

CS FOR SENATE BILL NO. 222(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 2/16/06

Referred: Judiciary

Sponsor(s): SENATORS THERRIAULT AND GUESS, Ellis

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, credit accuracy, protection of social
3 security numbers, disposal of records, factual declarations of innocence after identity
4 theft, filing police reports regarding identity theft, furnishing consumer credit header
5 information, and truncation of credit and debit card information; and amending Rule
6 60, Alaska Rules of Civil Procedure."

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

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

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

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

11 **Sec. 45.48.010. Disclosure of breach of security.** (a) If a person owns or uses
12 personal information that includes personal information on a state resident, and a
13 breach of the security of the information system containing the personal information

1 occurs, the person shall, after discovering or being notified of the breach, disclose the
 2 breach to the state resident, whether or not the personal information has or has not
 3 been accessed by an unauthorized third party for legal or illegal purposes.

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

8 **Sec. 45.48.020. Allowable delay in notification.** An information collector
 9 may delay disclosing the breach under AS 45.48.010 if an appropriate law
 10 enforcement agency determines that disclosing the breach will interfere with a
 11 criminal investigation and provides the information collector with a written request for
 12 the delay. However, the information collector shall disclose the breach to the state
 13 resident as soon as notification would not any longer interfere with the investigation.

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

16 (1) by a written document;

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

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

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

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

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

31 **Sec. 45.48.040. Exception for employees and agents.** In AS 45.48.010 -

1 45.48.090, the good faith acquisition of personal information by an employee or agent
 2 of an information collector for a legitimate purpose of the information collector is not
 3 a breach of the security of the information system if the employee or agent does not
 4 use the personal information for a purpose unrelated to a legitimate purpose of the
 5 information collector and does not make further unauthorized disclosure of the
 6 personal information.

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

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

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

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

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

18 (c) In this section, "state agency" means

19 (1) a department, division, or office in the executive branch of state
 20 government that has authority under the statutes of this state to regulate the operation
 21 of the information collector; or

22 (2) the Department of Law if another state agency does not have
 23 authority under the statutes of this state to regulate the operation of the information
 24 collector.

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

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

30 (1) "breach of the security" means unauthorized acquisition of personal
 31 information that compromises the security, confidentiality, or integrity of the personal

1 information maintained by the information collector; in this paragraph, "acquisition"
2 includes acquisition by

3 (A) photocopying, facsimile, or other paper-based method;

4 (B) a device, including a computer, that can read, write, or
5 store information that is represented in numerical form; or

6 (C) a method not identified by (A) or (B) of this paragraph;

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

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

14 (A) a combination of an individual's first name or first initial,
15 the individual's last name, and one or more of the following information
16 elements, when the name or the information elements are not encrypted or
17 redacted:

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

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

21 (iii) the individual's account number, credit card
22 account number or debit card account number if the number does not
23 require additional identifying information, access codes, or passwords
24 for use;

25 (iv) account passwords or personal identification
26 numbers or other access codes;

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

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

31 **Sec. 45.48.100. Security freeze authorized.** A consumer may prohibit a

1 consumer reporting agency from releasing all or a part of the consumer's consumer
2 report or information derived from the consumer report without the express
3 authorization of the consumer by placing a security freeze on the consumer's consumer
4 report.

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

7 (1) by certified mail;

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

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

12 (b) A consumer reporting agency shall place a security freeze within five
13 business days after receiving a request under (a)(1) of this section and immediately
14 after receiving a request under (a)(2) or (3) of this section.

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

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

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

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

1 (1) proper identification to verify the consumer's identity;
2 (2) the unique personal identification number or password provided
3 under AS 45.48.120(b); and

4 (3) the proper information necessary to identify the third party to
5 whom the consumer reporting agency may allow the access or the time period during
6 which the consumer reporting agency may allow the access to third parties who
7 request the access.

8 (c) A consumer reporting agency that receives a request from a consumer
9 under (b) of this section shall comply with the request immediately after receiving the
10 request by telephone or electronic mail or within three business days after receiving
11 the request by certified mail.

12 (d) If a security freeze is in place, a consumer reporting agency may not
13 release the consumer report or information derived from the consumer report to a third
14 party without the prior express authorization of the consumer.

15 (e) If a security freeze is in place on a consumer's consumer report and
16 information derived from the consumer report and if a third party applies to a
17 consumer reporting agency to provide the third party with access to the consumer's
18 consumer report or information derived from the consumer report, the consumer
19 reporting agency may treat the third party's application as incomplete unless the
20 consumer authorizes the access under (a) of this section.

