

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10277 HOUSE • JUDICIARY

HB

181

Adopted

April 20, 2001

Amendment # 1

To: Amy Erickson
To: Dave Shaftel

Faxed: (907) 465-2293

HB 181

Dear Amy:

I noticed one small change and it only being done to conform the bill to our existing statute.

A new section needs to be added: Logically this should follow Section 3.

AS 34.77.120(e) is amended to read:

This section does not affect the ownership interest or proceeds of a policy unless a spouse or a trust described in (b)(7) of this section is designated as an owner in the policy or on the records of the policy issuer and community property is used to pay a premium on the policy.

Steve

22-LS0567L
Bannister
4/19/01

*Adopted
4.21.01*

CS FOR HOUSE BILL NO. 181()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION**

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES MURKOWSKI, McGuire

new title

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the obligations of spouses, to insurance policies of spouses, to the
2 nonprobate transfer of property on death to a community property trust, to the division
3 of the community property of spouses at death, and to the Alaska Community Property
4 Act; amending Rule 301, Alaska Rules of Evidence; and providing for an effective date."

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

6 * Section 1. AS 34.77.070 is amended by adding new subsections to read:

7 (j) An obligation incurred by only one spouse before or during marriage may
8 be satisfied only from the property of that spouse that is not community property and
9 from that spouse's interest in community property. This subsection does not apply to
10 an obligation described in (b) of this section.

11 (k) An obligation incurred during marriage by both spouses may be satisfied
12 from property of each spouse that is not community property and from the community
13 property.

14 * Sec. 2. AS 34.77.100 is amended by adding a new subsection to read:

1 (i) In addition to other transfers of property to a community property trust,
2 property will be considered transferred to a community property trust if the property is
3 subject to a nonprobate transfer on death under AS 13.33.101 and the community
4 property trust is designated as the beneficiary to receive the property under the
5 transfer.

6 * Sec. 3. AS 34.77.120(b) is amended to read:

7 (b) Except as provided in (c) - (e) of this section,

8 (1) the ownership interest in and proceeds of a policy that insures the
9 life of one of the spouses and that has been classified by a community property
10 agreement or a community property trust as community property are community
11 property without regard to the classification of property used to pay premiums on the
12 policy;

13 (2) the ownership interest in and proceeds of a policy that is owned by
14 one spouse and that has not been classified by a community property agreement or a
15 community property trust as community property are mixed property if all or part of a
16 premium on the policy is paid from community property after the determination date;
17 the community property component of the ownership interest and proceeds is the part
18 resulting from multiplying the entire ownership interest and proceeds by a fraction that
19 consists of a numerator that is the sum of the net premiums and portions of net
20 premiums paid from community property and a denominator that is the sum of the net
21 premiums paid;

22 (3) the ownership interest in and proceeds of a policy issued during
23 marriage that designates the spouse of the insured as the owner are the individual
24 property of the owner without regard to the classification of property used to pay
25 premiums on the policy;

26 (4) the ownership interest in and proceeds of a policy that designates a
27 person other than either of the spouses as the owner are not affected by this chapter if
28 a premium on the policy is not paid from community property after the determination
29 date; if all or part of a premium on the policy is paid from community property after
30 the determination date, the ownership interest and proceeds of the policy are in part
31 property of the designated owner of the policy and in part community property of the

1 spouses without regard to the classification of property used to pay premiums on the
2 policy after the initial payment of a premium on the policy from community property;
3 the community property component of the ownership interest and proceeds is the part
4 resulting from multiplying the entire ownership interest and proceeds by a fraction that
5 consists of a numerator that is the sum of the net premiums and portions of net
6 premiums paid from community property and a denominator that is the sum of the net
7 premiums paid;

8 (5) written consent by a spouse to the designation of another person as
9 the beneficiary of the proceeds of a policy is effective to relinquish that spouse's
10 interest in the ownership interest and proceeds of the policy without regard to the
11 classification of property used by a spouse or another person to pay premiums on the
12 policy; a designation of any of the following persons or trusts as the beneficiary of
13 a policy is presumed to have been made with the consent of the other [BY
14 EITHER] spouse;

15 (A) [OF A PARENT OR CHILD OF EITHER OF THE
16 SPOUSES AS THE BENEFICIARY OF THE PROCEEDS OF A POLICY IS
17 PRESUMED TO HAVE BEEN MADE WITH THE CONSENT OF] the other
18 spouse or an ancestor or descendant of either spouse; or

19 (B) a trust, to the extent that its beneficiaries consist of one
20 or more of the persons named in (A) of this paragraph;

21 (6) unless the spouses provide otherwise in a community property
22 agreement or community property trust, designation of a trust as the beneficiary of the
23 proceeds of a policy with a community property component does not reclassify the
24 component;

25 (7) unless the spouses provide otherwise, if an irrevocable trust
26 owns a life insurance policy insuring the life of one spouse and the spouse whose
27 life is not insured by the policy is provided a beneficial interest in the trust, then,
28 before a contribution of assets to the trust, the spouse whose life is not insured by
29 the policy is presumed to have relinquished any community property interest
30 that the spouse whose life is not insured by the policy may have had in the assets
31 contributed to the trust; the presumption in this paragraph applies only to the

1 extent that the beneficiaries of the trust consist of one or more of the following
2 persons:

3 (A) the spouse whose life is not insured;

4 (B) an ancestor of either spouse;

5 (C) a descendant of either spouse;

6 (8) the testimony of the spouse whose life is not insured is sufficient
7 to rebut a presumption in (5) or (7) of this subsection.

8 * Sec. 4. AS 34.77 is amended by adding a new section to read:

9 **Sec. 34.77.155. Division of community property at death.** (a) Upon the
10 death of a spouse, one-half of the aggregate value of the community property owned
11 by the spouses and by any community property trust established by the spouses
12 reflects the share of the surviving spouse and the other one-half reflects the share of
13 the decedent.

14 (b) Upon the death of a spouse, the deceased spouse's personal representative
15 and the trustee of a community property trust each have the power to distribute
16 community property in divided or undivided interests and to adjust resulting
17 differences in valuation. A distribution of community property in kind may be made
18 on the basis of a non pro rata division of the aggregate value of the community
19 property, on the basis of a pro rata division of each individual item or asset of
20 community property, or by using both methods.

21 (c) Notwithstanding (a) and (b) of this section, spouses may agree in writing to
22 divide their community property on the basis of a non pro rata division of the
23 aggregate value of the community property or on the basis of a pro rata division of
24 each individual item or asset of community property, or by using both methods.

25 * Sec. 5. AS 34.77.070(a), 34.77.070(c), 34.77.070(d), and 34.77.070(e) are repealed.

26 * Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to
27 read:

28 **INDIRECT COURT RULE AMENDMENT.** AS 34.77.120(b)(8), enacted by sec. 3
29 of this Act, amends Rule 301, Alaska Rules of Evidence, by changing the rule's general
30 criteria for the evidence that must be introduced to satisfy the burden of proof to rebut the
31 presumptions established by AS 34.77.120(b)(5) or (7). AS 34.77.120(b)(8) provides that the

1 testimony of a spouse is sufficient to satisfy the burden without having to apply the rule's
2 requirement that the evidence be sufficient to permit reasonable minds to conclude that the
3 presumed fact does not exist.

4 * **Sec. 7.** This Act takes effect immediately under AS 01.10.070(c).

ALASKA STATE LEGISLATURE

Chair:
LABOR AND COMMERCE

Member:
MILITARY AND VETERANS AFFAIRS
COMMUNITY AND REGIONAL AFFAIRS
LEGISLATIVE COUNCIL
JOINT ARMED SERVICES



REPRESENTATIVE LISA MURKOWSKI
Government Hill • Elmendorf • East Anchorage


Session:
ALASKA STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-3783
FAX: (907) 465-2293
Representative_Lisa_Murkowski@legis.state.ak.us

Interim:
716 WEST 4TH AVENUE
ANCHORAGE, AK 99501-2133
PHONE: (907) 269-0174
FAX: (907) 269-0177

Memorandum

Date: March 23, 2001

To: Representative Norman Rokeberg
Chairman, House Judiciary Committee

From: Representative Lisa Murkowski 

Subject: Scheduling HB 181

MAR 23 2001

House Bill 181, "Community Property" makes four minor adjustments to Alaska's community property act: First, HB 181 provides that a creditor of a debtor spouse may only reach the separate property of that spouse and that spouse's jointly held property. Next, HB 181 allows property such as life insurance and IRAs to be transferred to a community property trust by designating the trust as a beneficiary of the property. Third, HB 181 clarifies the sources of funds used to purchase life insurance and expands the category of family members to include ancestors or descendants of either spouse. Finally, HB 181 clarifies that on the death of a spouse, different property items can be allocated to the spouse's shares, as long as each spouse's share receives half of the total value of the community property.

