

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 149

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY SENATOR GUESS

Introduced: 3/31/05

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to breaches of security involving personal information, consumer
2 report security freezes, consumer credit monitoring, protection of social security
3 numbers, disposal of records, factual declarations of innocence after identity theft,
4 furnishing consumer credit header information, and filing police reports regarding
5 identity theft; and amending Rule 60, Alaska Rules of Civil Procedure."

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

7 * **Section 1.** AS 45 is amended by adding a new chapter to read:

8 **Chapter 48. Personal Information Protection Act.**

9 **Article 1. Breach of Security Involving Personal Information.**

10 **Sec. 45.48.010. Disclosure of breach of security.** (a) If a person owns or
11 uses personal information that includes personal information on a state resident, and a
12 breach of the security of the information system containing the personal information
13 occurs, the person shall, after discovering or being notified of the breach, disclose the

1 breach to the state resident, whether or not the personal information has or has not
2 been accessed by an unauthorized third party for legal or illegal purposes.

3 (b) An information collector shall make the disclosure required by (a) of this
4 section in the most expedient time possible and without unreasonable delay, except as
5 provided in AS 45.48.020 and as necessary to determine the scope of the breach and
6 restore the reasonable integrity of the information system.

7 **Sec. 45.48.020. Notification of law enforcement.** An information collector
8 may delay making the disclosures required by AS 45.48.010 if the Department of Law
9 determines that the disclosures may compromise an investigation by the Department
10 of Law. If the disclosures are delayed under this section, the information collector
11 shall make the disclosures after the Department of Law determines that making the
12 disclosures would not compromise an investigation.

13 **Sec. 45.48.030. Methods of notice.** An information collector shall make the
14 disclosure required by AS 45.48.010

15 (1) by a written document;

16 (2) by electronic means if making the disclosure by the electronic
17 means is consistent with the provisions regarding electronic records and signatures
18 required for notices legally required to be in writing under 15 U.S.C. 7001 et seq.
19 (Electronic Signatures in Global and National Commerce Act); or

20 (3) if the information collector demonstrates that the cost of providing
21 notice would exceed \$250,000, that the affected class of state residents to be notified
22 exceeds 500,000, or that the information collector does not have sufficient contact
23 information to provide notice, by

24 (A) electronic mail if the information collector has an
25 electronic mail address for the state resident;

26 (B) conspicuously posting the disclosure on the Internet
27 website of the information collector if the information collector maintains an
28 Internet site; and

29 (C) providing a notice to major statewide media.

30 **Sec. 45.48.040. Exception for employees and agents.** In AS 45.48.010 -
31 45.48.090, the good faith acquisition of personal information by an employee or agent

1 of an information collector for a legitimate purpose of the information collector is not
 2 a breach of the security of the information system if the employee or agent does not
 3 use the personal information for a purpose unrelated to a legitimate purpose of the
 4 information collector and does not make further unauthorized disclosure of the
 5 personal information.

6 **Sec. 45.48.050. Waivers.** A waiver of AS 45.48.010 - 45.48.090 is void and
 7 unenforceable.

8 **Sec. 45.48.060. Violations.** (a) If an information collector violates
 9 AS 45.48.010 - 45.48.090 with regard to the personal information of an individual, the
 10 individual may bring a civil action in court to

11 (1) recover the damages suffered by the state resident;

12 (2) enjoin from further violations of AS 45.48.010 - 45.48.090 an
 13 information collector who engages in business and the security breach occurred to the
 14 personal information used or owned by the information collector in the business.

15 (b) The rights and remedies available under this section are in addition to any
 16 other rights and remedies available under another law.

17 **Sec. 45.48.070. Minimum contacts.** An information collector is subject to
 18 AS 45.48.010 - 45.48.090 if the information collector engages in activities that
 19 provide at least the minimum contacts required by substantive due process for the state
 20 to exercise jurisdiction over the information collector.