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

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

29 (h) The procedures used by a consumer reporting agency for implementing the
30 provisions of this section may include the use of telephone, facsimile, or electronic
31 means if making the disclosure by the electronic means is consistent with the

1 provisions regarding electronic records and signatures required for notices legally
 2 required to be in writing under 15 U.S.C. 7001 et seq. (Electronic Signatures in Global
 3 and National Commerce Act), Internet, electronic mail, or another electronic method.

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

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

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

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

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

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

28 (b) If a consumer fails to retain a personal identification number or password
 29 issued under AS 45.48.120, a consumer reporting agency may charge the consumer up
 30 to \$5 for each time after the first time that the consumer reporting agency issues the
 31 consumer another personal identification number or password because the consumer

1 failed to retain the personal identification number or password.

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

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

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

12 The security freeze will prohibit a consumer reporting agency
13 from releasing any information in your consumer report without your
14 express authorization or approval.

15 The security freeze is designed to prevent credit, loans, and
16 other services from being approved in your name without your consent.
17 When you place a security freeze on your consumer report, within five
18 business days you will be provided a personal identification number or
19 password to use if you choose to remove the freeze on your consumer
20 report or to temporarily authorize the release of your consumer report
21 to a specific third party or specific third parties or for a specific period
22 of time after the freeze is in place. To provide that authorization, you
23 must contact the consumer reporting agency and provide all of the
24 following:

- 25 (1) proper identification to verify your identity;
26 (2) the personal identification number or password
27 provided by the consumer reporting agency;
28 (3) proper information necessary to identify the third
29 party or third parties who are authorized to receive the consumer report
30 or the specific period of time for which the report is to be available to
31 third parties.

1 A consumer reporting agency that receives your request to
2 temporarily lift a freeze on a consumer report is required to comply
3 with the request immediately after receiving your request if you make
4 the request by telephone or electronic mail, or within three business
5 days after receiving your request if you make the request by certified
6 mail.

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

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

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

20 **Sec. 45.48.180. Notification after violation.** If a consumer reporting agency
21 violates a security freeze by releasing a consumer's consumer report or information
22 derived from the consumer report, the consumer reporting agency shall notify the
23 consumer within five business days after the release, and the information in the notice
24 must include an identification of the information released and of the third party who
25 received the information.

26 **Sec. 45.48.190. Violations and penalties.** (a) A consumer who suffers
27 damages as a result of a person's violation of AS 45.48.100 - 45.48.290 may bring an
28 action in court against the person and recover, in the case of a violation where the
29 person acted

30 (1) negligently, actual damages, including loss of wages, and, when
31 applicable, damages for pain and suffering;

1 (2) knowingly,

2 (A) damages as described in (1) of this subsection;

3 (B) punitive damages that are not less than \$100 nor more than
4 \$5,000 for each violation as the court determines to be appropriate; and

5 (C) other relief that the court determines to be appropriate.

6 (b) A consumer may bring an action in court against a person for a violation or
7 threatened violation of AS 45.48.100 - 45.48.290 for injunctive relief, whether or
8 not the consumer seeks another remedy under this section.

9 (c) Notwithstanding (a)(2) of this section, a person who knowingly violates
10 AS 45.48.100 - 45.48.290 is liable in a class action for an amount that the court
11 allows. When determining the amount of an award in a class action under this
12 subsection, the court shall consider, among the relevant factors, the amount of any
13 actual damages awarded, the frequency of the violations, the resources of the violator,
14 and the number of consumers adversely affected.

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

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

20 **Sec. 45.48.210. Reports not covered.** The provisions of AS 45.48.100 -
21 45.48.290 do not apply to a consumer report if the consumer report is

22 (1) a report that only contains information relating to transactions or
23 experiences between the consumer and the person making the report;

24 (2) a communication of the information that is described in (1) of this
25 section or that is taken from a consumer's credit application if

26 (A) the communication is limited to internal communication
27 within the organization of the person making the report; and

28 (B) the consumer is informed by a clear and conspicuous
29 written disclosure that the information contained in the credit application may
30 be communicated as allowed under (A) of this paragraph, except that, if a
31 credit application is taken by telephone, the consumer shall initially be

1 informed orally when the application is taken, and a clear and conspicuous
 2 written disclosure shall be made to the consumer in the first written
 3 communication to the consumer after the application is taken;

4 (3) a report containing information solely about a consumer's
 5 character, general reputation, personal characteristics, or mode of living and the
 6 information is obtained through personal interviews with neighbors, friends, or
 7 associates of the consumer reported on, or others with whom the consumer is
 8 acquainted or who may have knowledge concerning those items of information; or

9 (4) a consumer report furnished for use in connection with a
 10 transaction that consists of an extension of credit to be used solely for a commercial
 11 purpose.

12 **Sec. 45.48.220. Exemptions.** The provisions of AS 45.48.100 - 45.48.290 do
 13 not apply to the use of a consumer report by

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (A) the consumer who is the subject of the consumer's
15 consumer report; or

16 (B) the consumer reporting agency that is holding the
17 consumer's consumer report.