Attached you will find a copy of House Bill 181, sponsor statement, and sectional analysis. Please schedule HB 181 at your earliest convenience.

ALASKA STATE LEGISLATURE

Chair:
LABOR AND COMMERCE

Member:
MILITARY AND VETERANS AFFAIRS
COMMUNITY AND REGIONAL AFFAIRS
LEGISLATIVE COUNCIL
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Sponsor Statement HB 181 Community Property

In 1998, the legislature passed Alaska's community property act, which allows married couples to characterize some or all of their assets as community property. Since the enactment of Alaska's community property act, experts, through experience and application of community property and trust planning, have identified certain statutes requiring improvement and adjustment. House Bill 181 makes these improvements and adjusts Alaska's community property statutes in four ways:

The extent to which a creditor can reach a couple's community property. Section 1 provides that a creditor of a debtor spouse may only reach the separate property of that spouse and that spouse's half of the jointly held property. If only one spouse is the debtor, then the creditor can reach half of the community property. If both spouses are debtors, then the creditor can reach all of the community property.

Transfers of property to a community property trust by beneficiary designation. This new provision allows property such as life insurance policies and IRAs to be transferred to a community property trust by designating the trust as the beneficiary of the property. This will assist nonresidents of Alaska in using Alaska community property trusts.

Clarification of sources of funds used to purchase life insurance. Community property funds may be used by a couple to purchase life insurance, and where the primary beneficiaries are family members, then it is presumed that both spouses consented to the choice of such beneficiaries. The existing statute already creates the presumption for the parent or child of either spouse. This amendment expands the category of family members to include ancestors or descendants of either spouse, or a trust for the benefit of those persons. In order to minimize estate taxes, it is presumed that a spouse who buys life insurance has used his or her own property to purchase the life insurance.

Division of community property at death. Section 4 clarifies that on the death of a spouse, half of the community property reflects the share of the decedent and the other half reflects the share of the surviving spouse. However, each item of the community property does not have to be divided equally. Rather, different items can be allocated to the spouse's shares, as long as each spouse's share receives half of the total aggregate value of the community property. This added flexibility will allow for better income and estate tax planning for couples using Alaska community property.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 17, 2001

SUBJECT: Sectional Summary of HB 181 relating to the property and obligations of spouses (Work Order No. 22-LS0567\J)

TO: Representative Lisa Murkowski
Attn: Amy

FROM: *JB*
Theresa L. Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. AS 34.77.070(j) and (k). Establishes from what property an obligation incurred by only one spouse can be satisfied. Establishes from what property an obligation incurred during marriage by both spouses may be satisfied.

Section 2. AS 34.77.100. Establishes that nonprobate transfers on death of property under AS 13.33.101 can be transferred to a community property trust.

Section 3. AS 34.77.120(b). In (b)(5), establishes a presumption that a designation of certain persons or a certain trust as the beneficiaries of an insurance policy has been made with the consent of the other spouse. Adds under (b)(7) a presumption relating to the community property interests of spouses in an insurance policy on the life of one of the spouses and owned by an irrevocable trust.

Section 4. AS 34.77.155. Adds a new section establishing rules to govern the division of community property upon the death of a spouse.

Section 5. Repeals certain sections.

Section 6. Gives the Act an immediate effective date.

If I may be of further assistance, please advise.

TLB:glc
01-250.glc

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 181
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title "An Act relating to the obligations of spouses, to BRU Civil Division
the insurance policies of spouses, to the nonprobate transfer ..." Component Fair Business Practices
Sponsor Representative Murkowski
Requester House Judiciary Component No. 2206

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 181 repeals four sections of the Alaska Community Property Act and replaces them with a general rule that an obligation incurred by a spouse can only be satisfied from that spouse's non-community property and that spouse's interest in the community property, no matter when the obligation was incurred. In addition, the bill provides for how community property is to be divided upon the death of a spouse, and how it is to be distributed; allows for transfers of community property to a community property trust; and makes changes to how community property relates to life insurance purchases.

Passage of HB 181 will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson Phone 465-5370
Division: Attorney General's Office Date/Time 4/19/01 3:42 PM
Approved by: Kathryn Daughhete for Bruce M. Botelho, Attorney General Date 4/19/01
Agency: Department of Law

For distribution information, call the Governor's Legislative Office



HUGHES THORSNESS POWELL
HUDDLESTON & BAUMAN LLC
ATTORNEYS AT LAW

March 29, 2001

VIA FACSIMILE
(907) 465-2293

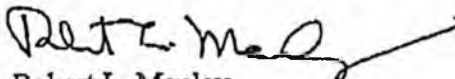
Representative Lisa Murkowski
State of Alaska
Juneau, Alaska

Re: HB 181

Dear Lisa:

As you know I am in estate planning attorney in Anchorage and am a member of the estate planning section of the Alaska Bar Association. I want to express my support for passage of HB 181. This bill would accomplish important amendments to our Alaska Community Property Act and will benefit the residents of Alaska.

Very truly yours,


Robert L. Manley

RLM/mjm

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Caroline P. Wanamaker, J.D. ♦ +
Donna Marie, J.D. ♦ ●
Michael D. Shaffer, J.D. ♦ ●
Bhree Roumagoux, J.D. ♦

♦ Admitted in AK
● Admitted in CA
+ Admitted in WA
■ Admitted in MA

March 26, 2001

SENT VIA FACSIMILE TO (907) 465-2293

Representative Lisa Murkowski
Alaska State Legislature
State Capitol, Room 406
Juneau, AK 99801-1182

Re: House Bill 181, Alaska Community Property Act Amendments

Dear Representative Murkowski:

Thank you very much for introducing House Bill 181. Our firm emphasizes estate planning and estate and trust administration. This bill adds important amendments to the Alaska Community Property Act. These provisions will enable Alaskans, and nonresidents using Alaska's Act, to take advantage of estate planning approaches now used by residents of other community property states.

Sincerely,



David G. Shaftel

DGS/cf

STEPHEN E. GREER
ATTORNEY AT LAW

P.O. BOX 24-2903
ANCHORAGE, ALASKA 99524-2903

4041 "B" STREET, STE. 205
ANCHORAGE, AK 99503

TEL: (907) 561-5520
FAX: (907) 563-5020

APR 23 2001

April 9, 2001

To: Rep. Norman Rokeberg - faxed: (907) 465-2040

HB 181
(The Community Property Bill)

Dear Representative Rokeberg:

At the hearing on HB 181 you requested that I send you written testimony concerning Section 3 of this bill.

Under our existing statute if the premiums on a life insurance policy are paid by community property, the proceeds of the policy are considered to be owned in part by the insured spouse and in part by the non-insured spouse, based upon the proportion of each person's separate property and 1/2 of each person's community property used to pay the premiums.

This result defeats a primary estate planning and tax objective of the couple, which is to keep the insurance out of both of their estates. To achieve the estate planning and tax result that both spouses would desire, the non-insured spouse must be presumed to have relinquished that spouse's interest in the policy. This section creates such a presumption in 2 different situations.

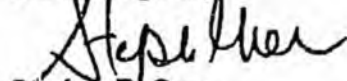
The first of these is contained in proposed AS 34.77.120(b)(5). At the present time AS 34.77.120(b)(5) creates a presumption by stating if a parent or child of either spouse is the beneficiary of the policy then it is presumed that the non-insured spouse relinquished that spouse's interest in the policy. Under Section 3 of this bill, AS 34.77.120(b)(5)(A) expands the list of permissible beneficiaries to include the surviving spouse and any ancestor and descendant of either spouse. In addition, under AS 34.77.120(b)(5)(B), the proceeds don't have to be distributed outright to the aforementioned beneficiaries, instead the proceeds can be transferred in trust for the benefit of the aforementioned beneficiaries. Thus under a typical estate plan, at the death of the insured spouse, the proceeds can be made payable to a credit shelter trust which

comes into being at the death of the insured spouse. Typically the credit shelter trust will provide the surviving spouse a lifetime interest in the trust, but the trust assets are protected from estate tax at the death of surviving spouse because the trust is not considered owned by the surviving spouse for estate tax purposes. If instead, a portion of the proceeds were payable directly to the surviving spouse as a result of that spouse's ownership interest, that portion would be included in the surviving spouse's taxable estate. This section creates a presumption which avoids that result.

34.77.120(b)(7) works in the same way but in the context where the policy is owned an irrevocable life insurance trust established by an insured spouse. If the policy is owned and made payable to the trust at the death of the insured spouse, the proceeds can be excluded from both spouse's estates, even though the non-insured spouse might have a lifetime interest in the trust. However, to exclude the proceeds from the surviving non-insured spouse's estate, she must have relinquished any ownership interest in the assets contributed to the trust.

