/____/____,

Register _____)

Authority: AS 21.06.090 AS 21.36.162

3 AAC 26.749. Definitions. In 3 AAC 26.605 - 3 AAC 26.749, unless the context requires otherwise,

- (1) "affiliate" means a company that controls, is controlled by, or is under common control with another company;
- (2) "clear and conspicuous" means reasonably understandable and designed to call attention to the nature and significance of the information;
- (3) "collect" means to obtain information that is organized or can be retrieved by the name of a consumer or by a number, symbol, or other identifier assigned to the consumer;
- (4) "company" means a corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship, or other similar organization;
- 5) "consumer-reporting agency" has the meaning given in 15 U.S.C. 1681a(f) (Fair Credit Reporting Act);
- (6) "continuing relationship between a consumer and a licensee" means a relationship in which a consumer is a current policy holder of an insurance product issued by or through a licensee or in which the consumer obtains financial, investment, or economic advisory services relating to an insurance product or service from the licensee for a fee; "continuing relationship between a consumer and a licensee" does not include a relationship in which
 - (A) a consumer applies for insurance but does not purchase the insurance;
 - (B) a licensee sells a consumer airline travel insurance in an isolated transaction;
 - (C) an individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;

(D) a consumer is a beneficiary or claimant under a policy, submits a claim under that policy, and chooses a settlement option that involves an ongoing relationship with a licensee;

(E) a consumer is a beneficiary or claimant under a policy, submits a claim under that policy, and chooses a lump sum settlement option;

(F) a consumer's policy lapses, expires, or otherwise becomes inactive under a licensee's business practices and the licensee has not communicated with the customer about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices, material required by law, communication at the directive of a state or federal authority, or promotional materials;

(G) an individual is an insured or an annuitant under an insurance policy or annuity but is not the policyholder or owner of the insurance policy or annuity.

(H) a consumer whose last known address in a licensee's records is invalid so that mail sent to the address by the licensee is returned by the postal authorities as undeliverable, and the licensee's subsequent attempts to obtain a current valid address for that consumer are unsuccessful;

(I) the latest of the following occurs when a licensee provides real estate settlement services:

(i) an individual completes the execution of all documents related to a real estate closing;

(ii) the licensee has received payment for the real estate settlement services;

(iii) the licensee completes all the licensee's responsibilities with respect to the real estate settlement including filing documents on the public record;

(7) "control" means

(A) the ownership, authority, or power to vote at least 25 percent of the outstanding shares of any class of voting security of a company;

(B) the authority in any manner over the election of a majority of the board of directors, trustees, general partners, or other individuals exercising similar functions of the company; or

(C) the authority or power to influence the management or policies of a company as determined by the director;

(8) "customer" means a consumer who has a customer relationship with a licensee;

(9) "customer information" means nonpublic personal health information or nonpublic personal financial information about a customer that is maintained by or on behalf of a licensee;

(10) "customer information systems" means the electronic or physical methods used to access, collect, store, use, transmit, protect, or dispose of customer information,

(11) "customer relationship" means a continuing relationship between a consumer and a licensee in which the licensee provides at least one insurance product or service to the consumer and occurs when the consumer

(A) becomes a policyholder of an insurer by delivery of an insurance policy to the consumer;

(B) obtains insurance through a licensee; or

(C) agrees to obtain financial, economic, or investment advisory services relating to insurance products or services for a fee from the licensee;

(12) "designed to call attention" means a notice that

(A) contains a heading written in plain language and is conspicuous;

(B) is written using a typeface and a type size that are easy to read;

(C) contains wide margins and line spacing;

(D) is written using boldface or italics for key words;

(E) if distributed with other information, is written using a type size, style, and graphics, such as shading or sidebars that are distinct from the type size, style, and graphics of the other information;

(F) if provided on a web page, is written using text or visual cues to encourage scrolling down the page when necessary to view the entire notice and is designed to ensure that other elements on the web page such as text, graphics, hyperlinks, or sound do not distract attention from the notice, and the licensee

