

CS FOR SENATE BILL NO. 222(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 3/15/06

Referred: Finance

Sponsor(s): SENATORS THERRIAULT AND GUESS, Ellis

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to breaches of security involving personal information, credit report
2 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 each state resident whose personal information was subject to the breach.

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. Allowable delay in notification.** An information collector
8 may delay disclosing the breach under AS 45.48.010 if an appropriate law
9 enforcement agency determines that disclosing the breach will interfere with a
10 criminal investigation and provides the information collector with a written request for
11 the delay. However, the information collector shall disclose the breach to the state
12 resident as soon as the law enforcement agency informs the information collector in
13 writing that disclosure of the breach will no 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. 45.48.090. Definitions.** In AS 45.48.010 - 45.48.090,

26 (1) "breach of the security" means unauthorized acquisition, or
 27 reasonable belief of unauthorized acquisition, of personal information that
 28 compromises the security, confidentiality, or integrity of the personal information
 29 maintained by the information collector; in this paragraph, "acquisition" includes
 30 acquisition by

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

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

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

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

7 (3) "personal information" means information in any form on an
8 individual that is not encrypted or redacted, or is encrypted and the encryption key has
9 been accessed or acquired, and that consists of a combination of

10 (A) an individual's name, address, or telephone number; in this
11 subparagraph, "individual's name" means a combination of an individual's

12 (i) first name or first initial; and

13 (ii) last name; and

14 (B) one or more of the following information elements:

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

16 (ii) the individual's driver's license number or state
17 identification card number;

18 (iii) the individual's account number, credit card
19 account number, or debit card account number;

20 (iv) account passwords or personal identification
21 numbers or other access codes.

22 **Article 2. Credit Report Security Freeze.**

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

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

29 (1) by certified mail;

30 (2) by telephone if the consumer provides the consumer credit
31 reporting agency with certain personal identification; or

1 (3) through a secure electronic mail connection if the consumer credit
2 reporting agency makes a secure electronic mail connection available to the consumer.

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

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

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

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

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

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

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

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

30 (c) A consumer credit reporting agency that receives a request from a
31 consumer under (b) of this section shall comply with the request immediately after

1 receiving the request by telephone or electronic mail or within three business days
2 after receiving the request by certified mail.

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

6 (e) If a security freeze is in place on a consumer's credit report and
7 information derived from the credit report and if a third party applies to a consumer
8 credit reporting agency to provide the third party with access to the consumer's credit
9 report or information derived from the credit report, the consumer credit reporting
10 agency and, except as provided for insurers under (f) of this section, the third party
11 may treat the third party's application as incomplete unless the consumer authorizes
12 the access under (a) of this section.

13 (f) If an insurer requests access to a consumer report on which a security
14 freeze is in place, unless the consumer authorizes access under (a) of this section, the
15 insurer may

16 (1) treat the consumer's application as incomplete;

17 (2) decline the consumer's application if the consumer does not lift the
18 security freeze for the insurer after a request by the insurer or the insurer's agent;

19 (3) treat the consumer as if the consumer has a neutral credit rating;

20 (4) exclude the use of credit information as a factor and use only
21 underwriting criteria; or

22 (5) treat the consumer in a manner that is otherwise approved by the
23 division of insurance.

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

29 (h) This section is not intended to prevent a consumer credit reporting agency
30 from advising a third party that requests access to a consumer's credit report or
31 information derived from the credit report that a security freeze is in effect.

1 (i) The procedures used by a consumer credit reporting agency for
2 implementing the provisions of this section may include the use of telephone,
3 facsimile, or electronic means if making the disclosure by the electronic means is
4 consistent with the provisions regarding electronic records and signatures required for
5 notices legally required to be in writing under 15 U.S.C. 7001 et seq. (Electronic
6 Signatures in Global and National Commerce Act), Internet, electronic mail, or
7 another electronic method.

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

11 (1) the consumer requests that the consumer credit reporting agency
12 remove the security freeze under (b) of this section; or

13 (2) the consumer made a material misrepresentation of fact to the
14 consumer credit reporting agency when the consumer requested the security freeze
15 under AS 45.48.110; if a consumer credit reporting agency intends to remove a
16 security freeze on a consumer's credit report under this paragraph, the consumer credit
17 reporting agency shall notify the consumer in writing five business days before
18 removing the security freeze.

19 (b) A consumer credit reporting agency shall remove a security freeze
20 immediately after receiving a request for removal from the consumer who requested
21 the security freeze if the consumer provides proper identification to identify the
22 consumer and the unique personal identification number or password provided by the
23 consumer credit reporting agency under AS 45.48.120.