All Section 3 does is create a presumption whereby the life insurance policy or any assets used to purchase a policy by an irrevocable trust can be considered the separate property of the insured spouse. The issue for the surviving spouse is the insured spouse might take community funds and use the funds to purchase insurance policies which benefit individuals other than the surviving spouse. In fact if the proceeds are directed to a trust it is inevitable that individuals other than the spouse will have interest in the trust. Most trusts provide for other beneficiaries, if not in the surviving spouse's lifetime, eventually at the surviving spouse's death. Note, however under 34.77.120(b)(8), the presumption can always be overcome by the surviving spouse's own testimony. Thus this bill accomplishes a tax result that both the insured and non-insured spouse would want. If the non-insured surviving spouse did not want this tax result, then the presumption created by this section can always be overcome by that spouse's own testimony. Thus this bill is a win-win bill for all concerned.

Kindest regards,



Stephen E. Greer

cc: Rep. Lisa Murkowski- faxed: (907) 465-2293

HB

184

Amendment ^{#1} to HB 184 (L & C)
(Conceptual)

Adopted

Sec. 21.36.162 Nondisclosure of personal information. The director shall adopt regulations regarding the release of financial and health information regarding an individual who seeks to obtain, obtains, or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes. The regulations must be no less restrictive than the model regulations adopted by the National Association of Insurance Commissioners (NCOIL) Financial Information Privacy Protection Model Act, adopted by the NCOIL Executive Committee on November 17, 2000 and amended on March 2, 2001.

Insurance
Legislators

Conference of

Replaces page 43, line 15 through
page 45, line 27.

Amendment #2 to CS HB 184 (LTC)
(Conceptual)

Adopted

*Sec. X AS 21.18. is amended by adding a new section to read:

Sec. 21.18.160. Valuation of investments. For the purposes of this chapter, the value or amount of an investment acquired, held, or invested in or an investment practice engaged in under this title, unless otherwise specified in this title, must be the value at which assets of an insurer are required to be reported for accounting purposes under this title and as required under procedures prescribed in published accounting and valuation standards of the National Association of Insurance Commissioners, including the purposes and procedures manual of the securities valuation office, the valuation of securities manual, the accounting practices and procedures manual, and the annual statement instructions or valuation procedures officially adopted by the National Association of Insurance Commissioners.

*Sec. X AS 21.21.010 is repealed and reenacted to read:

Sec. 21.21.010. Scope. This chapter applies only to an investment and investment practice of a domestic insurer and a United States branch of an alien insurer entered through this state. Except as provided in AS 21.42.370(c), this chapter does not apply to separate accounts of a life insurer.

*Sec. X AS 21.21.020 (d) is amended to read:

(d) An investment limitation based upon the amount of the insurer's assets or particular funds shall relate to the assets or funds shown by the insurer's annual statement most recently required to be [AS OF THE PRECEDING DECEMBER 31, DATE OF ACQUISITION OF THE INVESTMENT BY THE INSURER, OR SHOWN BY A CURRENT FINANCIAL STATEMENT] filed with the director.

*Sec. X AS 21.21.020 is amended by adding a new section to read:

(e) Determination of compliance with limitations under this chapter shall use admitted asset values.

*Sec. X AS 21.21.255 is amended to read:

As provided under 15 U.S.C. 77r-1(b) and (c) (Secondary Mortgage Market Enhancement Act of 1984), securities that are purchased, held or invested in by an insurer shall be regulated under AS 21.18.160 [AS 21.18.150], AS 21.21 [AS 21.21.050, 21.21.260, 21.21.270], and other applicable provisions of this title.

*Sec. X AS 21.21 is amended by adding a new section to read:

Sec. 21.21.420. Regulations. The director shall adopt regulations regarding insurance company investments that are consistent with the defined limits standards for investments of the National Association of Insurance Commissioners, as amended from time to time."

*Sec. XX. AS 21.24.030(a) is amended to read:

(a) All deposits required under AS 21.09.090 for authority to transact insurance in this state shall consist of certificates of deposit [,] or any combination of rated credit instruments of the United States, Canada, or state of the United States[SECURITIES OF THE KINDS DESCRIBED IN AS 21.21.060, 21.21.080, AND 21.21.090].

* Sec. XX AS 21.87.220(b) is amended to read:

(b) AS 21.21 shall[THE FOLLOWING SECTIONS] apply to the investments of service corporations, to the extent applicable, and, for the purposes of the application, a service

corporation shall be considered to be an insurer.[: AS 21.21.020 - 21.21.050, 21.21.290, AND 21.21.300].

* Sec. XX AS 21.18.120, 21.18.130, 21.18.140, 21.18.150; 21.21.030, 21.21.040, 21.21.050, 21.21.060, 21.21.070, 21.21.080, 21.21.090, 21.21.100, 21.21.110, 21.21.120, 21.21.130, 21.21.140, 21.21.150, 21.21.160, 21.21.170, 21.21.180, 21.21.190, 21.21.200, 21.21.210, 21.21.220, 21.21.225, 21.21.230, 21.21.240, 21.21.245, 21.21.250, 21.21.260, 21.21.270, 21.21.280, 21.21.290, 21.21.300, 21.21.310, 21.21.321, 21.21.330, 21.21.350, 21.21.355, 21.21.360, 21.21.370, 21.21.380, 21.21.390, 21.21.400, 21.21.600; AS 21.87.340(7), and 21.87.340(8) are repealed.

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

TRANSITION: REGULATIONS. The director of insurance may immediately proceed to adopt regulations necessary to implement the changes made by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the statutory change.

* Sec. XX Sections XX - XX of this Act take effect January 1, 2002.

Adopted

Conceptual Amendment #3

Sunset on AS 21.36.162 (roughly three years)

This statute shall sunset on the 90th day of the next regular session two years after the effective date of the regulation

Adopted

Amendment #4 (Conceptual)

Relates back to Amendment #2

APR 28 2001

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

CERTIFICATION OF EFFECTIVE DATE OF REGULATIONS. The lieutenant governor shall certify to the revisor of statutes the effective date of the regulations initially adopted by the Director of the Division of Insurance under AS 21.21.420, to implement the provisions of sections __, __, and __ regarding investments by insurers.

* Sec. __. Sections __, __, and __ take effect 30 days after the revisor of statutes receives notice from the lieutenant governor under sec. __ of this Act.

Conceptual
AMENDMENT #5

Offered by
Coghills
Withdrawn

OFFERED IN THE HOUSE

BY REPRESENTATIVE COGHILL

TO: HB 184

1 Page 43, line 15, after "personal information."

2 Insert: "(a)"

3

4 Page 43, line ____, after "March 2, 2001"

5 Delete: "."

6 Insert: ","

7

8 Page 43, line ____

9 Insert:

10 ~~(b) unless required by federal or state law or federal regulation, disclosure of a person's~~

11 ~~personal financial or personal health information under (a) of this section must be~~

12 ~~authorized in writing by the individual whose personal information is sought to be~~

13 ~~disclosed:~~

14

15 ~~(b)~~ ^{3rd party} the person receiving disclosed information agrees in writing not to disclose or use the

16 information other than to carry out the purposes for which the ~~person~~ ^{second person} disclosed the

17 information.

18

delete

Moved
by Belkowitz
FALLS

SEC. ENFORCEMENT.

Division of Insurance

(a) STATE ENFORCEMENT- This title shall be enforced by the [redacted] and the State Attorney General with respect to financial institutions and other persons subject to their jurisdiction under applicable law, and shall make compliance with this title a part of their company examinations.

(b) STATE ACTION FOR VIOLATIONS-

(1) STATE AUTHORITY - In addition to such other remedies as are provided under State law, if the [redacted] ^{Director or the} Attorney General has reason to believe that any person has violated or is violating this title, the State--

(A) may bring an action to enjoin such violation in any court of competent jurisdiction; and

(B) may bring an action on behalf of the residents of the State to enforce compliance with such rule, to obtain damages, restitution, or other compensation on behalf of residents of such State, or to obtain such further and other relief as the court may deem appropriate.

(2) INVESTIGATORY POWERS- For purposes of bringing any action under this subsection, no provision of this subsection shall be construed as preventing the [redacted] ^{Director or the} State Attorney General from exercising the powers conferred such officials by the laws of this State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(c) PRIVATE RIGHT OF ACTION-

(1) Civil Remedies. When an ^{insurance} institution fails to comply with any provision of this title, in such a way as to have an adverse effect on an individual, the individual may bring a civil action against the ^{insurance} institution in any court of competent jurisdiction.

(2) In any suit brought under the provisions of subsection (c)(1) of this section, the court may order the financial institution to take such action as is necessary to remedy violations of this Act, including but, not limited to:

(A) Amending the individual's record in accordance with his request or in such other way as the court may direct;

(B) Enjoining the ^{insurance} institution from withholding the complainants records and order the production to the complainant of any financial institution records improperly withheld from him. In such a case the Court may examine the contents of any financial institution records in camera to determine whether the records or any portion thereof may be withheld and,

(C) Enjoining the ^{insurance} institution from transferring to any affiliate or nonaffiliated third party financial information.

