

ALASKA STATE LEGISLATURE
HOUSE HEALTH AND SOCIAL SERVICES STANDING COMMITTEE

March 27, 2012

3:03 p.m.

MEMBERS PRESENT

Representative Wes Keller, Chair
Representative Alan Dick, Vice Chair
Representative Bob Herron
Representative Paul Seaton
Representative Beth Kerttula
Representative Bob Miller
Representative Charisse Millett

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 98(JUD)
"An Act relating to biometric information."

- HEARD & HELD

PRESENTATION: FASD

- HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 98

SHORT TITLE: BIOMETRIC INFORMATION FOR ID

SPONSOR(s): SENATOR(s) WIELECHOWSKI

03/11/11	(S)	READ THE FIRST TIME - REFERRALS
03/11/11	(S)	STA, JUD
03/15/11	(S)	STA AT 9:00 AM BUTROVICH 205
03/15/11	(S)	Heard & Held
03/15/11	(S)	MINUTE(STA)
03/17/11	(S)	STA AT 9:00 AM BUTROVICH 205
03/17/11	(S)	Moved CSSB 98(STA) Out of Committee
03/17/11	(S)	MINUTE(STA)
03/18/11	(S)	STA RPT CS 4DP SAME TITLE
03/18/11	(S)	DP: WIELECHOWSKI, GIESSEL, MEYER, PASKVAN

03/21/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 03/21/11 (S) Heard & Held
 03/21/11 (S) MINUTE(JUD)
 03/28/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 03/28/11 (S) Heard & Held
 03/28/11 (S) MINUTE(JUD)
 04/06/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)
 04/06/11 (S) Heard & Held
 04/06/11 (S) MINUTE(JUD)
 04/15/11 (S) JUD AT 1:30 PM BUTROVICH 205
 04/15/11 (S) Moved CSSB 98(JUD) Out of Committee
 04/15/11 (S) MINUTE(JUD)
 04/16/11 (S) JUD RPT CS 2DP 1DNP 1NR SAME TITLE
 04/16/11 (S) DP: COGHILL, WIELECHOWSKI
 04/16/11 (S) DNP: PASKVAN
 04/16/11 (S) NR: FRENCH
 04/16/11 (S) TRANSMITTED TO (H)
 04/16/11 (S) VERSION: CSSB 98(JUD)
 04/17/11 (H) READ THE FIRST TIME - REFERRALS
 04/17/11 (H) HSS, JUD
 03/27/12 (H) HSS AT 3:00 PM CAPITOL 106

WITNESS REGISTER

SENATOR BILL WIELECHOWSKI
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Introduced SB 98 as the prime sponsor of the bill.

SAM GOTTSTEIN, Staff
 Senator Bill Wielechowski
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Presented a PowerPoint titled "SB 98 - Biometric Information" and answered questions.

CHRISTOPHER OSWALD, Director
 State Government Affairs
 Western Region
 Reed Elsevier
 New York City, New York

POSITION STATEMENT: Testified during discussion of SB 98.

ERNEST PRAX, Staff
 Representative Wes Keller
 Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified during discussion of SB 98.

JASON GIAMO, Co-Chair
Alaskan Citizens for Privacy
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 98.

HORST POEPPERL
Borealis Broadband, Inc.
Privacy Now Alaska
Anchorage, Alaska

POSITION STATEMENT: Testified in support of SB 98.

PAUL RESENZWEIG
Heritage Foundation
Washington, D.C.

POSITION STATEMENT: Testified during discussion of SB 98.

WALTER HAMILTON, Chairman & President
International Biometrics & Identification Association (IBIA)
Washington, D.C.

POSITION STATEMENT: Testified during discussion of SB 98.

JIM HARPER, Director
Information Policy Studies
The Cato Institute
Washington, D.C.

POSITION STATEMENT: Testified during discussion of SB 98.

MAX MERTZ, CPA
Alaska Board of Public Accountancy
Juneau, Alaska

POSITION STATEMENT: Testified during discussion of SB 98.

TERI TIBBETT
Coordinator
Alaska FASD Partnership
Juneau, Alaska

POSITION STATEMENT: Introduced the FASD Partnership panel.