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

27 **Sec. 45.48.160. Charges.** (a) Except as provided by (b) of this section, a
28 consumer credit reporting agency may not charge a consumer to place or remove a
29 security freeze, to provide access under AS 45.48.130, or to take any other action,
30 including the issuance of a personal identification number or password under
31 AS 45.48.120, that is related to the placement of, removal of, or allowing access to a

1 credit report or information derived from a credit report on which a security freeze has
2 been placed.

3 (b) If a consumer fails to retain a personal identification number or password
4 issued under AS 45.48.120, a consumer credit reporting agency may charge the
5 consumer up to \$5 for each time after the first time that the consumer credit reporting
6 agency issues the consumer another personal identification number or password
7 because the consumer failed to retain the personal identification number or password.

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

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

13 You may obtain a security freeze on your credit report at no
14 charge to protect your privacy and ensure that credit is not granted in
15 your name without your knowledge. You have a right to place a
16 "security freeze" on your credit report under state law (AS 45.48.100 -
17 45.48.290).

18 The security freeze will prohibit a consumer credit reporting
19 agency from releasing your credit score and any information in your
20 credit report without your express authorization or approval.

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

- 31 (1) proper identification to verify your identity;

1 (2) the personal identification number or password
2 provided by the consumer credit reporting agency;

3 (3) proper information necessary to identify the third
4 party or third parties who are authorized to receive the credit report or
5 the specific period of time for which the report is to be available to
6 third parties.

7 A consumer credit reporting agency that receives your request
8 to temporarily lift a freeze on a credit report is required to comply with
9 the request immediately after receiving your request if you make the
10 request by telephone or electronic mail, or within three business days
11 after receiving your request if you make the request by certified mail.

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

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

21 You have a right to bring a civil action against someone who
22 violates your rights under these laws on security freezes. The action can
23 be brought against a consumer credit reporting agency.

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

30 **Sec. 45.48.190. Violations and penalties.** (a) A consumer who suffers
31 damages as a result of a person's violation of AS 45.48.100 - 45.48.290 may bring an

1 action in court against the person and recover, in the case of a violation where the
2 person acted

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

5 (2) knowingly,

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

7 (B) punitive damages that are not less than \$100 nor more than
8 \$5,000 for each violation as the court determines to be appropriate; and

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

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

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

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

20 **Sec. 45.48.200. Limited application.** A consumer credit information agency
21 may not release all or a part of the information on a consumer that the consumer credit
22 information agency has received from a consumer credit reporting agency if the
23 consumer has placed a security freeze on the consumer credit reporting agency under
24 AS 45.48.100.

25 **Sec. 45.48.210. Reports not covered.** The provisions of AS 45.48.100 -
26 45.48.290 do not apply to a credit report if the credit report is

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

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

31 (A) the communication is limited to internal communication

1 within the organization of the person making the report; and

2 (B) the consumer is informed by a clear and conspicuous
3 written disclosure that the information contained in the credit application may
4 be communicated as allowed under (A) of this paragraph, except that, if a
5 credit application is taken by telephone, the consumer shall initially be
6 informed orally when the application is taken, and a clear and conspicuous
7 written disclosure shall be made to the consumer in the first written
8 communication to the consumer after the application is taken;

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

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

16 **Sec. 45.48.220. Exemptions.** The provisions of AS 45.48.100 - 45.48.290 do
17 not apply to the use of a credit report by

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

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

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

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

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

31 (6) the Department of Revenue, its agents, or its assigns when

1 investigating or collecting delinquent taxes or unpaid court orders or when
2 implementing its other statutory responsibilities;

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

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

7 (9) a person providing a consumer with a copy of the consumer's credit
8 report or credit score at the consumer's request.

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

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

12 (2) "consumer" means an individual who is the subject of a credit
13 report;

14 (3) "consumer credit information agency" means a person who acts
15 only as a reseller of consumer information by assembling and merging information
16 contained in the data bases of consumer credit reporting agencies and does not
17 maintain a permanent data base of consumer information from which new consumer
18 credit reports are produced;

19 (4) "consumer credit reporting agency" has the meaning given in
20 AS 45.48.990, but does not include a consumer credit information agency;

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

25 (6) "third party" means a person who is not

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

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

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

31 **Sec. 45.48.300. Required disclosure.** A consumer credit reporting agency

1 shall, if a consumer makes the request and the request is not covered by the free
 2 disclosure provision of 15 U.S.C. 1681j(a) - (d) (Fair Credit Reporting Act), clearly
 3 and accurately disclose to the consumer the information described under
 4 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 credit
 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 credit
 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 credit reporting agency is not required to disclose the
4 information 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 credit report from the consumer credit 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 credit reporting agency
13 may 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 credit reporting agency shall disclose the charge to the
20 consumer 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 credit reporting
24 agency offers electronic access for any other purpose, or by any other reasonable
25 means that is available from the consumer credit 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 credit reporting agency, appear during normal
28 business hours at the consumer credit reporting agency's place of business where the
29 consumer credit reporting agency normally provides disclosures under AS 45.48.300.

