

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 149(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 4/22/05

Referred: Judiciary

Sponsor(s): SENATORS GUESS, Elton

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) of this section and immediately
2 after receiving a request under (a)(2) or (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 immediately after receiving the
29 request by telephone or electronic mail or within three business days after receiving
30 the request by certified mail.

31 (d) If a security freeze is in place, a consumer reporting agency may not

1 release the consumer report or information derived from the consumer report to a third
2 party without the prior express authorization of the consumer.

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

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

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

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

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

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

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

1 (b) A consumer reporting agency shall remove a security freeze immediately
 2 after receiving a request for removal from the consumer who requested the security
 3 freeze if the consumer provides proper identification to identify the consumer and the
 4 unique personal identification number or password provided by the consumer
 5 reporting agency under AS 45.48.120.

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

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

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

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

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

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

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

1 authorization or approval.

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

11 (1) proper identification to verify your identity;

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

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

18 A consumer reporting agency that receives your request to temporarily
19 lift a freeze on a consumer report is required to comply with the request
20 immediately after receiving your request if you make the request by telephone
21 or electronic mail, or within three business days after receiving your request if
22 you make the request by certified mail.

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

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

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

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

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

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

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

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

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

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

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

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

30 (1) a person, the person's subsidiary, affiliate, or agent, or the person's
31 assignee with whom a consumer has or, before the assignment, had an account,

1 contract, or debtor-creditor relationship if the purpose of the use is to review the
 2 consumer's account or to collect a financial obligation owing on the account, contract,
 3 or debt;

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (A) the consumer who is the subject of the consumer's
 31 consumer report; or

1 (B) the consumer reporting agency that is holding the
2 consumer's consumer report.

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

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

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

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

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

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

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

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

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

22 (A) provide the basis for an adverse characterization of the
23 consumer; and

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

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

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

1 (b) The information to be disclosed under (a)(3) of this section must include
 2 (1) the name of the person or, if applicable, the full trade name under
 3 which the person conducts business; and

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

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

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

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

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

18 (1) \$2 for each of the first 12 requests from the consumer in a calendar
 19 year;

20 (2) \$8 for each request beyond the 12 requests covered by (1) of this
 21 subsection in a calendar year.

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

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

29 (b) To make a request in person under (a) of this section, the consumer shall,
 30 after reasonable notice to the consumer reporting agency, appear during normal
 31 business hours at the consumer reporting agency's place of business where the

1 consumer reporting agency normally provides disclosures under AS 45.48.300.

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

4 (1) 24 hours after the date on which the request is made if the
5 disclosure is made by electronic means under AS 45.48.330(a); or

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

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

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

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

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

17 (3) require an individual to transmit the individual's social security
18 number over the Internet unless the Internet connection is secure or the social security
19 number is encrypted;

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

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

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

31 (b) A person may not sell, lease, loan, trade, rent, or otherwise disclose an

1 individual's social security number to a third party for any purpose without the
2 individual's written consent.

3 **Sec. 45.48.410. Penalties.** (a) A person who knowingly violates
4 AS 45.48.400 is liable to the state for a civil penalty not to exceed \$3,000.

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

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

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

12 **Article 5. Disposal of Records.**

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

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

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

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

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

31 (4) implementing and monitoring, with regard to a third party hired

1 under (3) of this section to dispose of records containing personal information, the
 2 third party's compliance with policies and procedures that protect against unauthorized
 3 access to or use of personal information during or after the collection, transportation,
 4 and disposal of the records under (1) and (2) of this section.

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

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

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

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

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

21 **Sec. 45.48.540. Civil penalty.** An individual or a business that knowingly
 22 violates AS 45.48.500 - 45.48.590 is liable to the state for a civil penalty not to exceed
 23 \$3,000. In this section, "knowingly" has the meaning given in AS 11.81.900.

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

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

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

1 (A) "conducts business" includes engaging in activities as a
 2 financial institution organized, chartered, or holding a license or authorization
 3 certificate under the laws of this state, another state, the United States, or
 4 another country;

5 (B) "possesses" includes possession for the purpose of
 6 destruction;

7 (2) "dispose" means

8 (A) the discarding or abandonment of records containing
 9 personal information;

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

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

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

16 (iii) equipment for nonpaper storage of information;

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

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

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

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

31 A victim of identity theft may petition the superior court for a determination that the

1 victim is factually innocent of a crime if

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

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

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

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

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

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

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

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

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

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

1 identity.

2 **Sec. 45.48.640. Vacation of determination.** A court that has issued an order
3 under AS 45.48.620 may, at any time, vacate the order if the petition or motion, or any
4 information submitted in support of the petition or motion, is found to contain a
5 material misrepresentation or fraudulent material.

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

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

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

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

- 19 (1) "crime" has the meaning given in AS 11.81.900;
20 (2) "department" means the Department of Law;
21 (3) "identity theft" means the theft of the identity of an individual;
22 (4) "perpetrator" means the person who perpetrated the theft of an
23 individual's identity;
24 (5) "victim" means an individual who is the victim of identity theft.

25 **Article 7. Miscellaneous Provisions.**

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

31 (b) In this section, "credit header information" means the social security

1 number of a consumer, or a derivative of the social security number, the maiden name
 2 of the mother of the consumer, the birth date of the consumer, and other personally
 3 identifiable information of a consumer that is derived from nonpublic personal
 4 information, except the name, address, and telephone number of the consumer listed in
 5 a residential telephone directory available in the locality of the consumer.

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

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

19 **Article 8. General Provisions.**

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

23 **Sec. 45.48.990. Definitions.** In this chapter, unless the context indicates
 24 otherwise,

25 (1) "consumer" means an individual;

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

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

3 (B) employment purposes; or

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

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

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

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

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

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

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

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

25 **TRANSITION: IMPLEMENTATION.** A person to whom AS 45.48.400 and
26 45.48.410, enacted by sec. 1 of this Act, apply shall make reasonable efforts to cooperate,
27 through systems testing and other means, to ensure that the requirements of AS 45.48.400 and
28 45.48.410 are implemented on or before the effective date of AS 45.48.400 and 45.48.410.