

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

May 5, 2007  
8:19 a.m.

**MEMBERS PRESENT**

Representative Jay Ramras, Chair  
Representative Nancy Dahlstrom, Vice Chair  
Representative John Coghill  
Representative Bob Lynn  
Representative Ralph Samuels  
Representative Max Gruenberg  
Representative Lindsey Holmes

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 65

"An Act relating to breaches of security involving personal information, credit report and credit score security freezes, consumer credit monitoring, credit accuracy, protection of social security numbers, care of records, disposal of records, identity theft, furnishing consumer credit header information, credit cards, and debit cards, and to the jurisdiction of the office of administrative hearings; amending Rule 60, Alaska Rules of Civil Procedure; and providing for an effective date."

- MOVED CSHB 65(JUD) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 65

SHORT TITLE: PERSONAL INFORMATION & CONSUMER CREDIT

SPONSOR(S): REPRESENTATIVE(S) COGHILL, GARA

01/16/07	(H)	PREFILE RELEASED 1/5/07
01/16/07	(H)	READ THE FIRST TIME - REFERRALS
01/16/07	(H)	L&C, JUD, FIN
01/31/07	(H)	L&C AT 3:00 PM CAPITOL 17
01/31/07	(H)	<Bill Hearing Canceled>
03/28/07	(H)	L&C AT 3:00 PM CAPITOL 17
03/28/07	(H)	Heard & Held
03/28/07	(H)	MINUTE(L&C)

04/04/07 (H) L&C AT 3:00 PM CAPITOL 17  
 04/04/07 (H) <Bill Hearing Canceled>  
 04/16/07 (H) L&C AT 10:00 AM CAPITOL 17  
 04/16/07 (H) Scheduled But Not Heard  
 04/20/07 (H) L&C AT 3:00 PM CAPITOL 17  
 04/20/07 (H) Heard & Held  
 04/20/07 (H) MINUTE(L&C)  
 04/23/07 (H) L&C AT 3:00 PM CAPITOL 17  
 04/23/07 (H) Moved CSHB 65(L&C) Out of Committee  
 04/23/07 (H) MINUTE(L&C)  
 04/24/07 (H) L&C RPT CS(L&C) 2DP 3NR 1AM  
 04/24/07 (H) DP: GATTO, NEUMAN  
 04/24/07 (H) NR: BUCH, LEDOUX, OLSON  
 04/24/07 (H) AM: GARDNER  
 05/02/07 (H) JUD AT 1:00 PM CAPITOL 120  
 05/02/07 (H) Heard & Held  
 05/02/07 (H) MINUTE(JUD)  
 05/05/07 (H) JUD AT 8:00 AM CAPITOL 120

**WITNESS REGISTER**

FRANK BAILEY, Special Assistant;  
 Legislative Liaison/Communications  
 Office of the Commissioner  
 Department of Administration (DOA)  
 Juneau, Alaska

**POSITION STATEMENT:** During discussion of HB 65, testified on Amendment 10.

JOHN BURTON, Vice President  
 State Government Affairs  
 ChoicePoint Asset Company ("ChoicePoint")  
 Alpharetta, Georgia

**POSITION STATEMENT:** Provided comments during discussion of HB 65.

REPRESENTATIVE LES GARA  
 Alaska State Legislature  
 Juneau Alaska

**POSITION STATEMENT:** Testified as one of the bill's joint prime sponsors on the amendments to HB 65.

JANE W. PIERSON, Staff  
 to Representative Jay Ramras  
 Alaska State Legislature  
 Juneau, Alaska

**POSITION STATEMENT:** Explained new Amendment 1 to HB 65.

CHRIS ASHENBRENNER, Interim Program Administrator  
Council on Domestic Violence & Sexual Assault (CDVSA)  
Department of Public Safety (DPS)  
Juneau, Alaska

**POSITION STATEMENT:** Testified on HB 65.

LORI DAVEY, Owner  
Motznik Information Services, Inc.  
Anchorage, Alaska

**POSITION STATEMENT:** Testified on HB 65.

RICK SVOBODNY, Deputy Attorney General  
Central Office  
Criminal Division  
Department of Law (DOL)  
Juneau, Alaska

**POSITION STATEMENT:** Provided comments and responded to questions during discussion of HB 65.

DOUG WOOLIVER, Administrative Attorney  
Administrative Staff  
Office of the Administrative Director  
Alaska Court System (ACS)  
Anchorage, Alaska

**POSITION STATEMENT:** Testified on HB 65.

CLYDE (ED) SNIFFEN, Jr., Senior Assistant Attorney General  
Commercial/Fair Business Section  
Civil Division (Anchorage)  
Department of Law (DOL)

**POSITION STATEMENT:** Provided comments and responded to questions during discussion of HB 65.

#### **ACTION NARRATIVE**

**CHAIR JAY RAMRAS** called the House Judiciary Standing Committee meeting to order at [8:19:27 AM](#). Representatives Holmes, Gruenberg, Dahlstrom, Coghill, Samuels, Lynn, and Ramras were present at the call to order.