30 **Sec. 45.48.340. Timing of disclosure.** A consumer credit reporting agency
31 shall 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 credit reporting agency, except by
6 electronic means.

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

12 (b) If a person who does business in the state by distributing information about
13 an individual's credit history, score, or ranking releases information about an
14 individual that is inaccurate, the person shall, as quickly as possible after discovering
15 that inaccurate information is being distributed,

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

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

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

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

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

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

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

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

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

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

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

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

11 (B) the social security number is included on an application or
12 other form, including a document sent as a part of an application process or an
13 enrollment process, sent by mail to establish, amend, or terminate an account, a
14 contract, or a policy, or to confirm the accuracy of the social security number;
15 however, a social security number allowed to be mailed under this
16 subparagraph may not be printed, in whole or in part, on a postcard or other
17 mailer that does not require an envelope, or in a manner that makes the social
18 security number visible on the envelope or without the envelope being opened;

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

25 (b) Unless expressly required by federal or state law, a person may not sell,
26 lease, loan, trade, rent, or otherwise disclose an individual's social security number to
27 a third party for any purpose without the individual's written consent.

28 **Sec. 45.48.410. Additional governmental prohibition; social security**
29 **numbers.** A person who is a state or local governmental agency, except for an agency
30 of the judicial branch, may not ask an individual to provide the agency with a social
31 security number unless state, federal, or local law expressly authorizes the agency to

1 ask the individual to provide the social security number to the agency. A state agency
 2 may adopt regulations under AS 44.62 (Administrative Procedure Act) to implement
 3 this section.

4 **Sec. 45.48.415. Interagency disclosure.** Notwithstanding the other provisions
 5 of AS 45.48.400 - 45.48.420, a state or local governmental agency may disclose an
 6 individual's social security number to another state or local governmental agency or to
 7 an agency of the federal government if the disclosure is required in order for the
 8 agency to carry out the agency's duties and responsibilities.

9 **Sec. 45.48.420. Penalties.** (a) A person who knowingly violates AS 45.48.400
 10 is liable to the state for a civil penalty not to exceed \$3,000.

11 (b) An individual may bring a civil action in court against a person who
 12 knowingly violates AS 45.48.400 or 45.48.410 and may recover actual damages or
 13 \$5,000, whichever amount is greater, and court costs and attorney fees allowed by the
 14 rules of court.

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

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

18 **Article 5. Disposal of Records.**

19 **Sec. 45.48.500. Disposal of records.** (a) A business and a governmental
 20 agency shall take, in connection with and after the disposal of the records, all
 21 reasonable measures necessary to protect against unauthorized access to or use of the
 22 records of the business or governmental agency that contain personal information.

23 (b) Notwithstanding (a) of this section, if a business or governmental agency
 24 has otherwise complied with the provisions of AS 45.48.500 - 45.48.590 in the
 25 selection of a third party engaged in the business of record destruction, the business or
 26 governmental agency is not liable for the disposal of records under AS 45.48.500 -
 27 45.48.590 after the business or governmental agency has relinquished control of the
 28 records to the third party for the destruction of the records.

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

31 (1) implementing and monitoring compliance with policies and

1 procedures that require the burning, pulverizing, or shredding of paper documents
2 containing personal information so that the personal information cannot practicably be
3 read or reconstructed;

4 (2) implementing and monitoring compliance with policies and
5 procedures that require the destruction or erasure of electronic media and other
6 nonpaper media containing personal information so that the personal information
7 cannot practicably be read or reconstructed; and

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

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

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

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

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

22 **Sec. 45.48.530. Policy and procedures.** A business or governmental agency
23 shall comprehensively describe and classify as the official policy of the business or
24 governmental agency in the writings of the business or governmental agency the
25 policies and procedures that relate to the adequate destruction and proper disposal of
26 personal records. In this section, "writings" includes corporate handbooks, employee
27 handbooks, and similar corporate documents.

