

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 11, 2010

1:07 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Chair
Representative Nancy Dahlstrom, Vice Chair
Representative Carl Gatto
Representative Bob Lynn
Representative Lindsey Holmes

MEMBERS ABSENT

Representative Bob Herron
Representative Max Gruenberg

COMMITTEE CALENDAR

OVERVIEW(S): SECURITY BREACH OF PERSONAL INFORMATION OF STATE
EMPLOYEES AND STATE RETIREES

- HEARD

HOUSE BILL NO. 283

"An Act relating to the purchasing of and restrictions
concerning alcoholic beverages."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 283

SHORT TITLE: PURCHASE/CONSUMPTION OF ALCOHOL

SPONSOR(S): REPRESENTATIVE(S) CRAWFORD

01/15/10	(H)	PREFILE RELEASED 1/15/10
01/19/10	(H)	READ THE FIRST TIME - REFERRALS
01/19/10	(H)	L&C, JUD
01/27/10	(H)	L&C AT 3:15 PM BARNES 124
01/27/10	(H)	Moved Out of Committee
01/27/10	(H)	MINUTE(L&C)
01/29/10	(H)	L&C RPT 5DP 1DNP
01/29/10	(H)	DP: LYNN, BUCH, HOLMES, T.WILSON, OLSON
01/29/10	(H)	DNP: NEUMAN
01/29/10	(H)	FIN REFERRAL ADDED AFTER JUD

02/11/10

(H)

JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

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

POSITION STATEMENT: Provided the overview regarding the security breach of personal information of State employees and State retirees.

KEVIN BROOKS, Deputy Commissioner
Office of the Commissioner
Department of Administration (DOA)
Juneau, Alaska

POSITION STATEMENT: Assisted with the overview regarding the security breach of personal information of State employees and State retirees.

REPRESENTATIVE HARRY CRAWFORD
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 283.

WHITNEY BREWSTER, Director
Division of Motor Vehicles (DMV)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of HB 283.

PAUL GROSSI, Staff
Representative Harry Crawford
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: On behalf of the sponsor, Representative Crawford, responded to a question during discussion of HB 283.

BONNIE HAYES
Anchorage, Alaska

POSITION STATEMENT: Provided comments and responded to a question during discussion of HB 283.

JERRY McCUTCHEON
Anchorage, Alaska

POSITION STATEMENT: Suggested a change to HB 283.

ACTION NARRATIVE

[1:07:36 PM](#)

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at 1:07 p.m. Representatives Ramras, Holmes, Dahlstrom, Gatto, and Lynn were present at the call to order.

Overview(s): Security Breach of Personal Information of State Employees and State Retirees

[1:08:52 PM](#)

CHAIR RAMRAS announced that the first order of business would be an overview regarding the security breach of personal information of State employees and State retirees.

The committee took an at-ease from 1:11 p.m. to 1:16 p.m.

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CLYDE (ED) SNIFFEN, JR., Senior Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage), Department of Law (DOL), explained that PricewaterhouseCoopers (PwC) discovered in early December 2009 that it had lost some personal information belonging to State employees and State retirees, and notified the State of Alaska of that loss on January 19, 2010. Shortly thereafter, PwC provided the State with a list of the information it had lost; PwC had that information in connection with litigation between the State and Mercer, an actuarial firm hired by the State. A settlement agreement between the State and PwC has since been reached, stipulating the steps that PwC would be taking to address the security breach and protect the Alaskans whose personal information was involved in the breach, including, among other things, either providing for a security freeze on a person's credit reports - and adjustments to that freeze - or, through a third-party vendor, providing free credit monitoring and identity theft protection for two years - with option for a third year, or longer, if there is evidence of identity theft resulting from the breach - and reimbursement for any losses individuals experience as a result of the breach.