21 **Sec. 45.48.090. Definitions.** In AS 45.48.010 - 45.48.090,

22 (1) "breach of the security" means unauthorized acquisition of personal
 23 information that compromises the security, confidentiality, or integrity of the personal
 24 information maintained by the information collector; in this paragraph, "acquisition"
 25 includes acquisition by photocopying, facsimile, or other paper-based method;

26 (2) "information collector" means a person who owns or uses personal
 27 information in any form if the personal information includes personal information on a
 28 state resident;

29 (3) "personal information" means information in any form on an
 30 individual, other than, if applicable, the information collector, that is not lawfully
 31 available to the general public from federal, state, or local government records and that

1 consists of

2 (A) a combination of an individual's first name or first initial,
3 the individual's last name, and one or more of the following information
4 elements, when the name or the information elements are not encrypted or
5 redacted:

6 (i) the individual's social security number;

7 (ii) the number of the individual's driver's license or
8 state identification card;

9 (iii) the individual's account number, credit card
10 account number or debit card account number if the number does not
11 require additional identifying information, access codes, or passwords
12 for use;

13 (iv) account passwords or personal identification
14 numbers or other access codes;

15 (B) an item listed in (A)(i) - (iv) of this paragraph if the item
16 would be sufficient to engage in or attempt to engage in the theft of an
17 individual's identity.

18 **Article 2. Consumer Report Security Freeze.**

19 **Sec. 45.48.100. Security freeze authorized.** A consumer may prohibit a
20 consumer reporting agency from releasing all or a part of the consumer's consumer
21 report or information derived from the consumer report without the express
22 authorization of the consumer by placing a security freeze on the consumer's consumer
23 report.

24 **Sec. 45.48.110. Placement of security freeze.** (a) To place a security freeze,
25 a consumer shall make the request to the consumer reporting agency

26 (1) by certified mail;

27 (2) by telephone if the consumer provides the consumer reporting
28 agency with certain personal identification; or

29 (3) through a secure electronic mail connection if the consumer
30 reporting agency makes a secure electronic mail connection available to the consumer.

31 (b) A consumer reporting agency shall place a security freeze within five

1 business days after receiving a request under (a)(1) or (2) of this section and within
2 three business days after receiving a request under (a)(3) of this section.

3 **Sec. 45.48.120. Confirmation of security freeze.** (a) Within five business
4 days after a consumer makes the request under AS 45.48.110, a consumer reporting
5 agency shall send a written confirmation of the placement of the security freeze to the
6 consumer.

7 (b) At the same time that the consumer reporting agency sends a confirmation
8 under (a) of this section, the consumer reporting agency shall provide the consumer
9 with a unique personal identification number or password to be used by the consumer
10 when the consumer authorizes the release of the consumer's consumer report or
11 information derived from the report under AS 45.48.130.

12 **Sec. 45.48.130. Access and actions during security freeze.** (a) While a
13 security freeze is in place, a consumer reporting agency shall allow a third party access
14 to a consumer's consumer report or information derived from the consumer report if
15 the consumer requests that the consumer reporting agency allow the access.

16 (b) To make a request under (a) of this section, the consumer shall contact the
17 consumer reporting agency by telephone, certified mail, or secure electronic mail
18 connection, authorize the consumer reporting agency to allow the access, and provide
19 the consumer reporting agency with

20 (1) proper identification to verify the consumer's identity;

21 (2) the unique personal identification number or password provided
22 under AS 45.48.120(b); and

23 (3) the proper information necessary to identify the third party to
24 whom the consumer reporting agency may allow the access or the time period during
25 which the consumer reporting agency may allow the access to third parties who
26 request the access.

27 (c) A consumer reporting agency that receives a request from a consumer
28 under (b) of this section shall comply with the request within three business days after
29 receiving the request.

30 (d) If a security freeze is in place, a consumer reporting agency may not
31 release the consumer report or information derived from the consumer report to a third

1 party without the prior express authorization of the consumer.

2 (e) If a security freeze is in place on a consumer's consumer report and
 3 information derived from the consumer report and if a third party applies to a
 4 consumer reporting agency to provide the third party with access to the consumer's
 5 consumer report or information derived from the consumer report, the consumer
 6 reporting agency may treat the third party's application as incomplete unless the
 7 consumer authorizes the access under (a) of this section.

8 (f) A consumer reporting agency shall notify a consumer that a third party has
 9 attempted to access the consumer's consumer report or information derived from the
 10 report if a third party requests a consumer reporting agency to provide the third party
 11 with access to the consumer report or information, a security freeze has been placed,
 12 and the purpose of the access is not for the sole purpose of account review.