#### HB 65-PERSONAL INFORMATION & CONSUMER CREDIT

[8:19:52 AM](#)

CHAIR RAMRAS announced that the only order of business would be HOUSE BILL NO. 65, "An Act relating to breaches of security

involving personal information, credit report and credit score security freezes, consumer credit monitoring, credit accuracy, protection of social security numbers, care of records, disposal of records, identity theft, furnishing consumer credit header information, credit cards, and debit cards, and to the jurisdiction of the office of administrative hearings; amending Rule 60, Alaska Rules of Civil Procedure; and providing for an effective date." [Before the committee was CSHB 65(L&C), as amended on 5/2/07; left pending from the meeting on 5/2/07 was the motion to adopt Amendment 1 and the motion to adopt Amendment 10; included in members' packets was a proposed committee substitute (CS) for HB 65, Version 25-LS0311\M, Bannister, 5/3/07.]

[8:21:49 AM](#)

REPRESENTATIVE DAHLSTROM moved [to adopt] the proposed committee substitute (CS) for HB 65, Version 25-LS0311\M, Bannister, 5/03/07, [as the work draft].

REPRESENTATIVE HOLMES objected.

CHAIR RAMRAS, in response to a question, stated that Version M only contains the amendments previously made to the bill.

REPRESENTATIVE HOLMES removed her objection.

[8:26:18 AM](#)

CHAIR RAMRAS stated that Version M was before the committee.

CHAIR RAMRAS made a motion to adopt new Amendment 10, labeled 25-LS0311\E.15, Bannister, 5/2/07, and containing handwritten changes to reflect a change to Version M; new Amendment 10 reads:

Page 20, lines 9 - 10:

Delete "or \$5,000, whichever amount is greater,"

REPRESENTATIVE HOLMES objected for the purpose of discussion.

CHAIR RAMRAS explained that new Amendment 10 would allow individuals to recover actual damages.

REPRESENTATIVE COGHILL, as one of the bill's joint prime sponsors, spoke in favor of Amendment 10, but cautioned that it would allow the recovery of both economic and noneconomic

damages. In the event of a class action suit, he opined, damages could become untenable.

CHAIR RAMRAS offered his support for Amendment 10.

REPRESENTATIVE HOLMES removed her objection. There being no further objection, new Amendment 10 was adopted.

[8:29:27 AM](#)

CHAIR RAMRAS [made a motion to adopt] Amendment 11, labeled 25-LS-0311\M.2, Bannister, 5/4/07, which read:

Page 26, lines 29 - 30:

Delete "assembling or evaluating consumer credit information or other information on consumers"

Insert "maintaining consumer credit information"

REPRESENTATIVE COGHILL objected.

[8:31:21 AM](#)

FRANK BAILEY, Special Assistant; Legislative Liaison/Communications, Office of the Commissioner, Department of Administration (DOA), relayed that the new Amendment 10 addresses DOA's concerns.

[8:31:56 AM](#)

JOHN BURTON, Vice President, State Government Affairs, ChoicePoint Asset Company ("ChoicePoint"), asked for clarification on Amendment 11, then explained that he had worked with the sponsor's staff in order to clarify the definitions of "consumer credit reporting agency" and "credit report". He offered that ChoicePoint supports the use of these terms because they mirror the definitions in the federal Fair Credit Reporting Act (FCRA). He explained that the term "consumer report" as defined in the FCRA, is an umbrella term used by the Federal Trade Commission (FTC) to govern everything it regulates, while the term "credit report" is a consumer report as defined in federal law. However, the FTC regulates other areas that do not involve credit or credit data. He opined that HB 65 correctly focuses on a credit score security freeze but does not extend to other consumer data such as lost data or data for fraud prevention, data which are not used for credit purposes. He stated that the two definitions together help conform the bill

to a credit report, which is the subject of a credit score security freeze.