(i) places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or

(ii) places a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature, and relevance of the notice;

(13) "financial institution" mean a business that engages in a financial activity or an activity incidental to a financial activity under 12 U.S.C. 1843(k) (Bank Holding Company Act of 1956); "financial institution" does not include

(A) with respect to a financial activity, a person that is subject to the Commodity Futures Trading Commission under 7 U.S.C. 1 et seq. (Commodity Exchange Act);

(B) the federal Agricultural Mortgage Corporation or any person charged and operating under 12 U.S.C. 2001 et seq. (Farm Credit Act of 1971); or

(C) a business chartered by the Congress of the United States specifically to engage in securitization of assets, secondary market sales, sales of servicing rights or similar transactions related to a transaction of a consumer, when the business does not sell or transfer nonpublic personal information to a nonaffiliated third party;

(14) "financial product or service" means a product or service that a financial holding company could offer by engaging in a financial activity or an activity incidental to a financial activity under 12 U.S.C. 1843(k) (Bank Holding Company Act of 1956); "financial

product or service” includes evaluation or brokerage of information that a financial institution collects in connection with a request or an application from a consumer for a financial product or service;

(15) “health care” means

(A) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, services, procedures, tests, or counseling that

(i) relates to the physical, mental, or behavioral condition of an individual; or

(ii) affects the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organ, or any other bodily tissue; or

(B) prescribing, dispensing, or furnishing to an individual drugs, biologicals, medical devices, or health care equipment or supplies;

(16) “health care provider” means a person licensed, accredited, or certified in any state to provide health care services; “health care provider” includes a health care facility regardless whether the facility is licensed, accredited, or certified to provide health care services;

(17) “health information” means oral or recorded information or data, excluding age and gender, created by or derived from a health care provider or consumer that relates to

(A) the past, present, or future physical, mental, or behavioral health or condition of an individual;

(B) the provision of health care to an individual; or

(C) payment for the provision of health care to an individual;

(18) "insurance product or service" means a product or service offered by a licensee, including evaluation, brokerage, or distribution of information that a licensee collects in connection with a request or an application from a consumer for an insurance product or service;

(19) "licensee" means a person licensed or required to be licensed, authorized or required to be authorized, or registered or required to be registered under AS 21, including a surplus lines insurer or surplus lines broker;

(20) "nonaffiliated third party" means

(A) a person that is not

(i) an affiliate of a licensee; or

(ii) employed jointly by a licensee and a company that is not an affiliate of a licensee;

(B) a company that is an affiliate of the company due to the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities described 12 U.S.C. 1843(k)(4)(H) (Bank Holding Company Act) or insurance company investment activities described in 12 U.S.C. 1843(k)(4)(I) (Bank Holding Company Act);

(21) "nonpublic personal information" means nonpublic personal financial information and nonpublic personal health information;

(22) "nonpublic personal financial information" means personally identifiable financial information; a list, description, or other grouping of consumers and publicly available

information pertaining to the consumers that is derived using personally identifiable financial information that is not publicly available; and a list of individual names and street addresses that is derived using personally identifiable financial information that is not publicly available, such as account numbers; "nonpublic personal financial information" does not include

(A) health information;

(B) publicly available information, unless included in a list described in this paragraph;

(C) a list, description, or other grouping of consumers and publicly available information pertaining to the consumers that is derived without using personally identifiable financial information that is not publicly available; or

(D) a list of individual names and addresses that contains only publicly available information that is not derived using personally identifiable information that is not publicly available and that does not indicate that an individual on the list, description, or other grouping is a consumer of a financial institution;

(23) "nonpublic personal health information" means health information

(A) that identifies an individual who is the subject of the information; or

(B) in which a reasonable basis exists to believe that the information could be used to identify an individual;