MR. SNIFFEN said notices to those affected State employees and State retirees would be mailed tomorrow, without cost to the

State, which would be indemnified from any claims related to this breach. The settlement, he assured the committee, would not release PwC from any affected individual's claims. He characterized the settlement as a very strong one, one aimed at maximizing protection from identity theft, and noted that one important provision of the settlement includes a rebuttable presumption that any identity theft [experienced by affected State employees and State retirees] stemmed from this breach rather than from something else. People, via a unique identifier provided in the aforementioned notification letters, will be able to begin signing up for the aforementioned protections as early as next week.

MR. SNIFFEN, in response to questions, indicated that the State was and is in compliance with recently enacted State law addressing such breaches, and that although PwC might have been out of compliance with that law in terms of timely notification, it would be in compliance with that law as long as it continues to comply with the terms of the settlement agreement. He added that he couldn't imagine a scenario where things could have occurred in a timelier manner. In response to further questions, he offered his understanding that Mercer, in order to perform the actuarial analysis [the State hired it to perform], required the State to provide it with the names, social security numbers, and dates of birth [of State employees and State retirees].

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KEVIN BROOKS, Deputy Commissioner, Office of the Commissioner, Department of Administration (DOA), added that several years ago, back when Mercer was originally given the information it needed in order to perform its analysis for the State, social security numbers were commonly provided. Now, of course, due to the proliferation of identity theft, such information is not given out without a very good reason for doing so.

MR. SNIFFEN went on to explain that a person could find out whether his/her or his/her spouse's personal information was included in the information that was lost, by calling the Division of Retirement & Benefits via a toll-free number.

MR. BROOKS added that the only information given to Mercer regarding a spouse would have been the spouse's age.

MR. SNIFFEN, in response to questions, explained that nothing can be done to make the lost information unusable by anyone who

already has it; that that information could be used by identity thieves to open new accounts for cash, goods, and services; and that the best thing that could happen is for the State to receive some kind of assurance that the lost information has instead been destroyed.

MR. BROOKS added that the State has since changed its procedures and now uses unique identifying numbers in place of social security numbers.

CHAIR RAMRAS expressed dissatisfaction with the steps the administration has taken thus far to address this security breach.

MR. BROOKS, in response to questions, reiterated that the State no longer uses social security numbers as identifiers, and said that in addition to that change, certain areas of the State Office Building are now off limits to casual passerby, and that the State has obtained software that automatically encrypts data that has a format similar to that of social security numbers. He offered his belief, though, that the threat of identity theft may not ever fully disappear, and noted that from what he's heard, daily attempts are being made to breach the State's network.

[1:44:10 PM](#)

MR. SNIFFEN added that in this instance, the State was not in any way at fault; the breach occurred via a subcontractor used by a vendor that the State hired. He then reiterated some of the terms of the agreement between the State and PwC. He, too, surmised that the problem of identity theft isn't going to disappear, and opined, therefore, that people, regardless of whether they are part of the group involved in the current situation, should be taking steps to protect themselves, and noted that some of the possible steps people can take are outlined in the information that's been provided to the affected [State employees and State retirees], and that those steps are free and not that onerous.

MR. BROOKS mentioned that he, himself, had to address fraudulent credit card charges last year, and surmised that everyone must take personal responsibility for being diligent regardless of the State's role in this particular situation. Again, PwC had a legitimate business reason for having the information, and the State has taken and is still taking steps to address the

situation, regardless that it was not the State that lost the information.

MR. SNIFFEN reiterated that the information was not lost due to a failure on the part of the State, that that information did not include account numbers, and that identity thieves commonly use the type of information that was lost to open new accounts for cash, goods, and services. Identity thieves also sometimes attempt to access existing accounts, and so it's important for people to also monitor their existing accounts. He explained that the reason the State isn't automatically contracting for the services offered via the settlement agreement on behalf of the affected individuals is that each person must set up an account himself/herself so that the third-part vendor can then contact him/her directly about possible problems; it should not be onerous for affected individuals to set up those accounts.

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CHAIR RAMRAS expressed interest in having the State do more for the affected individuals, and in being notified within a month's time regarding what those additional steps might entail.