13 (g) This section is not intended to prevent a consumer reporting agency from
 14 advising a third party that requests access to a consumer's consumer report or
 15 information derived from the consumer report that a security freeze is in effect.

16 (h) The procedures used by a consumer reporting agency for implementing the
 17 provisions of this section may include the use of telephone, facsimile, or electronic
 18 means if making the disclosure by the electronic means is consistent with the
 19 provisions regarding electronic records and signatures required for notices legally
 20 required to be in writing under 15 U.S.C. 7001 et seq. (Electronic Signatures in Global
 21 and National Commerce Act), Internet, electronic mail, or another electronic method.

22 **Sec. 45.48.140. Removal of security freeze.** (a) Except as provided by
 23 AS 45.48.130, a consumer reporting agency may not remove a security freeze unless

24 (1) the consumer requests that the consumer reporting agency remove
 25 the security freeze under (b) of this section; or

26 (2) the consumer made a material misrepresentation of fact to the
 27 consumer reporting agency when the consumer requested the security freeze under
 28 AS 45.48.110; if a consumer reporting agency intends to remove a security freeze on a
 29 consumer's consumer report under this paragraph, the consumer reporting agency shall
 30 notify the consumer in writing five business days before removing the security freeze.

31 (b) A consumer reporting agency shall remove a security freeze within three

1 business days after receiving a request for removal from the consumer who requested
 2 the security freeze if the consumer provides proper identification to identify the
 3 consumer and the unique personal identification number or password provided by the
 4 consumer reporting agency under AS 45.48.120.

5 **Sec. 45.48.150. Prohibition.** When dealing with a third party, a consumer
 6 reporting agency may not suggest, state, or imply that a consumer's security freeze
 7 reflects a negative credit score, history, report, or rating.

8 **Sec. 45.48.160. Charges.** (a) Except as provided by (b) of this section, a
 9 consumer reporting agency may not charge a consumer to place or remove a security
 10 freeze, to provide access under AS 45.48.130, or to take any other action, including
 11 the issuance of a personal identification number or password under AS 45.48.120, that
 12 is related to the placement of, removal of, or allowing access to a consumer report or
 13 information derived from a consumer report on which a security freeze has been
 14 placed.

15 (b) If a consumer fails to retain a personal identification number or password
 16 issued under AS 45.48.120, a consumer reporting agency may charge the consumer up
 17 to \$5 for each time after the first time that the consumer reporting agency issues the
 18 consumer another personal identification number or password because the consumer
 19 failed to retain the personal identification number or password.

20 **Sec. 45.48.170. Notice of rights.** When a consumer reporting agency is
 21 required to give a consumer a summary of rights under 15 U.S.C. 1681g (Fair Credit
 22 Reporting Act), a consumer reporting agency shall also give the consumer the
 23 following notice:

24 **Consumers Have the Right to Obtain a Security Freeze**

25 You may obtain a security freeze on your consumer report at no charge
 26 to protect your privacy and ensure that credit is not granted in your name
 27 without your knowledge. You have a right to place a "security freeze" on your
 28 consumer report under state law (AS 45.48.100 - 45.48.290).

29 The security freeze will prohibit a consumer reporting agency from
 30 releasing any information in your consumer report without your express
 31 authorization or approval.

1 The security freeze is designed to prevent credit, loans, and other
2 services from being approved in your name without your consent. When you
3 place a security freeze on your consumer report, within five business days you
4 will be provided a personal identification number or password to use if you
5 choose to remove the freeze on your consumer report or to temporarily
6 authorize the release of your consumer report to a specific third party or
7 specific third parties or for a specific period of time after the freeze is in place.
8 To provide that authorization, you must contact the consumer reporting agency
9 and provide all of the following:

10 (1) proper identification to verify your identity;

11 (2) the personal identification number or password
12 provided by the consumer reporting agency;

13 (3) proper information necessary to identify the third
14 party or third parties who are authorized to receive the consumer report
15 or the specific period of time for which the report is to be available to
16 third parties.

17 A consumer reporting agency that receives your request to temporarily
18 lift a freeze on a consumer report is required to comply with the request not
19 later than three business days after receiving your request.

20 A security freeze does not apply to circumstances where you have an
21 existing account relationship and a copy of your report is requested by your
22 existing creditor or its agents or affiliates for certain types of account review,
23 collection, fraud control, or similar activities.