(3) In any suit brought under the provisions of subsection (c)(1) of this section in which the court determines that the financial institution violated this Title, the ^{insurance} institution shall be liable to the individual in an amount equal to the sum of -

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of [redacted] 10,000; and

(B) The court may assess against the ^{insurance} institution reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph related to those claims on which the complainant has substantially prevailed.

(5) An action to enforce any liability created under this section may be brought in any court of competent jurisdiction, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where a financial institution has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the financial institution to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation.

(6) Rights of Legal Guardians. - For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(e) DEFINITIONS- The terms used in subsection (a) that are not defined in this subtitle or otherwise defined in section 3(s) of the Federal Deposit Insurance Act shall have the meaning given to them in section 1(b) of the International Banking Act of 1978.

SEC. 4. EFFECT ON FAIR CREDIT REPORTING ACT.

Nothing in this title shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act, and no inference shall be drawn on the basis of the provisions of this title regarding whether information is transaction or experience information under section 603 of such Act.

SEC. 5. RELATION TO OTHER STATE LAWS.

This title shall not be construed as superseding, altering, or affecting the statutes, regulations, orders, or interpretations in effect in this State, except to the extent that such statutes, regulations, orders, or interpretations are inconsistent with the provisions of this subtitle, and then only to the extent of the inconsistency.

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

TONY KNOWLES
GOVERNOR

HB 184

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907-465-7500
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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 9, 2001

The Honorable Brian Porter
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Porter:

I am transmitting this bill to implement needed financial service reforms in our insurance code in compliance with the federal Gramm-Leach-Bliley Act (GLBA). These changes will assist the State in maintaining its regulatory authority over the business of insurance in Alaska. The GLBA repealed depression-era restrictions on the insurance, banking, and securities industries and, more notably, removed some of the barriers that limited banks from engaging in the business of insurance.

Under the GLBA, specific standards are established with respect to consumer privacy, consumer protection, insurance producer licensing, and insurance sales. It requires states to streamline and coordinate their regulatory systems to make them faster, less burdensome, and more effective. This bill reforms our laws to conform to the GLBA and to continue the process of streamlining and coordinating insurance regulation.

Under the bill, the GLBA reforms would focus on three key areas:

- Establishing reciprocity for licensing nonresident insurance producers;
- Implementing the GLBA consumer privacy standards regarding sharing of personal information with affiliates and nonaffiliates; and
- Implementing GLBA consumer protection measures related to the sale of insurance by financial institutions.

These reforms are based on models adopted by the National Association of Insurance Commissioners (NAIC).

A significant portion of the bill would amend AS 21.27, the licensing chapter of the insurance code, to provide for reciprocity in the licensing of nonresident producers. In this context, reciprocity means that a nonresident producer would receive a license to transact insurance in this state to the same extent that the producer is licensed in the producer's home state, without

The Honorable Brian Porter
March 9, 2001
Page 2

having to satisfy any additional requirements. Licensing in this state would be accomplished by submitting an application, providing proof of licensing and good standing from the home state, and paying the license fees. Reciprocity also would allow resident producers to obtain licensing in other states without meeting state-specific requirements. All insurance producers, however, would still be subject to state-specific requirements related to unfair trade practices or consumer protection. The bill requires use of uniform applications in an electronic format to speed up insurance licensing.


The GLBA requires that at least 29 states adopt either reciprocity or uniformity in insurance producer licensing by November 2002, in order to maintain the authority to license nonresident insurance producers. Otherwise, a national organization authorized under the GLBA would assume that role. Enacting this bill into law in Alaska would achieve reciprocity and thereby help ensure the state retains the authority to license nonresident producers.

Another time-sensitive issue under the GLBA relates to consumer privacy. The federal law sets a minimum privacy standard that states must adopt and enforce by July 1, 2001, or risk losing the authority to enforce state consumer protection standards with respect to financial institution insurance sales. This bill expressly requires those regulated under our insurance statutes to comply with the GLBA privacy standards and authorizes the state director of insurance to adopt corresponding regulations on consumer privacy.

In addition to the GLBA-related reforms, the bill addresses other important issues to facilitate state insurance regulation and to conform to federal law. This includes the ability to obtain national criminal history record checks for persons who want to engage in the business of insurance. It also requires a person with a felony conviction involving dishonesty or breach of trust to obtain the express written consent of the director of insurance before engaging in the business of insurance. Without this consent, federal law prohibits such persons from working in the business of insurance. The amendment under this bill would assist the director of insurance in ensuring that prohibited persons comply with the law.

I urge your prompt and favorable action on this measure.

Sincerely,


Tony Knowles
Governor

**Sectional Analysis
HB 184**

~~Section 104~~ addresses three major sections of GLBA relating to insurance; producer licensing, consumer privacy and consumer protections in bank sales of insurance.

1. Sections 2-43 contain the needed amendments to AS 21.27 in order to achieve reciprocity in producer licensing. Title III, Subsection 321 of GLBA provides for multi-state licensing reform and directs a majority of states (a minimum of 29 jurisdictions) to achieve either uniformity or reciprocity within three years from the date of enactment of GLBA. In October 2000, the National Association of Insurance Commissioners (NAIC) adopted the Producer License Model Act (PLMA) for states to use as a guideline for developing legislation to meet the required elements of GLBA in order to achieve reciprocity.
2. Section 44 contains the provision addressing consumer privacy. Title V of GLBA establishes minimum privacy protections for consumer personal information. In September 2000, the NAIC adopted the Privacy of Consumer Financial and Health Information Regulation for states to use as a guideline in establishing privacy protections for insurance consumers.
3. Sections 44-47 and 49-50 contain the provisions addressing consumer protections in bank sales of insurance. Two sections in GLBA address consumer protections in sales of insurance by banks. Section 104 contains 13 safe harbor provisions for regulating bank sales of insurance that a state may not go beyond without risking federal preemption. However, Section 305 establishes additional consumer protections that dovetail with the 13 safe harbor provisions.

Sec. 2.

AS 21.27.010(e). License required

Narrows the license exemption for company employees who respond to requests from existing policyholders on existing policies provided the person does not sell, solicit, or negotiate insurance and their compensation is not directly related to the volume of premiums that may result from those services.

Sec. 3.

AS 21.27.010(j). License required

Expands the functions and duties a person may perform without holding an insurance license consistent with NAIC Model Law. Inserted those provisions in Section 4 of PLMA to achieve GLBA reciprocity requirements and for consistency with other states.

Sec. 4.

Sec. 21.27.020(b). Qualifications for license

Changes the minimum age and education requirements consistent with nonresident requirements that prohibit a state from requiring any additional requirements that are not required in home state to achieve GLBA reciprocity. The minimum age would be 18 and no High School or GED Diploma Equivalency would be required.

Sec. 5.

Sec. 21.27.020(c). Qualifications for license

Replaces principal or manager with compliance officer consistent with Section 6 (B)(2) in the PLMA and removes the separate subsection (2) applicable only to firms that are corporations or partnerships, thereby making some requirements applicable to all firms.

Sec. 6.

Sec. 21.27.020(f). Qualifications for license

Removes the requirement for a nonresident to meet Alaska's continuing education requirement consistent with Section 321 (c)(2) of GLBA that prohibits a state from requiring any additional requirements that are not required in home state.

Sec. 7.

Sec. 21.27.025(a) Required notice by licensee

Clarifies what actions must be reported as well as information that must be filed within an established time period for reciprocity requirements. Inserted language from Section 17 of the PLMA.

Sec. 8.

Sec. 21.27.025(b) Required notice by licensee

Replaces principal or manager with compliance officer consistent with the information required on the NAIC's Uniform Business entity application and Section 6 (B)(2) in the PLMA for reciprocity requirements.

Sec. 9.

Sec. 21.21.27.040(a). Application for license

Removes the notary requirement for consistency with the NAIC Uniform Application that does not require a notarized signature consistent with Section 321 (c)(1) of GLBA that prohibits a state from requiring any additional requirements that are not required in home state. Retains the authority to suspend or revoke a license for misrepresentation in an application.

Sec. 10.

Sec. 21.21.27.040(c). Application for license

Added to require any applicant for licensure to submit a fingerprint card for a national criminal background history check.

Sec. 11.

Sec. 21.27.060(a). Examination of Applicants; exceptions

Replaces principal or manager with compliance officer consistent with Section 6 (B)(2) in the PLMA for reciprocity requirements.

Sec. 12.

Sec. 21.27.060(c). Examination of Applicants and licensees

Removes the pre-licensing and examination requirements to be consistent with Section 321, (c)(1) of GLBA. Also allows for automated confirmation of a nonresident's license status seeking licensure in this state.