MR. BROOKS agreed to do so, and indicated that the State would be evaluating affected individuals' response to the provisions of the settlement agreement, and would consider taking further steps. In response to a request, he noted that the aforementioned toll-free phone number is 1-800-821-2251, and reiterated that the aforementioned notices will contain people's unique identifier.

MR. SNIFFEN added that the notices would also have some other toll-free phone numbers that could be called to receive additional help. In response to a question, he explained that all the affected individuals would have a notice mailed to them, but that is no guarantee that everyone will receive his/her notice, and so anyone questioning whether he/she should have received notice could call the aforementioned toll-free phone number to find out.

The committee took an at-ease from 2:04 p.m. to 2:09 p.m.

HB 283 - PURCHASE/CONSUMPTION OF ALCOHOL

[2:10:17 PM](#)

CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 283, "An Act relating to the purchasing of and restrictions concerning alcoholic beverages."

2:10:42 PM

REPRESENTATIVE HARRY CRAWFORD, Alaska State Legislature, sponsor of HB 283, disclosed that upon coming out of church on the evening of December 24, 2004, his wife was hit by a [repeat] drunk driver, and his son was missed by just inches. His focus, he relayed, has since been [to work on legislation that would help] prevent such a tragedy from happening to others. Obviously, punishment is not enough - there are still thousands of drunk drivers on the road every day. As the result of existing law, there are now 2,133 marked driver's licenses and State identification (ID) cards carried by people who have proven they can't handle alcohol, and existing law provides a monetary incentive for alcoholic beverage licensees to check a customer's driver's license or ID card. House Bill 283 [in part] would amend current law by raising the civil fine that could be awarded to licensees, from \$1,000 to \$2,000. Included in members' packets is a draft letter of intent stating that it is the legislature's intent that half of that civil fine award be shared with the licensee's employees and/or agents who confiscate the ID card or driver's license of someone prohibited from purchasing alcohol.

REPRESENTATIVE CRAWFORD noted that Brown Jug, Inc. ("Brown Jug"), just one liquor store out of many, as a matter of course, confiscates the driver's licenses and ID cards of underage persons attempting to purchase alcohol, and has collected approximately \$2 million in civil fines since the civil fine provision has been in effect. He said he would like more licensees to start checking and confiscating driver's licenses and ID cards from all who are precluded from purchasing or consuming alcohol. House Bill 283 would also add - to the list of those who could be prohibited from consuming or purchasing alcohol - [under proposed AS 12.55.015(a)(13)(A), a person who is convicted of a felony and the behavior was substantially influenced by consumption of alcohol, or, under proposed AS 12.55.015(a)(13)(B), is convicted of a third or subsequent crime, even if it's a misdemeanor crime, and the court finds that prohibiting him/her from consuming alcohol is necessary to protect the public]. Under the bill, the court would have the discretion to order such a prohibition, but it would not be mandated to do so, and any such person would then have his/her

driver's license or State ID card marked to reflect that he/she is prohibited from consuming or purchasing alcohol.

[2:16:37 PM](#)

CHAIR RAMRAS expressed interest in dealing with chronic inebriates, and in requiring - perhaps via an amendment - that the driver's license or State ID card of [a person under the age of 21] be marked so as to draw attention to the fact that the person is [under the age of 21], thereby perhaps stopping people who've reached the age of 21 from continuing to use the driver's license or ID card they got when they were a minor to go into places that sell or serve alcohol.

REPRESENTATIVE CRAWFORD, on the latter issue, said he had tried to get an amendment included which would have required that State IDs expire on a person's 21st birthday and that they be renewed within 90 days, but the drafter said that such an amendment to HB 283 wouldn't comply with the single subject rule and could thus engender litigation. As a result, Representative Crawford relayed, he'd asked that another bill be drafted that could include such a proposed change.