8:36:27 AM

REPRESENTATIVE LES GARA, Alaska State Legislature, speaking as one of the joint prime sponsors of HB 65, offered that [Amendment 10 and Amendment 11] work together. He stated that Version M reflects the Illinois language, and perhaps other states' consumer protection laws, which mirror definitions in federal law for a "consumer credit reporting agency" and a "credit report". He opined that the cumulative effect of the two amendments is to allow companies, like ChoicePoint, to distribute some of an individual's information even when he/she places a credit freeze on his/her personal information. For example, he indicated that some information might be relevant only to credit scoring, or to insurance products. But absent the adoption of [Amendment 11], Choice Point would be prevented from using that information while the individual has placed a freeze on his/her information. He offered that he could not determine any adverse impact to consumers, although he also noted that he has not heard any criticism of Illinois law. He opined that a person who has been a victim of identity theft or credit theft has a right to a broader freeze on his/her information, and so he supports the Illinois language.

REPRESENTATIVE COGHILL referred members to page 26 and indicated that the operative part of this section is for the purpose of furnishing credit reports to third parties. He suggested that if other information is relevant to furnishing a credit report it should be included in the bill. He stated that he speaks against Amendment 11.

MR. BURTON suggested that it is important to note that Illinois subsequently amended their credit freeze law to limit it to a credit report and extensions of credit. He offered that in lieu of not narrowing the definition of a "credit report" and a "credit reporting agency", ChoicePoint urges the committee to adopt the Illinois law definition for "security freeze".

CHAIR RAMRAS withdrew Amendment 11.

REPRESENTATIVE GARA clarified that the version of the Illinois law attached to Amendment 11 is dated 2007. He acknowledged that Illinois law may have since been updated, as Mr. Burton indicated, and that he will research the matter.

[8:40:22 AM](#)

CHAIR RAMRAS made a motion to adopt Amendment 12, labeled 25-LS0311\M.3, Bannister, 5/4/07, which read:

Page 27, lines 1 - 11:

Delete all material and insert:

"(3) "credit report" means a written, oral, or other communication of credit information by a consumer credit reporting agency bearing on a consumer's credit worthiness, credit standing, or credit capacity;"

REPRESENTATIVE COGHILL objected.

CHAIR RAMRAS explained that Amendment 12 will delete paragraph (3) of proposed AS 45.48.990, and will insert a new definition for "credit report".

MR. BURTON explained that since the initial passage of credit freeze legislation in California in 2001, the legislative intent and public policy behind these types of bills is to allow a consumer to freeze his/her credit report as protection against identity theft. If it is the intent of anyone that this bill should be a manner for consumers to opt out or freeze things beyond a credit report, then he stated he believes the bill goes beyond the original intent. He suggested that if the sponsor or committee wishes to adopt the Illinois language, then the Illinois law should be adopted in its entirety, and that the focus of the bill should be clear. He opined that the overall goal of the bill is to protect consumers by allowing them to freeze their credit reports as protection against identity theft and unauthorized extensions of credit.

CHAIR RAMRAS withdrew Amendment 12.

[8:43:32 AM](#)

[Left pending from the meeting on 5/2/07 was the motion to adopt Amendment 1, labeled 25-LS0311\E.12, Bannister, 5/1/07.]

CHAIR RAMRAS made a motion to adopt a new Amendment 1, labeled 25-LS0311\M.4, Bannister, 5/4/07, which read:

Page 1, line 1, following "to":

Insert "**the disclosure of permanent fund dividend applicant records,**"

Page 2, following line 2:

Insert new bill sections to read:

"\* **Sec. 2.** AS 43.23.017 is amended to read:

**Sec. 43.23.017. Applicant information confidential.** Information on each permanent fund dividend application, except the applicant's name, is confidential. The department may only release information that is confidential under this section

(1) to a local, state, or federal government agency;

(2) in compliance with a court order;

(3) to the individual who or agency that files an application on behalf of another;

(4) to a banking institution to verify the direct deposit of a permanent fund dividend or correct an error in that deposit;

(5) as directed to do so by the applicant;

[AND]

(6) to a contractor who has a contract with a person entitled to obtain the information under (1) - (5) of this section to receive, store, or manage the information on that person's behalf; a contractor receiving data under this paragraph may only use the data as directed by and for the purposes of the person entitled to obtain the information; and

(7) as provided under (b) of this section.

\* **Sec. 3.** AS 43.23.017 is amended by adding new subsections to read:

(b) The department shall disclose applicant information to a business under a contract with the department that requests the applicant information if the business has a license under AS 43.70.020, the business, or an agent, an employee, or a contractor of the business, indicates that the business will use the applicant information only in the normal course of business, the person making the request provides proof of the person's identity, and the person making the request states that the business will use the applicant information only

(1) to obtain information for law enforcement agencies or for an investigation, if the business is the practice of law or includes the service of process;

(2) in connection with a civil, a criminal, an administrative, or an arbitration proceeding, including the service of process, investigation in

anticipation of litigation, executing on a judgment, enforcing a judgment, or complying with a court order;

(3) for a legal or beneficial interest relating to the applicant, if the business holds the legal or beneficial interest;

(4) on behalf of the applicant, if the business is acting in a fiduciary capacity on behalf of the applicant;

(5) in connection with insurance claims, insurance investigations, or insurance anti-fraud activities, if the business is an insurer or a person who provides support services to an insurer;

(6) to comply with federal, state, or municipal laws, regulations, ordinances, or other legal requirements; or

(7) for bulk distribution to political candidates, nonprofit organizations, or persons taking polls.