Sec. 13.

Sec. 21.27.060(d). Examination of Applicants and licensees

Changes the examination exceptions in order to be consistent with AS 21.27.150 and changes the requirement to submit passing test results for an inactive license from two years to one, consistent with Section 7(C) of PLMA.

Sec. 14.

Sec. 21.27.100. Appointment of agents of general agents

Added to allow multiple insurers within the insurer's holding company system or group to file a single appointment request to reduce paper filings, consistent with Section 14 (B) of PLMA. Also clarifies that acts of the appointed agent are acts on behalf of the appointing insurer.

Sec. 15.

Sec. 21.27.110. Term of appointment

Changes the time period from 10 to 30 days for an insurer to notify the director of termination without cause of a company appointment and from 10 to 15 days if the termination is for cause. Retains the immunity and confidentiality provisions for information received for terminations for cause. Allows the terminated person to submit written comments about the termination that will become a part of the director's file. These changes are consistent with Section 15 in PLMA and essential for uniformity.

Sec. 16.

Sec. 21.27.115. Lines of Authority

Added the definitions for major lines of authority to achieve GLBA reciprocity. Incorporated Section 7 of PLMA.

Sec. 17.

Sec. 21.27.130. Form and content of licenses

Removes listing the name of the principal or compliance officer on the license, allowing for movement into an electronic environment and giving the licensee or a third party the ability to print a license. This change is consistent with the concept of Sections 6 (B)(2) and 7 (G) in PLMA.

Sec. 18.

Sec. 21.27.130. Form and content of licenses

Added to identify the license authority issued by the director, consistent with the definition of license in Section 2 (F) in PLMA

Sec. 19.

Sec. 21.27.140(b). License to firms and corporations

Replaces principal or manager with compliance officer for reciprocity and consistency with Section 6 (B)(2) in the PLMA.

Sec. 20.

Sec. 21.27.140(c). License to firms and corporations

Replaces principal or manager with compliance officer for reciprocity and consistency with Section 6 (B)(2) in the PLMA.

Sec. 21.

Sec. 21.27.150(a). Limited licenses

Removes the residency requirements that are inconsistent with GLBA, eliminates the limited lines retired and health licenses as well as the provision that permits the director to waive the bond requirement (since AS 21.27.530(5) is repealed). Added new limited license categories that allows the director to issue a limited lines producer license to a nonresident for the same authority issued in the home state. Added credit insurance and a miscellaneous licenses that restrict authority to less than the total authority for a defined line of authority. These changes are consistent with Section 321(c) of GLBA.

Sec. 22.

Sec. 21.27.270. Licensing of nonresidents

Incorporates the principal GLBA reciprocity requirements to allow for issuance of nonresident licenses as required under Section 321(c) in GLBA. Ongoing statutory requirements, such as fiduciary account requirements for nonresidents are retained.

Additionally, the retaliatory provisions are removed in order prohibit a state from requiring a nonresident to comply with additional requirements that are not required in home state in compliance with Section 321(c) of GLBA.

Sec. 23.

Sec. 21.27.275. Alien licenses

Added to allow Canadians and other foreign residents to obtain licensure in this state.

Sec. 24.

Sec. 21.27.330. Place of business

Removes the requirements for each branch location transacting business in this state to obtain separate licenses. Separate fees for each location of the same firm will still be required. These changes comply with Section 321(c) of GLBA that prohibits a state from requiring any additional requirements that are not required in home state.

Sec. 25.

Sec. 21.27.350(c). Maintenance of records; form and content

Replaces principal or manager with compliance officer to meet reciprocity and make consistent with Section 6 (B)(2) in the PLMA.

Sec. 26.

Sec. 21.27.370. Sharing Compensation

Allows an unlicensed person to receive renewal or deferred commissions if at the time of sale, solicitation or negotiation, the person was appropriately licensed. Changes made are consistent with consumer protection (13 safe harbor) requirements and consistent with Sections 13(C) and (D) of PLMA.

Sec. 27.

Sec. 21.27.390(a). Temporary license

Replaces principal or manager with compliance officer consistent with Section 6 (B)(2) in the PLMA.

Sec. 28.

Sec. 21.27.410(b). Disqualifications for license

Replaces principal or manager with compliance officer consistent with Section 6 (B)(2) in the PLMA.

Sec. 29.

Sec. 21.27.460(c). Surrender of license

Replaces principal or manager with compliance officer consistent with Section 6 (B)(2) in the PLMA.

Sec. 30.

Sec. 21.27.540(g). Trainee Producers

Replaces principal or manager with compliance officer consistent with Section 6 (B)(2) in the PLMA.

Sec. 31.

Sec. 21.27.560(a). Appointment of Brokers

Clarifies that the fee compensation a broker receives is from the client.

Sec. 32.

Sec. 21.27.600(g). Trainee managing general agents

Replaces principal or manager with compliance officer consistent with Section 6 (B)(2) in the PLMA.

Sec. 33.

Sec. 21.27.620(l). Agency contracts

Added to clarify that the definition in 21.90.900 is applicable to insurers transacting business with a managing general agent in this state.

Sec. 34.

Sec. 21.27.640(b). Qualifications

Replaces principal or manager with compliance officer consistent with Section 6 (B)(2) in the PLMA and removes the separate subsection (4) applicable only to firms that are corporations or partnerships, making some requirements applicable to all firms.

Sec. 35.

Sec. 21.27.650(p). Requirements to transact business

Added to clarify that the definition in 21.90.900 is applicable to insurers transacting business with a third party administrator in this state.

Sec. 36.

Sec. 21.27.680(g). Trainee reinsurance brokers

Replaces principal or manager with compliance officer consistent with Section 6 (B)(2) in the PLMA.

Sec. 37.

Sec. 21.27.690(g). Requirements to transact business

Added to clarify that the definition in 21.90.900 is applicable to insurers transacting business with a reinsurance intermediary broker in this state.

Sec. 38.

Sec. 21.27.760(l). Contracts with reinsurance managers

Added to clarify that the definition in 21.90.900 is applicable to insurers transacting business with a reinsurance intermediary manager in this state.

Sec. 39.

Sec. 21.27.800(g). Trainee surplus lines brokers

Replaces principal or manager with compliance officer consistent with Section 6 (B)(2) in the PLMA.

Sec. 40.

Sec. 21.27.840(f). Trainee independent adjusters

Replaces principal or manager with compliance officer consistent with Section 6 (B)(2) in the PLMA.

Sec. 41.

Sec. 21.27.840(i). Trainee independent adjusters

Replaces principal or manager with compliance officer consistent with Section 6 (B)(2) in the PLMA.

Sec. 42.

Sec. 21.27.900. Definitions

Removes the requirement that an individual may not represent a firm or work in association with another licensee without having to obtain a firm license or individual working in a firm license.

This is necessary to meet the reciprocity requirements in Section 321 (c) of GLBA.

Sec. 43.

Sec. 21.27.900. Definitions

Adds new definitions for compliance officer, home state, license, limited lines credit insurance, limited lines insurance, negotiate, sells, solicit, transact, Uniform application and Uniform Business Entity Application for GLBA reciprocity requirements under Section 321 of GLBA and consistent with Section 2 of PLMA.

Sec. 44.

Sec. 21.36.162. Nondisclosure of personal information

Adds new provisions to AS 21.36 to give the director authority to adopt regulations in Alaska consistent with but no less restrictive than the NAIC "Privacy of Consumer Financial and Health Insurance Regulation" which was adopted by the NAIC on September 26, 2000. This NAIC model establishes separate standards for financial information and health information as follows:

Financial information

Insurers and licensees are required to provide notices to consumers describing their financial information privacy policies and to provide consumers with an opportunity to prohibit the sharing of their personal financial information, which means that if a consumer does not affirmatively say they do not want the information disclosed, insurers and licensees may disclose the information (called an opt-out requirement). Information sharing among affiliates is not restricted.

Health information

Protected health information can not be disclosed without the prior consent of the consumer, which means an insurer or licensee must get explicit permission from the consumer before they can disclose the protected health information (called an opt-in requirement). However, several specific exceptions to this requirement are allowed in order for insurers to be able to perform their day to day operations. Unlike the financial information privacy requirements, insurers are not required to provide notices to consumers describing their health information privacy policies and the model provisions do not apply to insurers who are in compliance with the DHHS privacy regulations under HIPAA, which will become effective in late 2002. Sharing of health information among both affiliates and non-affiliates is restricted. Unlike for financial information, sharing among affiliates is restricted because of the expected sharing of information among banks, securities firms and insurers that are now allowed to affiliate with each other.

Enhanced protection of health information is essential due to the greater sensitivity of health information and the much larger volume of health information compared with financial information collected by insurers and licensees.