CHAIR RAMRAS referred to a proposed amendment, labeled 26-LS1218\E.1, Luckhaupt, 2/3/10, which read:

Page 3, line 22:

Delete "up to the lifetime of the defendant"

CHAIR RAMRAS indicated that it is his understanding that the Cabaret Hotel Restaurant & Retailer's Association (CHARR) is in favor of this change to proposed AS 12.55.015(a)(13). If this amendment were to be adopted, the proposed statute would then in part read, "order the defendant to refrain from consuming alcoholic beverages for a period of time, including during the term of any sentence and as a condition of probation, suspended sentence, and suspended imposition of sentence".

REPRESENTATIVE CRAWFORD indicated that proposed AS 12.55.015(a)(13) is intended to address those people who continue to get arrested as the result of alcohol consumption, those who have proven they can't handle alcohol. He opined that even if HB 283 only stops just one person from abusing alcohol, it would be a good thing, and offered his hope that the committee would pass HB 283.

[Chair Ramras turned the gavel over to Vice Chair Dahlstrom.]

2:24:45 PM

WHITNEY BREWSTER, Director, Division of Motor Vehicles (DMV), Department of Administration (DOA), explained that the DMV currently puts what's called a "J restriction" on the driver's licenses and ID cards of individuals who are restricted from purchasing alcohol as a condition of sentencing. Such driver's licenses and ID cards have the words "alcohol restricted" in a red banner across the top. In conclusion, she relayed that the DMV is supportive of HB 283.

[Vice Chair Dahlstrom returned the gavel to Chair Ramras.]

MS. BREWSTER, in response to comments and a question, explained that although under current law, a driver's license does expire 90 days after a person's 21st birthday, that law doesn't apply to ID cards. From the DMV's perspective, it would be ideal if ID cards were treated similarly. Enforcement, however, is an issue for the licensees themselves to address by refusing access to their establishments by those with expired driver's licenses and ID cards.

The committee took an at-ease from 2:29 p.m. to 2:34 p.m.

REPRESENTATIVE CRAWFORD, in response to a question, explained that the existing \$1,000 fine provided for in AS 04.16.047(b) is a civil fine, and offered his understanding that Brown Jug, for example, "settles it all up at one time during the year" and then shares a portion of the fines with the employees that confiscated the driver's licenses and ID cards. He then showed members a couple of examples of restricted licenses.

CHAIR RAMRAS questioned whether the DMV has the authority to change what is printed in the aforementioned red banner on restricted licenses. Could the DMV, perhaps via regulation, have that red banner indicate that the person is under the age of 21 until a certain date?

MS. BREWSTER said she would have to research that issue further.

2:38:13 PM

CHAIR RAMRAS offered his understanding that under current law, when the driver's license of a person who reaches the age of 21 expires, he/she is required to take [an alcohol and drug awareness and safety examination] prior to getting a new

driver's license. He indicated that he would be working with the sponsor of HB 283 to address further [the issue of people using expired driver's licenses and State ID cards to purchase alcohol].

REPRESENTATIVE CRAWFORD concurred. In response to questions, he offered his understanding that for federal tax purposes, the civil fines [licensees share with employees] would be treated as wages. He acknowledged that it can be difficult to collect those fines, and surmised that that's one of the reasons that Brown Jug "settles" [up with its employees] just once a year and then only with regard to those fines that were actually collected. [Neither existing law nor HB 283] outlines how the civil fine is to be distributed; that's left up to the licensees. In response to a question, he reiterated that the bill would be increasing the civil fine from \$1,000 to \$2,000, and noted that members' packets include a draft letter of intent, which reads [original punctuation provided]:

It is the intent of the Alaska Legislature under section #2 of HB 283 amending AS 04.16.047(b) to increase the civil award from \$1,000 to \$2,000 to enable licensees to share half of the award with their employees and or agents. The award is to provide an incentive to those who sell alcohol to check ID's. This should aide in the effort to prevent people who are restricted from consuming alcohol from purchasing alcohol.