(c) In this section,

(1) "applicant" means an applicant for a permanent fund dividend;

(2) "applicant information" means name, mailing address, and birth year of an applicant;

(3) "business" means a person engaging in business."

Renumber the following bill sections accordingly.

Page 27, line 23:

Delete "sec. 3"

Insert "sec. 5"

Page 27, line 27:

Delete "sec. 3"

Insert "sec. 5"

Page 27, line 30:

Delete "sec. 3"

Insert "sec. 5"

Page 28, line 1:

Delete "sec. 4"

Insert "sec. 6"

REPRESENTATIVE HOLMES objected for the purpose of discussion.

[8:45:33 AM](#)

JANE W. PIERSON, Staff to Representative Jay Ramras, Alaska State Legislature, explained the changes from the old Amendment 1, Version E.12, to the new Amendment 1, Version M.4. She referred to new Amendment 1, and explained that the major change reflects that the Department of Revenue (DOR) shall disclose Permanent Fund Dividend (PFD) applicant information to a business under contract with the department. This change allows the department set up a contract similar to how the Division of Motor Vehicles (DMV) handles confidential information. She explained that new Amendment 1 no longer stipulates that the information can only be used as necessary to implement or enforce a transaction authorized by the applicant because the business would already have been given that information by the applicant; that subsection (b)(1) now says in part "obtain information for law enforcement agencies" and no longer contains the term "self-regulatory organization" because the term was deemed unnecessary and poorly defined; and that [subsection (b)] no longer contains the words "to verify the accuracy of information provided by the applicant, to prevent fraud by the applicant, or to pursue legal remedies against the applicant" because it refers to information provided by the applicant.

MS. PIERSON stated that the term, "nonprofit" was supposed to have been removed from new Amendment 1's subsection (b)(7) to reflect that the information being released is available to all organizations not just non-profit organizations. She gave an example that one hospital might be non-profit, and another hospital might not be, so the effect of removing "non-profit" from the new Amendment 1 would be to open access to information for all organizations.

MS. PIERSON, in response to a question, advised that the term "organization" is not defined in statute, and in response to a concern that an organization seeking information might be a terrorist organization, responded that an organization seeking information could also be a local little league. Furthermore, there will be contractual obligations between the department and the person gathering the information, and that's where restraints will be.

REPRESENTATIVE GRUENBERG noted that that language might be broader than needed.

REPRESENTATIVE COGHILL asked with respect to the first change in new Amendment 1, if this is to mirror the type of contract that DMV lets.

MS. PIERSON, in response, confirmed that the change would allow businesses to obtain and use applicant information for bulk distribution to political candidates or persons taking polls and is intended replicate the type of contract DMV enters into.

REPRESENTATIVE COGHILL asked what criteria would be used in a potential contract.

MS. PIERSON offered that the criteria could be defined by regulation by the Permanent Fund Dividend Division, Department of Revenue.

[8:50:15 AM](#)

REPRESENTATIVE SAMUELS asked why information would be limited to businesses and not to individuals. He said he recognizes that some businesses sell formatted information.

REPRESENTATIVE RAMRAS made a motion to amend new Amendment 1 to delete "non-profit organizations" from proposed subsection (b)(7).

REPRESENTATIVE GRUENBERG said he doesn't have a problem deleting "non-profit", but urged that it is essential to define "organizations" in statute and not leave the term to be defined by regulation.

MS. PIERSON, in response to a question, offered her belief that it would make more sense to delete "nonprofit organizations" from new Amendment 1, rather than just deleting "non-profit".

CHAIR RAMRAS asked if there were any objections to the amendment to new Amendment 1. There being none, the new Amendment 1 was amended.

REPRESENTATIVE GRUENBERG asked if members would consider another amendment to new Amendment 1, as amended, to delete the word "business" from proposed subsection (b) because the definition of the word "person" includes business.

REPRESENTATIVE LYNN surmised that the same argument regarding paragraph (7) could also apply to subsection (b)'s other paragraphs. He cautioned that the language should not be centered on any particular business.