24 If you are actively seeking credit, you should understand that the
25 procedures involved in lifting a security freeze may slow your own
26 applications for credit. You should plan ahead and lift a freeze, either
27 completely if you are shopping around, or specifically for a certain creditor, a
28 few days before actually applying for new credit.

29 You have a right to bring a civil action against someone who violates
30 your rights under these laws on security freezes. The action can be brought
31 against a consumer reporting agency or a user of your consumer report.

1 **Sec. 45.48.180. Notification after violation.** If a consumer reporting agency
 2 violates a security freeze by releasing a consumer's consumer report or information
 3 derived from the consumer report, the consumer reporting agency shall notify the
 4 consumer within five business days after the release, and the information in the notice
 5 must include an identification of the information released and of the third party who
 6 received the information.

7 **Sec. 45.48.190. Violations, remedies, and penalties.** (a) If a consumer
 8 reporting agency violates a security freeze, including a violation caused by accident,
 9 by releasing a consumer's consumer report or information derived from the consumer
 10 report, the consumer may

11 (1) file a complaint with the Department of Law;

12 (2) file a civil action in court against the consumer reporting agency
 13 and receive

14 (A) injunctive relief to prevent or restrain further violation of
 15 the security freeze;

16 (B) a civil penalty in an amount not to exceed \$10,000 for each
 17 violation, any damages available under other civil laws, and court costs and
 18 attorney fees as allowed by the rules of court.

19 (b) Each violation of AS 45.48.100 - 45.48.290 is a separate violation for
 20 purposes of imposing a penalty under (a)(2)(B) of this section.

21 **Sec. 45.48.200. Minimum contacts.** A consumer reporting agency is subject
 22 to AS 45.48.100 - 45.48.290 if the consumer reporting agency engages in activities
 23 that provide at least the minimum contacts required by substantive due process for the
 24 state to exercise jurisdiction over the consumer reporting agency.

25 **Sec. 45.48.210. Exemptions.** The provisions of AS 45.48.100 - 45.48.290 do
 26 not apply to the use of a consumer report by

27 (1) a person, the person's subsidiary, affiliate, or agent, or the person's
 28 assignee with whom a consumer has or, before the assignment, had an account,
 29 contract, or debtor-creditor relationship if the purpose of the use is to review the
 30 consumer's account or to collect a financial obligation owing on the account, contract,
 31 or debt;

1 (2) a subsidiary, an affiliate, an agent, an assignee, or a prospective
2 assignee of a person to whom access has been granted under AS 45.48.130 if the
3 purpose of the use is to facilitate the extension of credit or another permissible use;

4 (3) a person acting under a court order, warrant, or subpoena;

5 (4) an agency of a state or municipality that administers a program for
6 establishing and enforcing child support obligations;

7 (5) the Department of Health and Social Services, its agents, or its
8 assigns when investigating fraud;

9 (6) the Department of Revenue, its agents, or its assigns when
10 investigating or collecting delinquent taxes or unpaid court orders or when
11 implementing its other statutory responsibilities;

12 (7) a person if the purpose of the use is prescreening allowed under 15
13 U.S.C. 1681 - 1681w (Fair Credit Reporting Act);

14 (8) a person administering a credit file monitoring subscription service
15 to which the consumer has subscribed;

16 (9) a person providing a consumer with a copy of the consumer's
17 consumer report at the consumer's request.

18 **Sec. 45.48.290. Definitions.** In AS 45.48.100 - 45.48.290,

19 (1) "account review" means activities related to account maintenance,
20 account monitoring, credit line increases, and account upgrades and enhancements;

21 (2) "consumer" means an individual who is the subject of a consumer
22 report;

23 (3) "security freeze" means a prohibition against a consumer reporting
24 agency from releasing all or a part of a consumer's consumer report or information
25 derived from the consumer report without the express authorization of the consumer;

26 (4) "third party" means a person who is not

27 (A) the consumer who is the subject of the consumer's
28 consumer report; or

29 (B) the consumer reporting agency that is holding the
30 consumer's consumer report.

31 **Article 3. Consumer Credit Monitoring.**

1 **Sec. 45.48.300. Required disclosure.** A consumer reporting agency shall, if a
 2 consumer makes the request and the request is not covered by the free disclosure
 3 provision of 15 U.S.C. 1681j(a) - (d) (Fair Credit Reporting Act), clearly and
 4 accurately disclose to the consumer the information described under AS 45.45.310.