28 **Sec. 45.48.540. Exemption.** A business or a governmental agency is not
29 required to comply with AS 45.48.500 - 45.48.530 if federal law requires that the
30 business or governmental agency act in a way that does not comply with AS 45.48.500
31 - 45.48.530.

1 **Sec. 45.48.550. Civil penalty.** An individual, a business, or a governmental
 2 agency that knowingly violates AS 45.48.500 - 45.48.590 is liable to the state for a
 3 civil penalty not to exceed \$3,000. In this section, "knowingly" has the meaning given
 4 in AS 11.81.900.

5 **Sec. 45.48.560. Court action.** An individual who is damaged by a violation of
 6 AS 45.48.500 - 45.48.590 may bring a civil action in court to enjoin further violations
 7 and to recover damages for the violation and court costs and attorney fees allowed by
 8 the rules of court.

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

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

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

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

19 (2) "dispose" means

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

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

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

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

28 (iii) equipment for nonpaper storage of information;

29 (3) "governmental agency" means a state or local governmental
 30 agency, except for an agency of the judicial branch;

31 (4) "personal information" means information that identifies, relates to,

1 describes, or is capable of being associated with a particular individual, and includes a
 2 name, signature, social security number, fingerprint, photograph, computerized image,
 3 physical characteristic, physical description, address, telephone number, passport
 4 number, driver's license, state identification number, date of birth, medical
 5 information, bank account number, credit card number, debit card number, and
 6 financial information;

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

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

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

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

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

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

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

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

31 **Sec. 45.48.620. Criteria for determination; court order.** (a) A court shall

1 determine that a victim is factually innocent of a crime if the court finds that the
2 petition or motion brought under AS 45.48.600 is meritorious and that

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

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

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

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

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

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

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

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

1 **Sec. 45.48.680. Right to file police report regarding identity theft.** (a) Even
 2 if the local law enforcement agency does not have jurisdiction over the theft of an
 3 individual's identity, if an individual who has learned or reasonably suspects the
 4 individual has been the victim of identity theft contacts, for the purpose of filing a
 5 complaint, a local law enforcement agency that has jurisdiction over the individual's
 6 actual place of residence, the local law enforcement agency shall make a report of the
 7 matter and provide the individual with a copy of the report. The local law enforcement
 8 agency may refer the matter to a law enforcement agency in a different jurisdiction.

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

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

- 14 (1) "crime" has the meaning given in AS 11.81.900;
 15 (2) "department" means the Department of Law;
 16 (3) "identity theft" means the theft of the identity of an individual;
 17 (4) "perpetrator" means the person who perpetrated the theft of an
 18 individual's identity;
 19 (5) "victim" means an individual who is the victim of identity theft.

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

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

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

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

2 **Sec. 45.48.850. Truncation of card information.** (a) A person who accepts
3 credit cards or debit cards for the transaction of business may not print more than the
4 last five digits of the card number or the expiration date on any receipt provided to the
5 cardholder at the point of the sale or transaction.

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

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

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

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

16 (f) In this section,

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

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

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

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

31 **Article 9. General Provisions.**

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

4 **Sec. 45.48.990. Definitions.** In this chapter, unless the context indicates
 5 otherwise,

6 (1) "consumer" means an individual;

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

12 (3) "credit report" means a written, oral, or other communication of
 13 information by a consumer credit reporting agency bearing on a consumer's credit
 14 worthiness, credit standing, credit capacity, character, general reputation, personal
 15 characteristics, or mode of living if the communication is used or expected to be used
 16 or collected in whole or in part to serve as a factor in establishing the consumer's
 17 eligibility for

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

20 (B) employment purposes; or

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

23 (4) "information system" means any information system, including a
 24 system consisting of digital data bases and a system consisting of pieces of paper;

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

27 (6) "state resident" means an individual who satisfies the residency
 28 requirements under AS 01.10.055.

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

31 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

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

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

8 TRANSITION: IMPLEMENTATION. A person to whom AS 45.48.400, 45.48.410,
9 45.48.415, or 45.48.420, enacted by sec. 1 of this Act, applies shall make reasonable efforts to
10 cooperate, through systems testing and other means, to ensure that the requirements of
11 AS 45.48.400, 45.48.410, 45.48.415, and 45.48.420 that apply to the person are implemented
12 on or before the effective date of AS 45.48.400, 45.48.410, 45.48.415, and 45.48.420. In this
13 section, "person" has the meaning given in AS 45.48.990, but also includes an agency of the
14 judicial branch.