REPRESENTATIVE COGHILL noted that subsection (b) uses the term, "business" several times but cautioned that in at least one instance it should remain.

REPRESENTATIVE GRUENBERG agreed.

REPRESENTATIVE GARA offered his understanding that the suggestion is logical in terms of consistency, but reminded the committee that Senator Guess's original amendment, he opined, was meant to ensure that a party has a legitimate reason for obtaining an applicant's address. By leaving in the word "business", as new Amendment 1, as amended, is currently written, it makes a policy call that some businesses legitimately need to obtain addresses in order to operate. By expanding the scope of new Amendment 1, as amended, to make this information available to individuals, it might inadvertently make information available to a class of people who do not have a right to confidential information. If the scope remains narrowed only to businesses, he opined, it seems more likely that someone with a vendetta probably would not have access to confidential information. He cautioned that once the scope of the bill is broadened to a person, any of the 600,000 or so Alaskans who file for a PFD might find a way to access confidential information.

REPRESENTATIVE SAMUELS, in response to a question, said he now understands why subsection (b) narrows the scope to just businesses, and he will decide whether he agrees.

The committee took an at-ease from 8:57 a.m. to 9:01 a.m.

[9:01:14 AM](#)

REPRESENTATIVE LYNN made a motion to adopt a second amendment to new Amendment 1, as amended; this second amendment read [original punctuation provided]:

Page 2, line 24

Add: "Applicant information for bulk distribution to political candidates in an election shall also be disclosed directly to a candidate who has filed a declaration of candidacy or letter of intent to run in that election."

REPRESENTATIVE COGHILL objected. He suggested that if new Amendment 1, as amended, passes as is, he would continue to work to address the underlying issues raised.

Representative Gruenberg noted that the committee could not amend an amendment to an amendment. The committee could either adopt this second amendment and then take up a third amendment, or the second amendment could be withdrawn so that he could draft better language.

REPRESENTATIVE LYNN withdrew the second amendment to new Amendment 1, as amended.

REPRESENTATIVE GARA recapped that the withdrawn second amendment to new Amendment 1, as amended, stated that not only can a company obtain the information to help candidates but if a candidate chose not to hire a company, the candidate could obtain the information directly. He stated his neutrality in the matter of whether to adopt this change, but offered his interpretation that if the purpose of the second amendment to Amendment 1 is to allow candidates to obtain information without hiring a company to obtain it, then the amendment must also specify party or candidate; that not only can a business obtain the information but an individual can also.

[9:04:34 AM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt a new conceptual amendment to new Amendment 1, as amended.

CHAIR RAMRAS [after some discussion regarding what the exact wording would be] relayed that the second conceptual amendment to new Amendment 1, as amended, would, in addition to making conforming changes to the entirety of new Amendment 1, as amended, add to the end of proposed subsection (b)(7) the words:

Applicant information for bulk distribution to political candidates in an election shall also be disclosed directly to a candidate who has filed a declaration of candidacy or letter of intent to run in that election or to a recognized political party"

CHAIR RAMRAS added that Amendment 1 should be made to conform to new Amendment 1.

REPRESENTATIVE COGHILL objected, suggesting that the amendment be prepared by the legislative drafters.

REPRESENTATIVE HOLMES asked why the language was changed several years ago with respect to the domestic violence aspect.

REPRESENTATIVE SAMUELS stated that he agrees and more fully understands why the information should only be released to a business and not to an individual. He stated he opposes the amendment to new Amendment 1, but supports the language in the bill.

REPRESENTATIVE DAHLSTROM indicated that she is concerned with both the new Amendment 1, as amended, and the second amendment to the Amendment 1 because the information being considered for release is within the only database in the state that lists specific information about children.

REPRESENTATIVE LYNN opined that most candidates are as responsible as business owners, and that merely holding a business license does not make a person more responsible or less likely to commit a crime.

REPRESENTATIVE HOLMES asked for testimony with respect to domestic violence and whether it makes a difference if the information is released to a business or a candidate.

[9:10:55 AM](#)

CHRIS ASHENBRENNER, Interim Program Administrator, Council on Domestic Violence & Sexual Assault (CDVSA), Department of Public Safety (DPS), offered her view that any narrowing of access to the PFD applicant database will help to protect children. She stated that it seems that the second amendment to new Amendment 1, as amended, would broaden access to confidential information, but that she is uncertain of its effect on potential victims.

[9:11:37 AM](#)

A roll call vote was taken. Representatives Gruenberg and Lynn voted in favor of the second amendment to new Amendment 1, as amended. Representatives Dahlstrom, Coghill, Samuels, Holmes, and Ramras voted against it. Therefore, the second amendment to new Amendment 1, as amended, failed by a vote of 2-5.