18 **Article 3. Consumer Credit Monitoring; Credit Accuracy.**

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

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

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

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

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

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

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

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

6 (A) provide the basis for an adverse characterization of the
7 consumer; and

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

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

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

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

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

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

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

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

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

30 **Sec. 45.48.320. Cost of disclosure.** (a) A consumer reporting agency may
31 impose a reasonable charge on a consumer for making a disclosure under

1 AS 45.48.300. The charge may not exceed

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

4 (2) \$8 for each request beyond the 12 requests covered by (1) of this
5 subsection in a calendar year.

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

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

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

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

19 (1) 24 hours after the date on which the request is made if the
20 disclosure is made by electronic means under AS 45.48.330(a); or

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

25 **Sec. 45.48.350. Credit accuracy.** (a) A person who does business in the state
26 by distributing information about an individual's credit history, score, or ranking shall,
27 when notified that the information that the person is distributing is inaccurate,
28 immediately stop distributing the information until the accuracy of the information can
29 be verified or the inaccuracies in the information corrected.

30 (b) If a person who does business in the state by distributing information about
31 an individual's credit history, score, or ranking releases information about an

1 individual that is inaccurate, the person shall, as quickly as possible after discovering
2 that inaccurate information is being distributed,

3 (1) repair, to the extent possible, the damage to the individual caused
4 by the release of the inaccurate information; and

5 (2) pay fair and reasonable compensation to the individual for the
6 damage caused to the individual by the release of the inaccurate information.

7 (c) If a person fails to comply with (b) of this section, an individual may bring
8 an action in court to compel the person to comply with (b) of this section.

9 (d) In this section, "does business in the state" means engages in activities that
10 provide at least the minimum contacts required by substantive due process for the state
11 to exercise jurisdiction over the person who is engaging in the activities.

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

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

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

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

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

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

25 (5) print an individual's social security number on material that is
26 mailed to the individual unless

27 (A) state or federal law requires the social security number to
28 be on the material; or

29 (B) the social security number is included on an application or
30 other form, including a document sent as a part of an application process or an
31 enrollment process, sent by mail to establish, amend, or terminate an account, a

1 contract, or a policy, or to confirm the accuracy of the social security number;
 2 however, a social security number allowed to be mailed under this
 3 subparagraph may not be printed, in whole or in part, on a postcard or other
 4 mailer that does not require an envelope, or in a manner that makes the social
 5 security number visible on the envelope or without the envelope being opened;

6 (6) refuse to do business with an individual because the individual
 7 does not consent to the receipt by the person of the social security number of the
 8 individual, unless the person is expressly required by state or federal law, in
 9 connection with doing business with an individual, to collect or submit the individual's
 10 social security number to the state or federal government; this paragraph does not
 11 prohibit a person from asking for another form of identification from the individual.

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

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

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

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

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

24 **Article 5. Disposal of Records.**

25 **Sec. 45.48.500. Disposal of records.** (a) A business shall take, in connection
 26 with and after the disposal of the records, all reasonable measures necessary to protect
 27 against unauthorized access to or use of the records of the business that contain
 28 personal information.

29 (b) Notwithstanding (a) of this section, if a business has otherwise complied
 30 with the provisions of AS 45.48.500 - 45.48.590 in the selection of a third party
 31 engaged in the business of record destruction, the business is not liable for the disposal

1 of records under AS 45.48.500 - 45.48.590 after the business has relinquished control
2 of the records to the third party for the destruction of the records.

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

5 (1) implementing and monitoring compliance with policies and
6 procedures that require the burning, pulverizing, or shredding of paper documents
7 containing personal information so that the personal information cannot practicably be
8 read or reconstructed;

9 (2) implementing and monitoring compliance with policies and
10 procedures that require the destruction or erasure of electronic media and other
11 nonpaper media containing personal information so that the personal information
12 cannot practicably be read or reconstructed; and

13 (3) after due diligence, entering into a written contract with a third
14 party engaged in the business of record destruction to dispose of records containing
15 personal information in a manner consistent with AS 45.48.500 - 45.48.590.

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

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

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

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

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

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

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

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

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

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

16 (B) "possesses" includes possession for the purpose of
17 destruction;

18 (2) "dispose" means

19 (A) the discarding or abandonment of records containing
20 personal information;

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

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

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

27 (iii) equipment for nonpaper storage of information;

28 (3) "personal information" means information that identifies, relates to,
29 describes, or is capable of being associated with a particular individual, and includes a
30 name, signature, social security number, fingerprint, photograph, computerized image,
31 physical characteristic, physical description, address, telephone number, passport

1 number, driver's license, state identification number, date of birth, medical
 2 information, bank account number, credit card number, debit card number, and
 3 financial information;

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

9 **Article 6. Factual Declaration of Innocence after Identity Theft; Right to File Police**
 10 **Report Regarding Identity Theft.**

11 **Sec. 45.48.600. Factual declaration of innocence after identity theft.** (a) A
 12 victim of identity theft may petition the superior court for a determination that the
 13 victim is factually innocent of a crime if

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

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

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

20 (b) In addition to a petition by a victim under (a) of this section, the
 21 department may petition the superior court for a determination under (a) of this
 22 section, or the superior court may, on its own motion, make a determination under (a)
 23 of this section.