DIDI RAYMOND
Mental Health Clinician
Department of Corrections (DOC)
Anchorage, Alaska

POSITION STATEMENT: Testified during the FASD presentation.

TRISH SMITH, Director
Prevention and Intervention Services
Volunteers of America Alaska
Anchorage, Alaska

POSITION STATEMENT: Testified during the FASD presentation.

STEPHANIE JOHNSON, Mental Health Clinician
Nome Youth Facility
Youth Facilities
Division of Juvenile Justice
Department of Health and Social Services
Nome, Alaska

POSITION STATEMENT: Testified during the FASD presentation.

MICHAEL JEFFREY, Judge
Superior Court
Barrow, Alaska

POSITION STATEMENT: Testified during the FASD presentation.

ACTION NARRATIVE

[3:03:43 PM](#)

CHAIR WES KELLER called the House Health and Social Services Standing Committee meeting to order at 3:03 p.m. Representatives Keller, Miller, Kerttula, and Seaton were present at the call to order. Representatives Millett, Dick, and Herron arrived as the meeting was in progress.

SB 98-BIOMETRIC INFORMATION FOR ID

[3:04:36 PM](#)

CHAIR KELLER announced that the first order of business would be CS FOR SENATE BILL NO. 98(JUD), "An Act relating to biometric information." He noted that technology had made it easier for personally identified information, but that it also raised many questions, with many ramifications. He questioned whether it was possible to completely erase information, once it had been digitized. He stated that SB 98 would not be moved from the committee at this meeting. He established that, as there were many perspectives to biometrics, he would not allow any disrespect during discussion of the proposed bill. Noting that there were many witnesses, he asked that some of the questions might be responded to in writing.

[3:08:09 PM](#)

SENATOR BILL WIELECHOWSKI, Alaska State Legislature, confirmed that people were passionate about protection for their rights to privacy, as stated in the Alaska State Constitution. He noted that proposed SB 98 had passed unanimously from the Senate, with ten co-sponsors. He listed three important aspects of the proposed bill: it required consent before collection of the biometric information; it did not allow disclosure of the personal information without consent; and, it allowed for the use of alternative identification. He stated that a variety of disparate groups supported the proposed bill.

[3:11:08 PM](#)

SAM GOTTSTEIN, Staff, Senator Bill Wielechowski, Alaska State Legislature, introduced slide 1, "Privacy in the Constitution," and read Article 1, Section 22 of the Alaska State Constitution:

The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.

[3:11:44 PM](#)

MR. GOTTSTEIN moved on to slide 2, "Genesis of Alaska's Right to Privacy," and shared that its existence was the result of a ballot initiative. He explained that the right to privacy, according to "Alaska's Constitution: A Citizen's Guide" by Gordon Harrison, "was prompted by fear of the potential for misuse of computerized information systems, which were then in their infancy." He stated that Senator Wielechowski shared this concern for potential misuse of information.

[3:12:33 PM](#)

MR. GOTTSTEIN directed attention to slide 3, "Legislative Obligation to Protect," and stated that the 1972 ballot initiative for the right to privacy was approved by more than 86 percent of Alaskan voters. He reported that the initiative affirmed that the legislature had a constitutional obligation to protect Alaskan's privacy, a protection which was stronger than those privacy protections in the U.S. Constitution.

[3:12:59 PM](#)

MR. GOTTSTEIN pointed to slide 4, "DNA Privacy Protections," and reported that the legislature had unanimously passed strong protections for Alaskans genetic (DNA) information in 2004. He noted that the proposed bill had unanimously passed the Senate, as well. He compared the similarity of the proposed SB 98 with the 2004 legislation, as private industry argued against privacy protections, stating a difficulty for fulfillment of fiduciary responsibilities. He reminded that the legislature had a constitutional obligation to protect the privacy of Alaskans.

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CHAIR KELLER asked if the legislation should be based on abuses and harm done, as privacy was subjective.

[3:14:33 PM](#)

MR. GOTTSTEIN expressed his agreement that privacy was subjective. He opined that some private information could be gleaned from biometric information.

CHAIR KELLER suggested that the legislation be directed toward privacy violations that caused harm.

MR. GOTTSTEIN stated that the biometric information needed to be defined, slide 5, "What are Biometrics?" as listed on page 4 of the proposed bill. He listed fingerprints, hand geometry recognition, vein recognition, retinal scans, and facial mapping, as examples.