CHAIR RAMRAS indicated that new Amendment 1, as amended, was now before the committee.

MS. ASHENBRENNER expressed concern about the specific personal information that might be made available to those individuals who prey on others, for example, domestic violence offenders, stalkers, or sex offenders. The CDVSA sees the growth of cyberstalking and this amendment would certainly enhance the ability of predators to stalk. Initially, she said, she was excited about the protection this bill might offer individuals, since some people have been tracked down by their credit report. However, new Amendment 1, as amended, makes specific confidential information available to potential predators, and so she has grown concerned about the broader aspect of confidential information that would be released. She suggested that the committee consider narrowing the scope of the bill in order to protect potential victims. She opined that this protection is especially important given the extremely high rates of victims of domestic violence and sexual assault in all parts of Alaska.

[9:14:41 AM](#)

LORI DAVEY, Owner, Motznik Information Services, Inc. ("Motznik"), began by offering her view that the value of the bill is more to protect victims than to find victims. She explained that by reauthorizing access to the PFD applicant database for legitimate business purposes allows Motznik to definitively locate people to serve process, to track their criminal record, and to effectively differentiate between criminals and those who are not. Businesses can currently access public information which contains names and addresses. The Division of Elections has the ability to update the voter registration files and to cross reference with the PFD files, and this would provide access to the information of about 90 percent of Alaskans. The remaining 10 percent missing from such a cross-referenced list would be the people who are not registered voters. It is currently very difficult to differentiate between people with common first or last names.

MS. DAVEY offered that new Amendment 1, as amended, would reauthorize access to addresses and birth years in order to differentiate between the non-criminal files. This personal information is routinely used for employment, title searches, home loans, housing, and similar uses. It is important for businesses to be able to effectively validate a person and to clearly identify whether the person is a criminal or not. She offered that currently a private investigator, a title company, or an attorney must obtain a court order to access specific PFD applicant information. Additionally, removing "non-profit

organizations" entirely eliminates the ability for a little league, a private school, or summer camp to access the information for bulk distribution.

REPRESENTATIVE DAHLSTROM asked if Motznik is the only business in the state that provides these data services.

MS. DAVEY responded no and offered that another company provides the same services.

REPRESENTATIVE DAHLSTROM advised that she, as a parent of four children, has not experienced mass mailings from any private school or little league program. She cautioned that there isn't a need for these types of programs to advertise in this way since the programs often have lines or waiting lists.

CHAIR RAMRAS questioned whether making this information available would put people at risk.

MS. DAVEY responded no because access to the information helps make people more accountable, adding that currently it is difficult to track someone down if they do not vote, do not own a car, or do not own property. She related that if someone is stalking a person, in order to gain protection, the victim must serve the stalker with a restraining order and in order to do so he/she must be able to locate the stalker. The proposed change, she opined would help the victim by allowing him/her to serve the restraining order.

[9:21:21 AM](#)

RICK SVOBODNY, Deputy Attorney General, Central Office, Criminal Division, Department of Law (DOL), in response to a question, offered that the DOL uses the services of both aforementioned businesses in order to locate witnesses or defendants, along with other tools such as the PFD applicant database. While he offered that these are all useful tools, he also acknowledged that some people use the information provided in these listings to search for victims.

[9:22:16 AM](#)

REPRESENTATIVE COGHILL maintained his objection.

A roll call vote was taken on new Amendment 1, as amended. Representatives Coghill, Samuels, Lynn, Ramras voted in favor of the new Amendment 1, as amended, and Representatives Dahlstrom,

Holmes, and Gruenberg voted against it. Therefore, new Amendment 1, as amended, was adopted by a vote of 4-3.

CHAIR RAMRAS suggested that Ms. Ashenbrenner continue her work continue to reduce the negative aspects of the bill and to address concerns expressed today as the bill moves through the process.

[9:24:47 AM](#)

MR. SVOBODNY referred to Article 5, starting on page 23, specifically the language regarding a court's determination of factual innocence. He offered that the bill would make a fundamental change with respect to how the court system operates. He explained that Alaska's court system is an adversarial system, with two opposing parties, with a judge and jury who ultimately make a determination between the two parties. This bill would change the court system to resemble the Napoleonic system, the French system where the judge acts as an inquisitor, and a person who petitions the court does not have an opposing side. He opined that to make a fundamental change such as this one deserves further consideration.