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

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

31 (1) there is not a reasonable cause to believe that the victim committed

1 the crime for which the perpetrator of the identity theft was arrested, cited, convicted,
2 or subject to a criminal complaint in the victim's name; or

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

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

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

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

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

19 **Sec. 45.48.660. Data base.** The department may establish and maintain a data
20 base of individuals who have been victims of identity theft and who have received an
21 order under AS 45.48.620. The department shall provide a victim or the victim's
22 authorized representative access to a data base established under this section in order
23 to establish that the individual has been a victim of identity theft. Access to the a data
24 base established under this section is limited to criminal justice agencies, victims of
25 identity theft, and individuals and agencies authorized by the victims.

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

29 **Sec. 45.48.680. Right to file police report regarding identity theft.** (a) Even
30 if the local law enforcement agency does not have jurisdiction over the theft of an
31 individual's identity, if an individual who has learned or reasonably suspects the

1 individual has been the victim of identity theft contacts, for the purpose of filing a
 2 complaint, a local law enforcement agency that has jurisdiction over the individual's
 3 actual place of residence, the local law enforcement agency shall make a report of the
 4 matter and provide the individual with a copy of the report. The local law enforcement
 5 agency may refer the matter to a law enforcement agency in a different jurisdiction.

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

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

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

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

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

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

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

17 **Article 7. Consumer Credit Header Information.**

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

23 (b) In this section, "credit header information" means the social security
 24 number of a consumer, or a derivative of the social security number, the maiden name
 25 of the mother of the consumer, the birth date of the consumer, and other personally
 26 identifiable information of a consumer that is derived from nonpublic personal
 27 information, except the name, address, and telephone number of the consumer listed in
 28 a residential telephone directory available in the locality of the consumer.

29 **Article 8. Truncation of Card Information.**

30 **Sec. 45.48.850. Truncation of card information.** (a) A person who accepts
 31 credit cards or debit cards for the transaction of business may not print more than the

1 last five digits of the card number or the expiration date on any receipt provided to the
2 cardholder at the point of the sale or transaction.

3 (b) This section applies only to receipts that are electronically printed and does
4 not apply to transactions in which the sole means of recording a credit card or debit
5 card account number is by handwriting or by an imprint or copy of the card.

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

9 (d) A person who knowingly violates this section is liable to the state for a
10 civil penalty not to exceed \$3,000.

11 (e) A person who knowingly violates this section is guilty of a class A
12 misdemeanor.

13 (f) In this section,

14 (1) "credit" means the right granted by a creditor to a debtor to defer
15 payment of debt, to incur debts and defer payment of the debt, or to purchase property
16 or services and defer payment of the purchase; in this paragraph, "creditor" means a
17 person who regularly extends, renews, or continues credit, a person who regularly
18 arranges for the extension, renewal, or continuation of credit, or an assignee of an
19 original creditor who participates in the decision to extend, renew, or continue credit;

20 (2) "credit card" means a card, plate, coupon book, or other credit
21 device existing for the purpose of obtaining money, property, labor, or services on
22 credit;

23 (3) "debit card" means a card issued by a financial institution to a
24 consumer for use in initiating an electronic fund transfer from the account of the
25 consumer at the financial institution for the purpose of transferring money between
26 accounts or obtaining money, property, labor, or services;

27 (4) "knowingly" has the meaning given in AS 11.81.900.

28 **Article 9. General Provisions.**

29 **Sec. 45.48.900. Relationship to federal law.** If a provision of this chapter is
30 preempted by federal law in a particular situation, the provision does not apply to the
31 extent of the preemption.

1 **Sec. 45.48.990. Definitions.** In this chapter, unless the context indicates
2 otherwise,

3 (1) "consumer" means an individual;

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

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

12 (B) employment purposes; or

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

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

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

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

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

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

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

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

3 TRANSITION: IMPLEMENTATION. A person to whom AS 45.48.400 and
4 45.48.410, enacted by sec. 1 of this Act, apply shall make reasonable efforts to cooperate,
5 through systems testing and other means, to ensure that the requirements of AS 45.48.400 and
6 45.48.410 are implemented on or before the effective date of AS 45.48.400 and 45.48.410.