[3:15:48 PM](#)

MR. GOTTSTEIN, presenting slide 6, "Biometric Privacy is similar to Genetic Privacy," described that biometric information was similar to DNA, noting for example, that certain fingerprint characteristics or iris scans could be linked to diseases and genetic disorders. He declared that, as private health information could be derived from biometric information, biometric information should be afforded the same protections as previously afforded by the legislature for DNA.

[3:17:47 PM](#)

MR. GOTTSTEIN furnished slide 7, "Federal Privacy Laws Lacking," and asked if it was necessary for state privacy laws, as federal protections already existed. He stated that the U.S. Constitution did not explicitly give a right to privacy, unlike

the Alaska State Constitution, and that federal law focused on specific sectors for privacy protection. He gave examples of legislation for privacy to federal government, health care, and financial institutions, and observed that no federal law protected biometric information.

MR. GOTTSTEIN considered slide 8, "Other States address Biometrics," and stated that Alaska was not the only state to pass similar legislation. He reported that 18 other states had laws on biometrics, and explained that California's strong privacy laws had resulted in the disclosure of a data breach. He pointed to an analysis of Illinois, Indiana, and Texas by Legislative Research Services, which highlighted the variety of policy decisions for application of protections [Included in members' packets].

[3:20:38 PM](#)

MR. GOTTSTEIN, explaining slide 9, "The Need for Biometric Privacy," stated that, without legislative action, an Alaskan's privacy could be exploited for financial gain. He shared that, from a digital image of a fingerprint, a new set of fingerprints could be created. He described an example of facial mapping [Included in members' packets] which allowed a store to photograph a customer, and then, as the person wandered the store, change the price of items based on previously collected personal data. He clarified that biometric information could not be replaced, emphasizing that it was the most private of information.

[3:22:49 PM](#)

CHAIR KELLER asked if privacy should extend to the right for people to misrepresent themselves.

[3:23:12 PM](#)

MR. GOTTSTEIN, in response, offered his belief that someone would not have the right to misrepresent themselves, opining that it was illegal. Moving on to slide 10, "Biometrics easy to duplicate," he disclosed that modern biometric data was easily duplicated, and stolen, stating that this was the way that modern identification systems would most threaten practical obscurity and the privacy it afforded many people.

[3:24:07 PM](#)

MR. GOTTSTEIN declared that data breaches did happen quite frequently, as shown on slide 11, "Data breaches are common," and he gave an example of a data breach at Lockheed Martin.

[3:25:01 PM](#)

REPRESENTATIVE MILLETT asked about the data breach in Alaska.

MR. GOTTSTEIN, in response, reported that the breach occurred in January 2009, when a Division of Retirements and Benefits subcontractor lost a laptop computer or data card containing records which could have been compromised. He offered his belief that no compromise had occurred, but that precautions were taken.

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MR. GOTTSTEIN reported that more than 30 million sensitive records were compromised in 2011.

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CHAIR KELLER asked if the aforementioned loss of data was a breach of privacy, dealt with by contractual law. He asked if the right to privacy was for your choice to give biometric information.

MR. GOTTSTEIN, in response, said that it depended on the contract or agreement. He gave an example of medical school testing agreements, which allowed the testing agency to give applicant fingerprints to law enforcement agencies without disclosing this to the applicant. He presented slide 12, "SB 98 Increase Privacy Protections," which explained the proposed bill. He stated that proposed SB 98 would increase reasonable privacy protections with clear notification and authorization for the uses of the biometric information. He noted that there would not be any distribution or sale of information except by agreement, and there would be safe storage requirements for the biometric information. He shared that the proposed bill would require disposal after the use of the biometric information, and it would allow citizens the right to civil suits for any violations.

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MR. GOTTSTEIN proffered slide 13, "SB 98 Gives Alaskans a Choice," and stated that the proposed bill preserved choice by

Alaskans. He directed attention to proposed AS 18.14.040, and explained that Senator Wielechowski would present an amendment with proposed changes for language clarification to this section about alternate identification. This proposed amendment would include the removal of "occupational" from page 2, lines 13 and 17; page 2, line 16, would include "a passport or an"; and page 2, line 17 would remove the sentence beginning with "In this section."