5 **Sec. 45.48.310. Information to be disclosed.** (a) The following information
 6 shall be disclosed under AS 45.45.300:

7 (1) all information in the consumer's file when the consumer makes the
 8 request, except that this paragraph may not be construed to require a consumer
 9 reporting agency to disclose information concerning credit scores, risk scores, or other
 10 predictors that are governed by 15 U.S.C. 1681g;

11 (2) the sources of the information described in (1) of this subsection;

12 (3) an identification of each person, including each end user identified
 13 under 15 U.S.C. 1681e, who procured a report on the consumer

14 (A) for employment purposes during the two-year period that
 15 precedes the date when the consumer's request is made; or

16 (B) for a purpose other than employment purposes during the
 17 one-year period that precedes the date when the consumer's request is made;

18 (4) the dates, original payees, and amounts of any checks that

19 (A) provide the basis for an adverse characterization of the
 20 consumer; and

21 (B) are included in the file when the disclosure is made or can
 22 be inferred from the file;

23 (5) a record of all inquiries that were received by the consumer
 24 reporting agency during the one-year period that precedes the request and that identify
 25 the consumer in connection with a credit or insurance transaction that was not initiated
 26 by the consumer; and

27 (6) a statement that the consumer may request and obtain a credit score
 28 if the consumer requests the credit file and not the credit score.

29 (b) The information to be disclosed under (a)(3) of this section must include

30 (1) the name of the person or, if applicable, the full trade name under
 31 which the person conducts business; and

1 (2) the address and telephone number of the person if requested by the
2 consumer.

3 (c) A consumer reporting agency is not required to disclose the information
4 described in (a)(3) of this section if

5 (1) the end user is an agency of the United States government and
6 procures the consumer's consumer report from the consumer reporting agency to
7 determine the eligibility of the consumer to receive access or continued access to
8 classified information; in this paragraph, "classified information" has the meaning
9 given in 15 U.S.C. 1681b; and

10 (2) the individual who is in charge of the end user makes a written
11 finding as prescribed under 15 U.S.C. 1681b(b)(4)(A).

12 **Sec. 45.48.320. Cost of disclosure.** (a) A consumer reporting agency may
13 impose a reasonable charge on a consumer for making a disclosure under
14 AS 45.48.300. The charge may not exceed

15 (1) \$2 for each of the first 12 requests from the consumer in a calendar
16 year;

17 (2) \$8 for each request beyond the 12 requests covered by (1) of this
18 subsection in a calendar year.

19 (b) The consumer reporting agency shall disclose the charge to the consumer
20 before making the disclosure under AS 45.48.300.

21 **Sec. 45.48.330. Form of disclosure.** (a) A consumer may make the request
22 under AS 45.48.300 in writing, in person, by telephone if the consumer has made a
23 written request for the disclosure, by electronic means if the consumer reporting
24 agency offers electronic access for any other purpose, or by any other reasonable
25 means that is available from the consumer reporting agency.

26 (b) To make a request in person under (a) of this section, the consumer shall,
27 after reasonable notice to the consumer reporting agency, appear during normal
28 business hours at the consumer reporting agency's place of business where the
29 consumer reporting agency normally provides disclosures under AS 45.48.300.

30 **Sec. 45.48.340. Timing of disclosure.** A consumer reporting agency shall
31 provide a consumer with the disclosure under AS 45.48.300 within

1 (1) 24 hours after the date on which the request is made if the
2 disclosure is made by electronic means under AS 45.48.330(a); or

3 (2) five days after the date on which the request is made if the
4 disclosure is made in writing, in person, by telephone, or by any other reasonable
5 means that is available from the consumer reporting agency, except by electronic
6 means.

7 **Article 4. Protection of Social Security Number.**

8 **Sec. 45.48.400. Use of social security number.** (a) A person may not,
9 without the consent of the individual,

10 (1) intentionally communicate or otherwise make available to the
11 general public an individual's social security number;

12 (2) print an individual's social security number on a card required for
13 the individual to access products or services provided by the person;

14 (3) require an individual to transmit the individual's social security
15 number over the Internet unless the Internet connection is secure or the social security
16 number is encrypted;

17 (4) require an individual to use the individual's social security number
18 to access an Internet site unless a password, a unique personal identification number,
19 or another authentication device is also required in order to access the site;

20 (5) print an individual's social security number on materials that are
21 mailed to the individual, unless state or federal law requires the social security number
22 to be on the material;

23 (6) refuse to do business with an individual because the individual
24 does not consent to the receipt by the person of the social security number of the
25 individual, unless the person is expressly required under federal law, in connection
26 with doing business with an individual, to submit the individual's social security
27 number to the federal government.