(24) "opt out" means to direct a licensee not to disclose nonpublic personal financial information about a consumer to a nonaffiliated third party, except as allowed under 3 AAC 26 660 - 3 AAC 26 670;

(25) "personally identifiable financial information" means information a consumer provides to a licensee to obtain an insurance product or service from the licensee, information about a consumer resulting from a transaction between a licensee and a consumer involving an insurance product or service, or information a licensee obtains about a consumer in connection with providing an insurance product or service to the consumer; "personally identifiable financial information"

(A) includes

- (i) information a consumer provides to a licensee on an application to obtain an insurance product or service;
- (ii) account balance information and payment history of a consumer;
- (iii) the fact that an individual is or has been a customer of a licensee or has obtained an insurance product or service from the licensee;
- (iv) information about a licensee's consumer if the information is disclosed in a manner that indicates that the individual is or has been the licensee's consumer;
- (v) information that a consumer provides to a licensee or that the licensee or the licensee's agent obtains in connection with collecting a loan or servicing a loan;
- (vi) information a licensee collects from an information collecting device through an internet web server; or

(vii) information from a consumer report;

(B) does not include

(i) health information;

(ii) a list of names and addresses of customers of an entity that is not a financial institution; or

(iii) information that does not in any way identify a consumer;

(26) "publicly available information" means information that a licensee has a reasonable basis to believe is lawfully made available to the general public from

(A) federal, state, or local government records, including information from government real estate and security interest filings;

(B) widely distributed media, including information from a telephone book, a television or radio program, or a newspaper that is available to the general public on an unrestricted basis or from a web site that is available to the general public regardless of whether a fee or password is required to access the web site; or

(C) disclosures to the general public that are required to be made by federal, state, or local law;

(27) "reasonable basis" means a licensee takes action to determine

(A) that the information is of a type that is available to the general public;

and

(B) if an individual can direct information to not be made available to the general public and the individual has not directed that the information not be made available to the general public;

(28) "reasonably understandable" means a notice in which

(A) information is presented using clear and concise sentences, paragraphs, and sections;

(B) short explanatory sentences or bullet lists are used whenever possible;

(C) definite, concrete, everyday words and active voice are used when possible;

(D) multiple negatives are avoided;

(E) legal and highly technical business terminology is avoided when possible; and

(F) imprecise and ambiguous explanations are avoided;

(29) "service provider" means a person that maintains, processes, or otherwise is allowed access to customer information due to the service the person furnishes directly to a licensee. (Eff.

____/____/____, Register _____)

Authority: AS 21.06.090 AS 21.36.162

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SENATOR DONALD C. OLSON

DISTRICT T

Alakanuk
Ambler
Anaktuvuk Pass
Atkasuk
Barrow
Brevig Mission
Browerville
Buckland
Chevak
Deering
Diomede
Eli
Golovin
Gambell
Golovin
Hooper Bay
Kaktovik
Kiana
Kivalina
Kobuk
Kotlik
Kotzebue
Koyuk
Mountain Village
Noatak
Nome
Noorvik
Nuiqsut
Nunam Iqua
Pilot Station
Pitka's Point
Point Hope
Point Lay
Savoonga
Scammon Bay
Selawik
Shaktoolik
Shishmaref
Shungnak
St. Michael
Stebbins
Teller
Unalakleet
Wainwright
Wales
White Mountain

IN THE SENATE JUDICIARY COMMITTEE

RECOMMENDED CHANGES BETWEEN CS SB 217 () "I" VERSION AND CS SB 217 (HES) "H" VERSION

1. Section 1 of the "H" version on legislative findings is deleted. A separate letter of intent is offered as a replacement.
2. Sec. 18.13.010 (b)(5) on page 3, lines 4 through 8 of the "H" version is deleted. Dr. Bert Boyer, a genetic research scientist at UAF, recommends that scientists and educators that collect, analyze, and use genetic material be held to the informed consent requirements and penalties of the bill.
3. The definition of "DNA analysis" on page 4, lines 4 through 7 of the "H" version is changed in the "I" version on page 3, lines 2 through 8 to accommodate some uncertainties posed by an insurance company.