Sec. 21.36.164. Licensing of persons in a financial institution

Implements GLBA Section 305, Sec 47 (d)(2)(C), which prohibits a financial institution from allowing a person to sell or offer an insurance product in the office of the institution if the person is not properly licensed.

Sec. 45.

Sec. 21.36.165. Anticoercion and antitying.

Amended to be consistent with and incorporate additional provisions relating to GLBA Section 104 safe harbor provisions 1-2, 6-8, 11-13 as well as GLBA Section 305, Sec 47 (b) antitying and anticoercion provisions.

Modifies existing statutory provision regarding confidentiality of information to allow sharing of consumer information with an unaffiliated party only with consent of consumer and establishes certain specified exceptions to this rule.

Sec. 46.

Adds provisions to AS 21.36.165 to require that a person use separate documents for transacting insurance, to prohibit a person from including insurance premiums in the credit transaction without consent, and to require that separate records relating to insurance be maintained.

Sec. 47.

Sec. 21.36.167. Misrepresentation in financial institution sales

21.36.167(1), (3), (4) implement 14.30(b)(1)-(3) of the federal regulations implementing Section 305, Sec 47(a). These provisions prohibit a person from using an advertisement or engaging in any practice that would lead a customer to believe that

- (1) the insurance is backed by, or a return on the insurance is guaranteed by, the person responsible for the advertisement or practice, state or federal government, or the FDIC
 - (2) the insurance does not contain investment risk, that principal may not be lost, or value may not decline, if in fact the insurance does contain investment risk
 - (3) lending of money, extending credit or renewing a loan is conditioned on the customer purchasing insurance from the person or that insurance may not be purchased elsewhere
- 21.36.167(2) implements Section 104, safe harbor 3, which prohibits a person from using an advertisement or engaging in any practice that would lead a customer to believe that state or federal government will pay a claim under the insurance contract, is responsible for insurance sales activity of the person, or guarantees the credit of the person.

Sec. 21.36.168. Disclosures required in financial institution sales

Implements GLBA Section 305, Sec 47 (c) and Section 104 safe harbors 9 and 10, which require certain disclosures be provided in a meaningful form to consumers at or before the initial purchase of an insurance product. The disclosures must be provided both orally and in writing and may be provided electronically. A person transacting insurance must disclose to the consumer that:

- (1) the insurance is not a deposit or other obligation of the person
- (2) the insurance is not guaranteed by the person or the person soliciting the insurance
- (3) the insurance is not insured by the FDIC, another government agency, the financial institution or the person
- (4) the insurance contains investment risk and may lose value, if the insurance does contain investment risk
- (5) the consumer is not required to purchase insurance through a particular insurer as a condition to the extension of credit

Sec. 21.36.169. Definitions

"Consumer" is defined in the federal regulations 14.20(c)

"Financial institution" is defined to be consistent with the definition in IIAA model, which expands applicability of the consumer protections beyond depository institutions.

Sec. 48.

Sec. 21.36.355. Felony convictions involving dishonesty or breach of trust.

Adds a provision that a person with a felony conviction involving dishonesty or breach of trust may not transact insurance without receiving prior written consent by the director as is currently required under federal law.

Sec. 49. and 50.

Sec. 21.36.430. Insurance for domestic violence victims; records

Expands existing provision to be consistent with GLBA Section 305(e) including a definition of domestic violence.

Sec. 51.

Sec. 21.89.080. Electronic submissions.

Adds a provision to remove barriers to electronic submissions of information and electronic confirmation of submissions.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 184
 (H) Publish Date: 3/14/01

Revision Date/Time (Note if correction): 02/21/2001 12:10p.m. Dept. Affected: DCED
 Title: Gram-Leach-Bliley Act & Other Insurance BRU: Insurance Operations
 Component: Insurance Operations
 Sponsor: Rules Committee
 Requester: Governor Component Number: 354

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill has no fiscal impact on this component. It is covered by funds currently appropriated to the division in the operating budget.

Prepared by: Robert A. Lohr, Director Phone 907-269-7900
 Division: Insurance Date/Time 02/21/2001 12:10p.m.
 Approved by: Commissioner Deborah B. Sedwick Date 2/21/2001
 Agency: Department of Community & Economic Development

For distribution information, call the Governor's Legislative Office

Privacy Standards

The privacy provisions in both insurance bills (SB 138 and CS SB 138 (L&C) Work Draft) establish minimum privacy standards for insurance companies and would allow the director to adopt standards that provide greater privacy protections for consumers. This is consistent with the federal Gramm-Leach-Bliley Act (GLBA) privacy standards, which explicitly allows states to adopt privacy standards that provide greater protection to consumers' privacy. The privacy provisions in both banking bills (SB 66 and CS SB 66 (L&C)) directly set privacy standards for other financial institutions.

The following compares insurance and banking privacy provisions in the originally introduced bills and in the current version of the bills:

	<u>Financial</u>	<u>Health</u>
<u>Current Bills</u>		
Banking - CS SB 66 (L&C)	Opt-out	Opt-out
Insurance - CS SB 138 (L&C)	Opt-out	Opt-out
<u>Bills Originally Introduced</u>		
Banking - SB 66	Opt-in	None
Insurance - SB 138	Opt-out	Opt-in

Current banking law sets an opt-in standard for sharing financial information. Current insurance law does not restrict sharing of consumer information.¹

Explanation of Terms

Opt-Out: means your information may be shared with others unless you state otherwise.

Opt-In: means your information may not be shared with others unless you give written permission.

Insurance Financial Information: Examples include how much premium you pay, value of your home, your name, address, phone number, birth date, occupation, income, credit information, claims made against your policy, driving history, vehicle identification and features, vehicle citations, amounts of coverage.

Insurance Health Information: Examples include medical and mental health records, payment records that indicate what type of doctors you see, types of medications you take, types of treatments you receive, your height and weight, whether you use tobacco.

Banking Financial Information: Examples include income, details on all your assets and liabilities, credit information, where and on what you spend money.

¹However, HB211 was adopted last year and will become effective 7/1/2001. It restricts sharing of financial and health information, but only for health insurers who sell managed care plans in the state. HB 211 disallows any sharing of financial information and sets an opt-in standard for sharing health information.



**Department of Community
and Economic Development**

Division of Insurance

P.O. Box 110805, Juneau, AK 99811-0805

Telephone: (907) 465-2515 • Fax: (907) 465-3422 • Text Telephone: (907) 465-5437

Email: Insurance@dced.state.ak.us • Website: www.dced.state.ak.us/insurance/

March 14, 2001

The Honorable Lisa Murkowski
Chair
House Labor & Commerce Committee
State Capitol, Room 408
Juneau, AK 99801-1182

Dear Madam Chair:

RE: HB 184 "An Act relating to the business of insurance, including changes to the insurance code to implement federal financial services reforms for the business of insurance and to authorize the director of insurance to review criminal backgrounds for individuals applying to engage in the business of insurance; amending Rule 402, Alaska Rules of Evidence; and providing for an effective date."

On March 13, 2001, HB 184 was introduced by the Rules Committee at the request of Governor Knowles. It has been referred to your committee with a zero fiscal note.

Under this bill, significant changes would be made to the insurance code, AS 21, to accomplish insurance reforms necessitated by the federal Gramm-Leach-Bliley Act (GLBA) enacted in 1999. Under GLBA, specific standards are established for producer licensing, consumer privacy, consumer protections, and insurance sales. State authority to regulate insurance is affirmed by this new federal law. However, federal law may preempt that authority if states fail to regulate insurance in a manner that is at least consistent with GLBA, or if the states regulate in a manner that prevents or significantly interferes with the ability of a bank or bank affiliate to engage in insurance sales. GLBA requires states to streamline and coordinate their regulatory systems to make them faster, less burdensome and more effective. Enacting this bill into law will accomplish reforms consistent with GLBA and will continue the process of streamlining and coordinating insurance regulation.

One important goal of this bill is to amend AS 21.27, the licensing chapter of the insurance code, to provide for reciprocity in the licensing of nonresidents. This will avoid the forced creation of a national licensing organization authorized under GLBA that would take over licensing authority from the

March 14, 2001

states. It also addresses time-sensitive issues relating to consumer privacy and financial institution sales of insurance. GLBA establishes minimum privacy standard that a state must adopt. If a state fails to adopt minimum privacy standards consistent with the GLBA standards, the state risks losing their authority to enforce state consumer protection standards with respect to financial institution insurance sales.

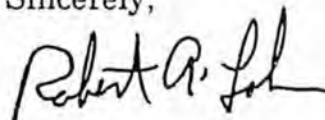
In addition to addressing the federal GLBA requirements, the bill also makes changes necessary to conform with federal laws and provides some regulatory simplifications.