CHAIR RAMRAS expressed interest in receiving more information regarding the distribution of the civil fine.

[2:43:49 PM](#)

PAUL GROSSI, Staff, Representative Harry Crawford, Alaska State Legislature, on behalf of the sponsor, Representative Crawford, indicated that the driver's license or ID card would be confiscated by the licensee or his/her employees and then brought before the court, which would award the civil fine to the licensee; that fine would be paid by the offender.

CHAIR RAMRAS, remarking that the aforementioned letter of intent needs to be reworded, characterized it as too vague and burdensome on employers, expressing concern that it could result in employees filing claims demanding payment of their portion of the fine from their employers, the licensees. The civil fine, currently something that benefits licensees when awarded, would,

under the letter of intent, become a liability for licensees as employers. He questioned how the State would collect the fine, how it would be distributed, and what happens if it isn't shared with employees, and suggested that further testimony - from the administration and Brown Jug, for example - is warranted.

REPRESENTATIVE CRAWFORD offered his belief that the letter of intent won't create a legal expectation by the employee to receive a portion of the civil fine; that the licensee won't have to share any of the fine, regardless of whether the person is still in the licensee's employ; and that the letter of intent merely indicates that it is the legislature's wish that a licensee share the fine with the employee who confiscated the driver's license or ID card of someone who wasn't supposed to be buying or consuming alcohol, but it is not required. He indicated that although he is unfamiliar with how the awarding and distribution of the fine is accomplished now, he surmised that it would be the same for the proposed fine as it is for the current fine.

CHAIR RAMRAS indicated that he would also like to hear testimony from the Alcoholic Beverage Control Board ("ABC Board"), and noted that as a licensee, he, himself, hasn't ever pursued the civil fine.

REPRESENTATIVE CRAWFORD explained that current law prohibits the awarding of the fine directly to the employee - the fine must instead be awarded to the licensee. In response to a question, he reiterated that this provision of statute is meant to work as an incentive for licensees to check driver's licenses and ID cards; currently, a number of establishments in the state aren't doing so.

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BONNIE HAYES relayed that she has been convicted twice of driving under the influence (DUI) and has a red banner on her driver's license. The civil fine isn't really going to be an issue for people like her, she predicted, because rather than show someone their restricted ID and risk having it confiscated, they'll just walk out of the establishment if the licensee or employee asks to see their ID. It's sufficient that licensees have this incentive to check the driver's licenses and ID cards of those seeking to purchase alcohol, she opined, and said she views current law regarding restricted licenses and ID cards as a wonderful tool to help her stay sober, adding that for the most part, it has worked. If a person with a restricted license

or ID card is stopped from buying alcohol, that person will essentially be stopped from drinking and driving, and so it is critical that the red banner be put on a person's driver's license or ID card right away. In response to a question, she indicated that because \$2,000 is a lot of money, the proposed civil fine provides people like her with another huge incentive to not purchase alcohol.

[2:59:30 PM](#)

JERRY McCUTCHEON opined that HB 283 should be changed to mandate that everyone's driver's license or ID card be examined by licensees prior to them selling or providing alcohol; without such a requirement, HB 283 is basically a "toothless tiger." He also indicated his belief that the people who have been killed by drunk drivers would be alive today if [existing Alaska law regarding drunk driving] were more stringent.

CHAIR RAMRAS expressed favor with the provisions of the bill that would add more people to the list of those who may be ordered by the court to refrain from purchasing or consuming alcohol, but relayed that he is not convinced that the proposed increase in the civil fine would do anything other than double the amount of money that gets awarded to licensees, at least those who can afford to take people to small claims court. He again opined that the letter of intent would put too many burdens on the employer, adding that he is not convinced doubling the civil fine would provide any more incentive for people to refrain from buying or consuming alcohol.

REPRESENTATIVE GATTO indicated that he is questioning whether deleting the fine altogether would change a DUI offender's behavior.

[HB 283 was held over.]

[3:03:19 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:03 p.m.