28 (b) A person may not sell, lease, loan, trade, rent, or otherwise disclose an
29 individual's social security number to a third party for any purpose without the
30 individual's written consent.

31 **Sec. 45.48.410. Penalties.** (a) A person who knowingly violates

1 AS 45.48.400 is liable to the state for a civil penalty not to exceed \$3,000.

2 (b) An individual may bring a civil action in court against a person who
3 knowingly violates AS 45.48.400 and may recover actual damages or \$5,000,
4 whichever amount is greater, and court costs and attorney fees allowed by the rules of
5 court.

6 (c) A person who knowingly violates AS 45.48.400 is guilty of a class A
7 misdemeanor.

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

9 **Article 5. Disposal of Records.**

10 **Sec. 45.48.500. Disposal of records.** A business shall take, in connection
11 with and after the disposal of the records, all reasonable measures necessary to protect
12 against unauthorized access to or use of the records of the business that contain
13 personal information.

14 **Sec. 45.48.510. Measures to protect access.** The measures required to be
15 taken under AS 45.48.500 include

16 (1) implementing and monitoring compliance with policies and
17 procedures that require the burning, pulverizing, or shredding of paper documents
18 containing personal information so that the personal information cannot practicably be
19 read or reconstructed;

20 (2) implementing and monitoring compliance with policies and
21 procedures that require the destruction or erasure of electronic media and other
22 nonpaper media containing personal information so that the personal information
23 cannot practicably be read or reconstructed;

24 (3) after due diligence, entering into a written contract with a third
25 party engaged in the business of record destruction to dispose of records containing
26 personal information in a manner consistent with this statute, and monitoring with due
27 diligence the third party's compliance with the contract;

28 (4) implementing and monitoring, with regard to a third party hired
29 under (3) of this section to dispose of records containing personal information, the
30 third party's compliance with policies and procedures that protect against unauthorized
31 access to or use of personal information during or after the collection, transportation,

1 and disposal of the records under (1) and (2) of this section.

2 **Sec. 45.48.520. Due diligence.** In AS 45.48.510(3), due diligence ordinarily
3 includes performing one or more of the following:

4 (1) reviewing an independent audit of the third party's operations and
5 its compliance with AS 45.48.500 - 45.48.590;

6 (2) obtaining information about the third party from several references
7 or other reliable sources and requiring that the third party be certified by a recognized
8 trade association or similar organization with a reputation for high standards of quality
9 review;

10 (3) reviewing and evaluating the third party's information security
11 policies and procedures, or taking other appropriate measures to determine the
12 competency and integrity of the third party.

13 **Sec. 45.48.530. Business policy and procedures.** A business shall
14 comprehensively describe and classify as the business's official policy in the writings
15 of the business the policies and procedures that relate to the adequate destruction and
16 proper disposal of personal records. In this section, "writings" includes corporate
17 handbooks, employee handbooks, and similar corporate documents.

18 **Sec. 45.48.540. Civil penalty.** An individual or a business that knowingly
19 violates AS 45.48.500 - 45.48.590 is liable to the state for a civil penalty not to exceed
20 \$3,000. In this section, "knowingly" has the meaning given in AS 11.81.900.

21 **Sec. 45.48.550. Court action.** An individual who is damaged by a violation
22 of AS 45.48.500 - 45.48.590 may bring a civil action in court to enjoin further
23 violations and to recover damages for the violation and court costs and attorney fees
24 allowed by the rules of court.