Examples include provisions to:

- enable the division to obtain national criminal history record checks for any person who wants to engage in the business of insurance;
- require a person with a felony conviction involving dishonesty and breach of trust to obtain the express written consent of the director of insurance before engaging in the business of insurance, as required by and consistent with 18 U.S.C. 1033 and 1034 (Violent Crime Control and Law Enforcement Act of 1994);
- removes the current statutory requirement that an insurance firm with many branch offices license each branch office separately;
- allows multiple insurers within the insurer's holding company system or group to file a single company appointment request;
- give authority to the director to provide for the electronic submission of information and for electronic confirmation of a requested submission.

I respectfully request you to schedule HB 184 for hearing in your committee, and urge your favorable action on this bill. The Division of Insurance would be happy to meet with you and other members of the committee to brief you on the bill, and to provide any other information you may require. Thank you for considering this request.

Sincerely,



Robert A. Lohr
Director

*Dept. of Community & Economic
Development
Alaska Division of Insurance*

HB 184

**Deborah Sedwick,
Commissioner**

**Robert A. Lohr,
Director**



Mission

The Alaska Division of Insurance:

- Protects and serves the state by regulating all aspects of insurance in Alaska
- Protects and educates the consumer and enhances the insurance business environment

Gramm-Leach-Bliley Financial Services Modernization Act (GLBA)

- The Act breaks down barriers among banking, insurance and securities industries by repealing the Glass-Steagall Act, re-writing federal banking laws, and establishing a framework covering the responsibilities of federal and state regulators
- State insurance regulators' primary goal is to protect insurance consumers by taking a proactive and flexible approach to regulation

Gramm-Leach-Bliley Financial Services Modernization Act (GLBA)

- State regulators must streamline processes and become more efficient in the highly competitive world economic environment
- State regulators must work cooperatively with other state officials, federal officials, consumers and interested parties
- Simplify producer licensing, protect the privacy of consumers information and protect consumers who purchase insurance through banks

Producer Licensing

National Association of Registered Agents and Brokers (NARAB) will be enacted by November 2002, if at least 29 states do not achieve either uniformity or reciprocity for nonresident agents and brokers.

NAIC Producer Licensing Model

In October 2000, the National Association of Insurance Commissioners (NAIC) adopted the Producer License Model Act (PLMA) for states to use as a guideline for developing legislation to meet the reciprocity elements of GLBA and move toward uniformity.

Alaska Licensees

- Over 10,700 licensees
 - 2,900 residents
 - 7,800 nonresidents

• Since 1998, the Division has seen a 38% increase in the number of nonresident licensees while the trend for resident licensees has remained constant.

Producer Licensing Provisions

- Based on the NAIC Model with goal of achieving reciprocity and moving towards Uniformity
- Give licenses on a reciprocal basis, which means a nonresident applicant may receive a license upon request for licensure and payment of fee, if producer is licensed and in good standing in home state
- Issue a nonresident license for the same authority granted in the home state
- Accept home state's continuing education requirement

Producer Licensing ProvisionsContinued

- Eliminate any retaliatory provisions
- Remove all discriminatory requirements based on place of residency or operations
- Accept the National Uniform License Application

Benefits of Enacting the Producer Licensing Provisions

- Streamlined license process and elimination of duplicative requirements for licensure
- Greater efficiency and cost savings
- No retaliatory fee requirements
- Level playing field
- Collaborative effort to identify rogue agents

Alaska's Constitutional Right to Privacy

Article I, Section 22 states “The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.”

Consumer Privacy Provisions

Confirms the Director of Insurance's authority to adopt privacy standards that are consistent with, but no less restrictive, than the NAIC model regulation.

Summary of NAIC Privacy Model

- Protected information is: personally identifiable financial or health information
- Standards for protected financial information are consistent with GLBA (Opt-out)
- Enhanced standards for protected health information (Opt-in)

Protected Financial Information Standards

- “Opt-out” standard which means insurers may share protected financial information unless the consumer affirmatively says they do not want the information shared
- Insurers must provide notices to consumers describing their privacy policies
- Protected financial information may be shared among affiliates without restriction

Protected Health Information Standards

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

Protected Health Information Standards...continued

- Standards do not apply to insurers who are in compliance with the U.S. DHHS regulations implementing HIPAA (effective 2002)
- Sharing among both affiliates and non-affiliates is restricted

Why have stronger privacy standards for health information?

- GLBA standard is geared toward banks and securities firms not the insurance industry
- Much larger volume of health information
- Greater sensitivity of health information compared to financial information
- Greater sharing of information among banks, securities firms and insurers who are now, with passage of GLBA, allowed to affiliate

Why adopt the NAIC Privacy Model?

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

Consumer Protections in Financial Institution Sales of Insurance

- Establishes consumer protection standards consistent with Section 104 (often referred to as the “13 safe harbors”) and 305 of GLBA
- Expands applicability beyond depository institutions as provided in GLBA to all financial institutions that may transact insurance in Alaska
- Four major areas of protection relating to licensing, misrepresentations, disclosure, anti-tying and anti-coercion

Why adopt consumer protections in financial institution sales of insurance?

- Provides important protections to Alaskans that may purchase insurance through a financial institution
- Avoids possible federal preemption and enforcement of these protections in Alaska
- Makes a strong statement that state regulation of insurance can work effectively to protect consumers, while allowing the insurance industry to remain competitive in a changing financial services marketplace

Two Other GLBA-Related Provisions

- Requires that a person with a felony conviction involving dishonesty or breach of trust obtain consent of director before transacting insurance as required by Federal Law (1033 and 1034)
- Removes barriers in current law to allow for electronic submissions

APR 26 2001

Subject: HB 184

Date: Thu, 26 Apr 2001 11:19:47 -0700

From: akpirg <akpirg@akpirg.org>

To: Representative_Norman_Rokeberg@legis.state.ak.us

RE: HB 184

Dear Representative Rokeberg:

The House Judiciary is considering HB 184 today and AkPIRG is concerned about the implications of this legislation in its relation to consumers. AkPIRG has consistently advocated for an "opt-in" provision rather than the "opt-out" mechanism that insurance and financial institutions are using to share personal information about consumers with other institutions.

This bill was amended to apply such an "opt-in" standard but it is now only a watered-down version of opt-in and isn't an opt-in at all. Information, particularly financial information, can be still be shared and consumer rights are not being protected.

In addition, this bill needs to include a private right of action. This private right of action would empower consumers to move as individual policy holders to file grievances against insurance companies.

Consumers are facing an increasingly complex and consolidated line-up of financial and related services. They need strong protection to ensure that their rights are safe-guarded.

Thank you for your time.
Sincerely,

Steve Cleary
AkPIRG - Alaska Public Interest Research Group

HB

187

ALASKA STATE LEGISLATURE
House of Representatives

Committee Assignments:

Judiciary Committee, Chairman
Labor & Commerce Committee, Member
Legislative Council, Member
Special Committees:
Economic Development, Member



Interim:

716 West 4th Avenue, Suite 350
Anchorage, AK 99501
PHONE: (907) 269-0117
FAX: (907) 269-0119

SESSION:

State Capitol
PHONE: (907) 465-4968
FAX: (907) 465-2040

REPRESENTATIVE NORMAN ROKEBERG

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us

FAX COVER SHEET

DATE: 4.9.01

TO: Legal Services

FAX: 2029 VOICE: _____

RE: 22 - LSD2Ed61C

MESSAGE: Please create a House Judiciary CS (final)

for HB 187 w/ the following amendment

Page 2, Line 18

after "law"

insert " or state permit"

Heather x4990

TOTAL NUMBER OF PAGES SENT, INCLUDING COVER SHEET: 1

Alaska State Legislature

Representative Jim Whitaker
House of Representatives
District 31



Session
Capitol Building, Room 411
Juneau, Alaska 99801
Phone: (907) 465-3004
Fax: (907) 465-2070

Interim
119 N. Cushman St. Suite 213
Fairbanks, AK 99701
Phone: (907) 452-1088
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SPONSOR STATEMENT **House Bill 187**

House Bill 187 is an act relating to the destruction, desecration, and vandalism of cemeteries and graves.

From Southeast Alaska to the Arctic Coast, Alaskans from many different regions have ways of celebrating the lives of loved ones lost. Currently under statute, there are few protections of cemeteries and memorials of past and present generations.

Implementing HB 187 will make the knowing vandalism or theft of items from a cemetery, tomb, or memorial, a Class C Felony punishable by up to five years and Fifty Thousand Dollars.

Summary: HB 187

Vandalism of Cemeteries and Graves

Under current Alaska Statutes, there are no provisions relating specifically to the vandalism or desecration of modern cemeteries and memorials. One legal opinion is that they are protected under the "Historic Preservation Act", however, persons charged with the maintenance and care of cemeteries are unconvinced that AS 41.35.200 provides for the penalties necessary to protect the safety and dignity of Alaska's cemeteries and memorials from theft, vandalism, or other forms of desecration.