IN THE SENATE JUDICIARY COMMITTEE

SB 217, Genetic Privacy

LETTER OF INTENT

The legislature finds that with the preeminent discovery of the deoxyribonucleic acid (DNA) molecular structure, medical and biochemical sciences are making rapid advances in decoding the genetic information contained that uniquely makes up the character and development of each individual being. Analysis of a DNA sample can disclose private information of a fundamental nature not only of the individual but also their blood relatives. More and more, advances in genetic information technology are revealing of one's medical future.

The legislature recognizes that knowledge of one's genetic information can be of great benefit to the individual's health and welfare. In addition, advances in genetic information technology have engendered many useful and practical applications for society in general, particularly in law enforcement, paternity identification, and natal medicine. The legislature also understands, however, that the improper collection, retention, or disclosure of genetic information can significantly harm an individual and lead to stigmatization and discrimination.

The purpose of SB 217 is to address this latter consideration. It is the intent of the legislature that an individual's genetic privacy be protected against unwanted, unwarranted, and unauthorized invasions.

23-LS1074I
Luckhaupt
2/23/04

CS FOR SENATE BILL NO. 217()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR OLSON

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to genetic privacy."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 *** Section 1.** AS 18 is amended by adding a new chapter to read:

4 **Chapter 13. Genetic Privacy.**

5 **Sec. 18.13.010. Genetic testing.** (a) Except as provided in (b) of this section,

6 (1) a person may not collect a DNA sample from a person, perform a
7 DNA analysis on a sample, retain a DNA sample or the results of a DNA analysis, or
8 disclose the results of a DNA analysis unless the person has first obtained the
9 informed and written consent of the person, or the person's legal guardian or
10 authorized representative, for the collection, analysis, retention, or disclosure;

11 (2) a DNA sample and the results of a DNA analysis performed on the
12 sample are the exclusive property of the person sampled or analyzed.

13 (b) The prohibitions of (a) of this section do not apply to DNA samples
14 collected and analysis conducted

15 (1) under AS 44.41.035 or comparable provisions of another

1 jurisdiction;

2 (2) for a law enforcement purpose, including the identification of
3 perpetrators and the investigation of crimes and the identification of missing or
4 unidentified persons or deceased individuals;

5 (3) for determining paternity;

6 (4) to screen newborns as required by state or federal law;

7 (5) for the purpose of emergency medical treatment.

8 (c) A general authorization for the release of medical records or medical
9 information may not be construed as the informed and written consent required by this
10 section. The Department of Health and Social Services may by regulation adopt a
11 uniform informed and written consent form to assist persons in meeting the
12 requirements of this section. A person using that uniform informed and written
13 consent is exempt from civil or criminal liability for actions taken under the consent
14 form. A person may revoke or amend their informed and written consent at any time.

15 **Sec. 18.13.020. Private right of action.** A person may bring a civil action
16 against a person who collects a DNA sample from the person, performs a DNA
17 analysis on a sample, retains a DNA sample or the results of a DNA analysis or
18 discloses the results of a DNA analysis, in violation of this chapter. In addition to the
19 actual damages suffered by the person, a person violating this chapter shall be liable to
20 the person for damages in the amount of \$5,000 or, if the violation resulted in profit or
21 monetary gain to the violator, \$100,000.

22 **Sec. 18.13.030. Criminal penalty.** (a) A person commits the crime of
23 unlawful DNA collection, analysis, retention, or disclosure if the person knowingly
24 collects a DNA sample from a person, performs a DNA analysis on a sample, retains a
25 DNA sample or the results of a DNA analysis, or discloses the results of a DNA
26 analysis in violation of this chapter.

27 (b) In this section, "knowingly" has the meaning given in AS 11.81.900.