25 **Sec. 45.48.590. Definitions.** In AS 45.48.500 - 45.48.590,

26 (1) "business" means a person who conducts business in the state or a
27 person who conducts business and maintains or otherwise possesses personal
28 information on state residents; in this paragraph,

29 (A) "conducts business" includes engaging in activities as a
30 financial institution organized, chartered, or holding a license or authorization
31 certificate under the laws of this state, another state, the United States, or

1 another country;

2 (B) "possesses" includes possession for the purpose of
3 destruction;

4 (2) "dispose" means

5 (A) the discarding or abandonment of records containing
6 personal information;

7 (B) the sale, donation, discarding, or transfer of

8 (i) any medium, including computer equipment or
9 computer media, that contains records of personal information;

10 (ii) nonpaper media, other than that identified under (i)
11 of this subparagraph, on which records of personal information are
12 stored; and

13 (iii) equipment for nonpaper storage of information;

14 (3) "personal information" means information that identifies, relates to,
15 describes, or is capable of being associated with a particular individual, and includes a
16 name, signature, social security number, fingerprint, photograph, computerized image,
17 physical characteristic, physical description, address, telephone number, passport
18 number, driver's license, state identification number, date of birth, medical
19 information, bank account number, credit card number, debit card number, and
20 financial information;

21 (4) "records" means material on which information that is written,
22 drawn, spoken, visual, or electromagnetic is recorded or preserved, regardless of
23 physical form or characteristics, but does not include publicly available directories
24 containing names, addresses, telephone numbers, or other information an individual
25 has voluntarily consented to have publicly disseminated or listed.

26 **Article 6. Factual Declaration of Innocence after Identity Theft.**

27 **Sec. 45.48.600. Factual declaration of innocence after identity theft. (a)**

28 A victim of identity theft may petition the superior court for a determination that the
29 victim is factually innocent of a crime if

30 (1) the perpetrator of the identity theft was arrested for, cited for, or
31 convicted of the crime using the victim's identity;

1 (2) a criminal complaint has been filed against the perpetrator in the
2 victim's name; or

3 (3) the victim's identity has been mistakenly associated with a record
4 of a conviction for a crime.

5 (b) In addition to a petition by a victim under (a) of this section, the
6 department may petition the superior court for a determination under (a) of this
7 section, or the superior court may, on its own motion, make a determination under (a)
8 of this section.

9 **Sec. 45.48.610. Basis for determination.** A determination of factual
10 innocence under AS 45.48.600 may be heard and made on declarations, affidavits,
11 police reports, or other material, relevant, and reliable information submitted by the
12 parties or ordered to be made a part of the record by the court.

13 **Sec. 45.48.620. Criteria for determination; court order.** (a) A court shall
14 determine that a victim is factually innocent of a crime if the court finds that the
15 petition or motion brought under AS 45.48.600 is meritorious and that

16 (1) there is not a reasonable cause to believe that the victim committed
17 the crime for which the perpetrator of the identity theft was arrested, cited, convicted,
18 or subject to a criminal complaint in the victim's name; or

19 (2) the victim's identity has been mistakenly associated with a record
20 of a conviction of a crime.

21 (b) If a court finds under this section that the victim is factually innocent of a
22 crime, the court shall issue an order indicating this determination of factual innocence
23 and shall provide the victim with a copy of the order.

24 **Sec. 45.48.630. Orders regarding records.** After a court issues an order
25 under AS 45.48.620, the court may order the name and associated personal
26 information of the victim that is contained in the files, indexes, and other records of
27 the court that are accessible by the public deleted, sealed, or labeled to show that the
28 name and personal information is impersonated and does not reflect the defendant's
29 identity.

30 **Sec. 45.48.640. Vacation of determination.** A court that has issued an order
31 under AS 45.48.620 may, at any time, vacate the order if the petition or motion, or any

1 information submitted in support of the petition or motion, is found to contain a
2 material misrepresentation or fraudulent material.

3 **Sec. 45.48.650. Court form.** The supreme court of the state may develop a
4 form to be used for the order under AS 45.48.620.

5 **Sec. 45.48.660. Data base.** The department may establish and maintain a data
6 base of individuals who have been victims of identity theft and who have received an
7 order under AS 45.48.620. The department shall provide a victim or the victim's
8 authorized representative access to a data base established under this section in order
9 to establish that the individual has been a victim of identity theft. Access to the a data
10 base established under this section is limited to criminal justice agencies, victims of
11 identity theft, and individuals and agencies authorized by the victims.

12 **Sec. 45.48.670. Toll-free telephone number.** The department may establish
13 and maintain a toll-free telephone number to provide access to information in a data
14 base established under AS 45.48.660.