MR. SVOBODNY related two examples from his experience as a prosecutor. In one instance someone used a different person's name during a driving while under the influence (DUI) case plead guilty and subsequently served the sentence. The effect was that the innocent party unknowingly had a fraudulent DUI on his/her record, including ramifications to his/her driver's license and vehicle insurance. In another instance, a Juneau woman discovered she had been convicted of prostitution in Seattle, Washington, yet she had never been outside Juneau, Alaska. He said he supports an identification system of some type, but cautioned against the aforementioned fundamental change to the court system. He asked for clarification, under the bill, in which physical location a petition would be filed, for example, if a person lives in Nome and someone in Juneau steals the person's identity. He opined that the amendments adopted today help provide for a burden of proof which satisfies the DOL Criminal Division.

MR. SVOBODNY opined that the way the bill is currently drafted is flawed. He referred to page 23, lines 23-24, and stated that the second line in paragraph (2) appears to be redundant with paragraph (1). He offered that as a general rule victims do not file criminal complaints because the state files the complaint. He pointed out that in proposed AS 45.48.100 (a)(1)-(3) as it is

currently written, because the word "and" separates the paragraphs, all three paragraphs would have to apply, and therefore no one could utilize the bill in order to establish his/her innocence. He referred to line 29, and again, noted this would be a change in the court system and it would be more like the French system.

9:30:09 AM

CHAIR RAMRAS said he thought the drafting of proposed AS 45.48.600 had been fixed and asked Representative Coghill to clarify.

REPRESENTATIVE COGHILL suggested that on page 23, line 24, in paragraph (2) to delete "by the victim" in order that a criminal complaint could be filed against the perpetrator. But he agrees and confirmed that this bill would change the structure of legal system, but that victims of identity or credit theft are currently disenfranchised since the burden of proof to prove their innocence rests with them.

CHAIR RAMRAS indicated that currently there is not a document that will provide proof that the victim is innocent. The goal of the bill is to provide a mechanism for documentation for victims of identity theft who are not guilty of any wrongdoing.

REPRESENTATIVE DAHLSTROM said she agrees with the sponsor's intent but asked if businesses affected by the unlawful charges, or the theft of services are required to recognize the certificate and erase the debt in order for the credit agency to clear the individual's name, and questioned the value of a certificate.

MR. SVOBODNY offered that his testimony is given from the point of view of a prosecutor and for the victim of fraud or theft, whose name will be associated with a criminal conviction. He expressed concern for the victim and the far reaching impacts, for example, having his/her future credit denied at a store in a village. He opined that as drafted, he is not sure that this bill will address that concern, but again suggested that perhaps someone else could provide more specific guidance.

REPRESENTATIVE COGHILL cautioned that if Article 5 is removed, the committee should consider strengthening the penalty section, and cited the reason as being the specific effect on the victims of identity theft.

CHAIR RAMRAS offered that identity theft is unique in that it does require a certificate to absolve the victim, and without a police report to validate that theft, an individual cannot verify his/her innocence.

9:37:14 AM

DOUG WOOLIVER, Administrative Attorney, Administrative Staff, Office of the Administrative Director, Alaska Court System (ACS), explained, that there are some sections that need further work, and relayed his willingness to work with the bill's sponsor. With respect to deleting Article 5, he said he wanted to make members aware that the Alaska Supreme Court Advisory Committee on Criminal Rules is considering a proposal to deal with this issue. He offered to provide a copy of the draft proposal and to report the status of any rule change with the committee. He said he believes that the ACS is considering an amendment to the Alaska Rules of Criminal Procedure, rule 43, Dismissal and Deferred Prosecution. Under the proposed court rule change, once an identity theft case is dismissed, the prosecutor would file a certificate to indicate that the individual in question is not the person who committed the crime. He opined that the court is unlikely to find a person cleared of wrongdoing without some type of certification from the prosecutor to confirm the person's innocence.

CHAIR RAMRAS referred to page 25, line 7, proposed AS 45.48.680, Right to file a police report regarding identity theft. He explained that this section would treat identity theft like a property loss. He related personal experiences of property losses that did not have good outcomes with respect to law enforcement in Fairbanks. He cautioned that a person facing identity theft might not have assurance that the police would take enforcement action or write a police report, as he had experienced, so that the court could issue a certificate of innocence.

Mr. SVOBODY responded that he agrees with the concept of the bill, but wanted to point out concerns with the current language and cautioned that the legislature should work out the details and not leave it to the courts to decide, or to prosecutors to provide specific remedies. He speculated that there will always be abuses of the system, just as currently happens with some domestic violence petitions, and expressed concern that some people might use the proposed certificate of innocence to defraud their creditors. He offered support for the type of

system where a victim outlines the crime and the accused responds to the allegation.