28 (c) Unlawful DNA collection, analysis, retention, or disclosure is a class A
29 misdemeanor.

30 **Sec. 18.13.100. Definitions.** In this chapter,

31 (1) "DNA" means deoxyribonucleic acid, including mitochondrial

1 DNA, complementary DNA and DNA derived from ribonucleic acid;

2 (2) "DNA analysis" means DNA or genetic typing and testing to
3 determine the presence or absence of genetic characteristics in an individual, including
4 tests of nucleic acids or chromosomes in order to diagnose or identify a genetic
5 characteristic; "DNA analysis" does not include a routine physical measurement, a test
6 for drugs, alcohol, cholesterol, or the human immunodeficiency virus, a chemical,
7 blood, or urine analysis, or any other diagnostic test that is widely accepted and in use
8 in clinical practice;

9 (3) "genetic characteristic" includes a gene, chromosome, or alteration
10 of a gene or chromosome that may be tested to determine the existence or risk of a
11 disease, disorder, trait, propensity, or syndrome, or to identify an individual or a blood
12 relative; "genetic characteristic" does not include family history or a genetically
13 transmitted characteristic whose existence or identity is determined other than through
14 a genetic test.

15 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 **APPLICABILITY.** AS 18.13, enacted by sec. 1 of this Act, applies to any collection,
18 analysis, retention, or disclosure occurring after the effective date of this Act.

IN THE SENATE JUDICIARY COMMITTEE

SB 217, Genetic Privacy

LEGISLATIVE INTENT

The legislature finds that with the preeminent discovery of the deoxyribonucleic acid (DNA) molecular structure, medical and biochemical sciences are making rapid advances in decoding the genetic information contained that uniquely makes up the character and development of each individual being. Analysis of a DNA sample can disclose private information of a fundamental nature not only of the individual but also their blood relatives. More and more, advances in genetic information technology are revealing of one's medical future.

The legislature recognizes that knowledge of one's genetic information can be of great benefit to the individual's health and welfare. In addition, advances in genetic information technology have engendered many useful and practical applications for society in general, particularly in law enforcement, paternity identification, and natal medicine. The legislature also understands, however, that the improper collection, retention, or disclosure of genetic information can significantly harm an individual and lead to stigmatization and discrimination.

The purpose of SB 217 is the latter consideration. It is to protect an individual's genetic privacy against the unwanted, unwarranted, and unauthorized invasion.

Alaska Civil Liberties Union

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To: Senator Donny Olson
CC: Senate Judiciary Committee
From: Jennifer Rudinger, Executive Director
Date: February 24, 2004

Re: **Proposed amendments to strengthen SB 217 ("Genetic Privacy")**

Dear Senator Olson:

I have reviewed the work draft for a proposed Judiciary CS for SB 217 that Dave Gray faxed me today, and while we appreciate the removal of the medical/scientific research exemption that was in 18.13.010(b)(5) of the HESS version, we remain concerned about the following issues:

1. In order to truly protect people's genetic privacy, SB 217 must employ a comprehensive definition of "genetic characteristic" in 18.13.100(3). The AkCLU recommends that the appropriate definition of genetic information should be broader than DNA or genetic testing, covering:

"Any information about genes, gene products, or inherited characteristics that may derive from the individual or a family member. This includes, but is not limited to, information regarding carrier status, information regarding an increased likelihood of future disease or increased sensitivity to any substance, information derived from laboratory tests that identify mutations in specific genes or chromosomes, physical medical examinations, family histories, requests for genetic services or counseling, tests of gene products, and direct analysis of genes or chromosomes."

2. We respectfully submit that the definition of "DNA analysis" in 18.13.100(2) is too narrow as amended. We are wary of the removal of tests for specific proteins from the HES version of this definition, and we object to the exemptions in the second half of this definition because these exemptions are not necessary and may make the bill so vague as to be unworkable. For example, does this exemption mean that informed consent for genetic testing or retention of genetic information is not necessary if the genetic information was discovered in course of one of the listed exempt procedures? Given that these procedures are increasingly common, these exemptions will gut the bill.