15 **Sec. 45.48.690. Definitions.** In AS 45.48.600 - 45.48.690,

16 (1) "crime" has the meaning given in AS 11.81.900;

17 (2) "department" means the Department of Law;

18 (3) "identity theft" means the theft of the identity of an individual;

19 (4) "perpetrator" means the person who perpetrated the theft of an
20 individual's identity;

21 (5) "victim" means an individual who is the victim of identity theft.

22 **Article 7. Miscellaneous Provisions.**

23 **Sec. 45.48.800. Consumer credit header information.** (a) A consumer
24 reporting agency may not furnish by a written, an oral, or another method of
25 communication a consumer's credit header information to a person unless the person
26 has a permissible purpose under 15 U.S.C. 1681b (Fair Credit Protection Act) to
27 obtain the consumer's consumer report.

28 (b) In this section, "credit header information" means the social security
29 number of a consumer, or a derivative of the social security number, the maiden name
30 of the mother of the consumer, the birth date of the consumer, and other personally
31 identifiable information of a consumer that is derived from nonpublic personal

1 information, except the name, address, and telephone number of the consumer listed in
2 a residential telephone directory available in the locality of the consumer.

3 **Sec. 45.48.810. Right to file police report regarding identity theft.** (a)
4 Even if the local law enforcement agency does not have jurisdiction over the theft of
5 an individual's identity, if an individual who has learned or reasonably suspects the
6 individual has been the victim of identity theft contacts, for the purpose of filing a
7 complaint, a local law enforcement agency that has jurisdiction over the individual's
8 actual place of residence, the local law enforcement agency shall make a report of the
9 matter and provide the individual with a copy of the report. The local law
10 enforcement agency may refer the matter to a law enforcement agency in a different
11 jurisdiction.

12 (b) This section is not intended to interfere with the discretion of a local law
13 enforcement agency to allocate its resources to the investigation of crime. A local law
14 enforcement agency is not required to count a complaint filed under (a) of this section
15 as an open case for purposes that include compiling statistics on its open cases.

16 **Article 8. General Provisions.**

17 **Sec. 45.48.900. Relationship to federal law.** If a provision of this chapter is
18 preempted by or conflicts with federal law in a particular situation, the provision does
19 not apply to the extent of the preemption or conflict.

20 **Sec. 45.48.990. Definitions.** In this chapter, unless the context indicates
21 otherwise,

22 (1) "consumer" means an individual;

23 (2) "consumer report" means a written, oral, or other communication
24 of information by a consumer reporting agency bearing on a consumer's credit
25 worthiness, credit standing, credit capacity, character, general reputation, personal
26 characteristics, or mode of living if the communication is used or expected to be used
27 or collected in whole or in part to serve as a factor in establishing the consumer's
28 eligibility for

29 (A) credit or insurance to be used primarily for personal,
30 family, or household purposes;

31 (B) employment purposes; or

1 (C) any other permissible purpose authorized under section 15
 2 U.S.C. 1681b;

3 (3) "consumer reporting agency" means a person who, for monetary
 4 fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in
 5 the practice of assembling or evaluating consumer credit information or other
 6 information on consumers for the purpose of furnishing consumer reports to third
 7 parties;

8 (4) "person" has the meaning given in AS 01.10.060 and includes a
 9 state or local governmental agency, except for an agency of the judicial branch;

10 (5) "state resident" means an individual who satisfies the residency
 11 requirements under AS 01.10.055.

12 **Sec. 45.48.995. Short title.** This chapter may be cited as the Alaska Personal
 13 Information Protection Act.

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

16 **INDIRECT COURT RULE AMENDMENT.** AS 45.48.640, enacted by sec. 1 of this
 17 Act, has the effect of changing Rule 60(b), Alaska Rules of Civil Procedure, by allowing a
 18 court to vacate an order on its own motion and at any time and by establishing a specific
 19 criterion for vacating the order under AS 45.48.640.

20 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
 21 read:

22 **TRANSITION: IMPLEMENTATION.** A person to whom AS 45.48.400 and
 23 45.48.410, enacted by sec. 1 of this Act, apply shall make reasonable efforts to cooperate,
 24 through systems testing and other means, to ensure that the requirements of AS 45.48.400 and
 25 45.48.410 are implemented on or before the effective date of AS 45.48.400 and 45.48.410.