[9:41:54 AM](#)

CLYDE (ED) SNIFFEN, Jr., Senior Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage), Department of Law (DOL), responding to a question, with respect to a process that results in a certificate or an order to the court and whether the certificate has any value, offered that a certificate would be useful because identity theft victims suffer from creditors trying to collect on debt. When a victim doesn't pay the debt because he/she doesn't know the debt exists, the delinquency gets reported to the credit bureau. The credit bureau initiates collection proceedings and that action harms the consumer. With a certificate or an order from the court that clears the victim, he/she would have proof to give to the creditor that he/she did not incur the debt.

MR. SNIFFEN said that protection is currently offered, no matter what state the creditor resides in, since the creditor is obligated under the Fair Debt Practices Act (FDPA) to only proceed against the party if it has a good faith belief that the individual is liable. When a person has a certificate from the court certifying that he/she is not guilty, the credit bureau must correct his/her credit report. He offered that the proposed certificate would have a positive effect to help repair damages done to consumers who have been victims of identity theft. He commented on Article 5, which he stated has utility and is why DOL supports the bill, but he agrees with Mr. Svobodny that there are some factual issues that could be addressed to satisfy some concerns.

MR. SNIFFEN described that the current system involves a victim but also has another person to argue against the allegation in order to test out the evidence. But the appearance of a new type of crime, identity theft, might also require a new approach to solve it, one in which the judge would act as the arbitrator to determine whether that information is correct or if it is an attempt by a party to fraudulently charge debt and subsequently clear his/her record.

[9:44:38 AM](#)

CHAIR RAMRAS made a motion to adopt Conceptual Amendment 13, on page 23, line 24, to delete "by the victim". There being no objection, Conceptual Amendment 13 was adopted.

CHAIR RAMRAS opined that while Article 5 is imperfect, he preferred to leave it as is in order to provide a buffer for victims of identity theft until the aforementioned court rule changes are adopted. He suggested that perhaps subsequent legislation might be required.

REPRESENTATIVE COGHILL commented that that point was well taken, which is that victims of identity theft must be able to protect themselves with the assistance of the court. He offered to continue work on this issue.

[9:46:52 AM](#)

MR. BURTON expressed concern with the changes made to Articles 3 and 4. ChoicePoint supports the efforts to regulate any public display of social security number (SSN) by a general business or any commercial user, and also supports strong penalties for those who use SSNs in an inappropriate way, or who misappropriate the identities of others for fraud or to otherwise harm individuals. He offered that his concerns with proposed changes to AS 45.48.400 have been addressed. But he still has concerns with proposed changes to AS 45.48.410-430. He stated that he is unsure of the legislative intent and legal implications of these sections. ChoicePoint concerns were validated earlier in the week during prior testimony when it became unclear that there was confusion about what was or was not permitted.

MR. BURTON said it is clear that no one should be able to sell an SSN or a list of SSNs or purchase the aforementioned lists on the Internet. Yet, every day millions of businesses and governments transact legitimate business and a SSN number is included as part of the larger transaction. These transactions may be business to business, consumer to business, or business to government. In those transactions the SSN is not used as anything of value, but the SSN is still the single most critical element to verify and authenticate an individual's identity. The SSN is used to prevent fraud and to ensure the accuracy of data as it exchanges hands between entities. Currently, use of the SSN is governed and restricted under the federal regulatory structure, primarily by the FCRA, the federal Gramm-Leach Bliley Act (GLBA), the Driver's Privacy Protect Act of 1994,(DPPA), and the United States of America's Patriot Act.

MR. BURTON offered that the bill creates prohibitions, but also include some exemptions to them. He cautioned that these

sections of the bill are not yet clear and must provide considerations to allow existing commerce under these four regulatory structures. He respectfully requests further review on the issues with respect to the prohibitions.

REPRESENTATIVE COGHILL expressed a willingness to consider the issues that were raised.

9:52:48 AM

CHAIR RAMRAS, after determining that no one else wished to testify, closed public testimony on HB 65.

REPRESENTATIVE COGHILL agreed with the concept that information needs to move freely in business and commerce, but cautioned that there must also be protections for individuals who suffer the consequences of identity theft, especially since it also affects the ability of an individual to pass through customs. He again pledged to continue working on HB 65.

REPRESENTATIVE SAMUELS asked that his concern about the method of payment of fees by individuals who are victims of identity theft and who would no longer have access to a valid credit card be addressed.

9:55:21 AM

REPRESENTATIVE COGHILL moved to report the proposed CS for HB 65, Version 25-LS0311\M, Bannister, 5/3/07, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 65(JUD) was reported from the House Judiciary Standing Committee.

#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 9:55 a.m.