3. Given the substantial costs involved in providing medical care and other benefits to those who contract genetic diseases, if employers or insurers are permitted to collect genetic information about employees, policyholders and applicants, some of them will use it, even if this is not legal. Even where discrimination does not occur, the employee or insured party has still suffered a loss of privacy. For this reason we continue to suggest the following language:

“ (a) No employer or insurer may directly or indirectly collect or have access to any genetic information concerning an employee, policy holder or applicant, or member of their family. An exception exists for an employer who can demonstrate that the information is job related and consistent with business necessity.

(b) No employer or insurer shall discriminate against any employee, policyholder or applicant, or any member of that individual's family because of any genetic information about that individual or a member of their family. An exception exists for an employer who can demonstrate that the information is job related and consistent with business necessity.”

4. There may be circumstances where a person's genetics put them at elevated risk in certain jobs, but do not affect their ability to do the job, or endanger other employees. In these circumstances, the final decision whether to accept such a job ought to be up to the individual. Often employers have been allowed to override an employee's judgment in such situations. To correct this, the job related/business necessity standard referenced above should be defined as follows:

“Job related and consistent with business necessity means the condition in question renders the individual unable to perform the essential functions of the position that such individual holds or desires. This includes situations in which the individual poses a direct threat to the health or safety of others in the workplace, but not situations in which only the individual is at risk.”

4. In addition, we would like the bill to define or outline minimum standards for “informed and written consent.” For example, can a company get informed consent from an individual to use their genetic information for “general research purposes” or should they have to spell out precisely how and for what purposes the information will be used? Would consent for general research purposes allow a company to transfer that consent to another company or research project? Individuals who allow or request their genetic information to be collected,

retained, or disclosed should be informed of:

- The specific purpose and use of the information;
- Who will have access to the information;
- Where a genetic test is involved, the meaning and reliability of the test.
- How long the consent lasts;
- How confidentiality will be maintained;
- Their rights to and the procedures for removal of their information from the research, where applicable;
- How they can be assured that their information will not be sold to or shared with other parties.

6. Further, the ACLU has concluded that there is a constitutional privacy right in genetic material that is so important that it cannot also be called a "property right." Genetic material is not akin to property that can be bought or sold. These ethical questions have posed themselves repeatedly in various contexts, such as whether people should be able to buy and sell human organs, fetuses, babies, etc., and the conventional wisdom thus far is that human material should generally not be devalued to the point of being a market commodity. It is true that people can sell their blood, eggs and sperm, but the ACLU cautions legislators not to travel any further down this slippery slope. If human genes are "property," then poor people could be pressured into selling their organs, their genetic material, and other parts of themselves that would be akin to selling their humanity. Moreover, a person's genetic code contains information that applies to more than one individual - it describes his/her parents, children and other family members. We therefore urge that 18.13.010(a)(2) of the proposed Judiciary CS for SB 217 delete the reference to individuals' property interest in their DNA.
7. With regard to liability, we strongly urge that the private right of action should not only allow a "person" who violates this chapter, but also against a government agency that violates this law. AS 01.10.060 (8) defines "person" as "a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person." It is imperative that people also be protected from abuses of genetic privacy that are perpetrated by the government.
8. In addition, we maintain that damages for violations probably should not be capped. It's too hard to predict the types of consequences misuses of genetic information could have.
9. With regard to the exemption for law enforcement in 18.13.010(b)(2), this needs to be tightened up to ensure that the law enforcement purpose claimed as the rationale for collecting genetic information is actually limited to what is authorized under Alaska state law.

CS SB 217 comments
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Thank you very much for the opportunity to submit written comments on this important legislation. Please feel free to contact me at (907) 258-0044 if I may be of further assistance.

Sincerely,

Jennifer Rudinger
Executive Director