Acts of vandalism are currently punishable under statutes that relate to criminal mischief, however the degree of crime centers around monetary value of the damage and do not recognize the personal insult and emotional injury to a family, community or tribe that is suffered when cemeteries, burial sites or memorials are vandalized.

House Bill 187 clearly states that it is a crime of criminal mischief in the second degree if a person "defaces, damages, or desecrates a cemetery or the contents of a cemetery or a tomb, grave, or memorial regardless of whether the tomb, grave, or memorial is in a cemetery or.....appears to be abandoned, lost or neglected.

The bill also inserts language into statute making it a crime of criminal mischief in the second degree if a person, "removes human remains or associated burial artifacts from a cemetery, tomb, grave or memorial".

Recognizing that there may be circumstances where memorials, tombs or gravesites must be altered, moved or removed, HB 187 places into statute an affirmative defense if the defendant is an employee of the cemetery acting on behalf of the cemetery or; is otherwise authorized by law to engage in the conduct.

Finally, HB 187 defines "contents of a cemetery", "memorial", and "tomb".

Currently, a violation of AS 41.35.200 is a "class A misdemeanor", and if convicted, the person faces a penalty of up to \$5,000.00 fine and one year in prison. With the passage of HB 187, these crimes may be prosecuted as a "class C felony" punishable by a fine of \$50,000.00 and up to 5 years in prison.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 187
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act relating to the destruction, desecration, BRU Criminal Division
and vandalism of cemeteries and graves." Component 1st-4th Judicial Districts
 Sponsor Representative Whitaker
 Requester House Judiciary Committee Component No. 2198-99;2201;61;79

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 187 raises to a class C felony the crimes of defacing, damaging, or desecrating a cemetery or its contents, a tomb, grave, or memorial, or for removing human remains or associated burial artifacts, whether or not the cemetery, tomb, grave, or memorial appears to be abandoned, lost, or neglected. Under current law, these actions are a class A misdemeanor.

The Department of Law does not anticipate a fiscal impact from passage of this legislation. While the prosecution of felonies is much more time and resource intensive than the prosecution of misdemeanors, this crime is relatively uncommon and the department believes it can handle the volume of new felony prosecutions this bill might generate with existing staff.

Prepared by: Joan M. Kasson Phone 465-5370
 Division: Attorney General's Office Date/Time 4/6/01 4:36 PM
 Approved by: Bob Meiners for Bruce M. Botelho, Attorney General Date 4/6/01
 Agency: Department of Law

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 187
 () Publish Date: _____
 Dept. Affected: Administration
 BRU: Legal & Advocacy Svc.
 Component: Public Defender Agency
 Component Number: 1631

Revision Date/Time (Note if correction): _____
 Title: "An Act relating to vandalism of cemetaries
and graves..."
 Sponsor: Representative Whitaker
 Requester: (H) Judiciary

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

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)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

See Page 2 for Analysis.

Prepared by: Barbara Brink, Director Phone (907) 334-4414
 Division: Public Defender Agency Date/Time April 6, 2001
 Approved by: Jim Duncan, Commissioner Date 4/6/01
 Agency: Department of Administration

For distribution information, call the Governor's Legislative Office

H3 187 Vandalism of Cemeteries and Graves – Fiscal Note Analysis

This bill would make it a felony-level offense to deface, damage, or desecrate a cemetery, tomb, grave, or memorial. The offense would apply even if the cemetery appears to be abandoned. Removing human remains or artifacts would also be illegal.

This bill would have some fiscal impact on the Public Defender Agency. Because this bill covers a broad range of activity and is a felony-level offense, the impact may be substantial. However, there is no way to know how many cases would be brought. Therefore, the Public Defender Agency's is submitting an indeterminate fiscal note.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

BILL NO. HB 187

Revision Date/Time (Note if correction) _____ Dept. Affected _____
 Title Vandalism of Cemeteries and Graves BRU Alaska Court System
 Component Trial Courts
 Sponsor Representative Whitakar
 Requester House Judiciary Component No. 768

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of HB 187.

Prepared by: Douglas Wooliver Phone 463-4750
 Division Alaska Court System Date/Time 4/06/01 2:30 p.m.
 Approved by: Stephanie Cole Date _____
 Agency Alaska Court System

For distribution information, call the Governor's Legislative Office

Chapter 12.55. SENTENCING AND PROBATION

Sec. 12.55.035. Fines.

(a) Except as provided in AS 12.55.036 , upon conviction of an offense, a defendant **may be sentenced to pay a fine** as authorized in this section or as otherwise authorized by law.

(2) **\$50,000** for a class A, B, or C felony;

Sec. 12.55.125. Sentences of imprisonment for felonies

(e) A defendant convicted of a **class C felony** may be sentenced to a definite term of imprisonment of **not more than five years**, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a second felony conviction, two years;

(2) if the offense is a third felony conviction, three years.

Current Statutes

Sec. 41.35.200. Unlawful acts.

Alaska Historic Preservation Act

(a) A person may not appropriate, excavate, remove, injure, or destroy, without a permit from the commissioner, any historic, prehistoric, or archeological resources of the state.

(b) A person may not possess, sell, buy, or transport within the state, or offer to sell, buy, or transport within the state, historic, prehistoric, or archeological resources taken or acquired in violation of this section or 16 U.S.C. 433.

(c) A person may not unlawfully destroy, mutilate, deface, injure, remove, or excavate a gravesite or a tomb, monument, gravestone, or other structure or object at a gravesite, even though the gravesite appears to be abandoned, lost, or neglected.

(d) An historic, prehistoric or archeological resource that is taken in violation of this section shall be seized by any person designated in AS 41.35.220 wherever found and at any time. Objects seized may be disposed of as the commissioner determines by deposit in the proper public depository.

Sec. 41.35.210. Criminal penalties.

A person who is convicted of violating a provision of AS 41.35.010 - 41.35.240 is guilty of a class A misdemeanor.

Sec. 41.35.215. Civil penalties.

In addition to other penalties and remedies provided by law, a person who violates a provision of AS 41.35.010 - 41.35.240 is subject to a maximum civil penalty of \$100,000 for each violation.

Sec. 12.55.135. Sentences of imprisonment for misdemeanors.

(a) A defendant convicted of a class A misdemeanor may be sentenced to a definite term of imprisonment of not more than one year.

Sec. 12.55.035. Fines.

(a) Except as provided in AS 12.55.036, upon conviction of an offense, a defendant may be sentenced to pay a fine as authorized in this section or as otherwise authorized by law.

(b) Except as provided in AS 12.55.036, upon conviction of an offense, a defendant who is not an organization may be sentenced to pay, unless otherwise specified in the provision of law defining the offense, a fine of no more than

(1) \$75,000 for murder in the first or second degree, attempted murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree;

(2) \$50,000 for a class A, B, or C felony;

(3) \$5,000 for a class A misdemeanor;

Chapter 41.35. HISTORIC PRESERVATION

Article 01. ALASKA HISTORIC PRESERVATION ACT

Sec. 41.35.010. Declaration of policy.

It is the policy of the state to preserve and protect the historic, prehistoric, and archeological resources of Alaska from loss, desecration, and destruction so that the scientific, historic, and cultural heritage embodied in these resources may pass undiminished to future generations. To this end, the legislature finds and declares that the historic, prehistoric, and archeological resources of the state are properly the subject of concerted and coordinated efforts exercised on behalf of the general welfare of the public in order that these resources may be located, preserved, studied, exhibited, and evaluated.

Sec. 41.35.020. Title to historic, prehistoric, and archeological resources; local display.

(a) The state reserves to itself title to all historic, prehistoric, and archeological resources situated on land owned or controlled by the state, including tideland and submerged land, and reserves to itself the exclusive right of field archeology on state-owned or controlled land. However, nothing in AS 41.35.010 - 41.35.240 diminishes the cultural rights and responsibilities of persons of aboriginal descent or infringes upon their right of possession and use of those resources that may be considered of historic, prehistoric, or archeological value.

(b) Although title to historic, prehistoric, and archeological resources is in the state, local cultural groups may obtain from the state, or retain, for study or display, artifacts and other items of these resources from their respective cultures or areas if the commission created in AS 41.35.300 finds that

(1) the group has a durable building with weatherproof and fireproof construction and humidity control and other factors necessary to serve as a museum which will assure safe preservation of the items, (2) the item sought to be obtained is not one for which there is an undue risk of damage during transportation, and (3) the item sought to be obtained or retained is not one requiring special treatment or care beyond the ability or means of the group requesting it. A group retaining such an item or obtaining one from the state shall house it in the museum building and shall make every reasonable effort to assure its safe preservation. If the commission finds that a local cultural group is not properly taking care of an item the group shall return it to the department.

Sec. 41.35.030. Designation of monuments and historic sites.

Upon the recommendation of the commission, the governor may declare by public order any particular historic, prehistoric, or archeological structure, deposit, site, or