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CHAIR KELLER clarified that the proposed amendment would not yet be offered.

[3:30:47 PM](#)

MR. GOTTSTEIN summarized slide 14, "Conclusion," stating that the proposed bill was a compromise which added reasonable protections and preserved choices, without banning the collection of biometric information. He opined that this was the next manifestation of privacy protections for Alaskans.

[3:31:38 PM](#)

REPRESENTATIVE MILLER, noting that biometric information could be gathered and distributed quickly, asked what precautions could be put in place for violations to biometric information used, stored, or sold in jurisdictions outside Alaska.

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SENATOR WIELECHOWSKI, in response, said that the state could only enforce violations which occurred within Alaska. He directed attention to page 3, lines 11-19, the "Right of action" provision, stating that there was a right to civil action against a person who knowingly violated this chapter, and applied to any individual over whom the State of Alaska had jurisdiction. He expressed the difficulty of jurisdiction over individuals who lived out of the state. He declared the necessity for a federal or international ban to fully enforce this.

[3:33:50 PM](#)

REPRESENTATIVE MILLER asked for a definition to distinguish "knowingly" from "willingly."

[3:34:23 PM](#)

SENATOR WIELECHOWSKI offered to get the legal definitions. He offered his belief that knowingly included actually knowing the action was occurring.

[3:35:20 PM](#)

REPRESENTATIVE MILLER suggested that willingly or recklessly be inserted in the language of the proposed bill.

[3:36:00 PM](#)

CHRISTOPHER OSWALD, Director, State Government Affairs, Western Region, Reed Elsevier, explained that Reed Elsevier was the parent company of LexisNexis Risk Solutions and was a "recognized leader in data driven capabilities and technology in the risk sector." He stated that identity verification and authentication products provided customers with a higher level of security than traditional methods. He declared that his company used biometric technology to match unique physical characteristics which allowed quick identity authentication. He agreed that biometrics, as an emerging technology, created legitimate concerns for its use and implementation. He reported that Reed Elsevier worked to maintain a safe warehouse for biometric data. He explained its relationship with Prometric, a worldwide professional licensing and testing service, for administering educational testing procedures. He gave an example of its work worldwide with certified public account (CPA) examinations, pointing out that a biometric identification system was now used during administration of the examinations. He said that this system verified the candidate's identity, identified and mitigated the risk of testing fraud from unauthorized candidates, improved test center security, and provided protection for the content and intellectual property of the examinations.

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CHAIR KELLER asked to clarify whether the biometric information was used more to protect the intellectual property than to identify the candidates.

MR. OSWALD explained that the CPA exam was "getting ripped off by professional test takers who were memorizing questions, then putting them out there on the internet for sale." He said that some people were unprepared for the exam, so they would hire

people to take the exam for them. He stated that biometric identification protected the exam and the profession. He explained that the process between LexisNexis and Prometric included a notification to the candidate applicant, which stated that the personal information data would not be used for any other purpose, without permission. He stated that this was the consent from the candidate applicant, and that any candidate could deny this consent, although the CPA state exam board might not allow them to take the exam. Upon verification of identity through Prometric, the candidate was enrolled in the biometric system with a fingerprint scan, which was stored in the LexisNexis data base for any future exam identification.

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CHAIR KELLER asked what Prometric did with the information after completion of the exams.

MR. OSWALD said that the information was destroyed when the candidate successfully passed the examination. He emphasized that the biometric data was only held in safe keeping for the customer, and, as it was not owned by LexisNexis, it was not available for sale or any other use by LexisNexis.

[3:44:25 PM](#)

REPRESENTATIVE SEATON asked why, if a person presented verifiable identification, that same identification would not be acceptable at a later date, in lieu of biometric data.

MR. OSWALD explained that the CPA exam could be re-taken for many years, and that more than a few pieces of identification were necessary for validation. He pointed out that additional background information was collected on the application, which also had to be verified upon entrance to the examination site. He stated that biometric information was more efficient, reliable, and convenient for the exam applicant, and allowed for immediate validation should the person leave the room at the test center.

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REPRESENTATIVE DICK asked what would happen if the information was sold.

MR. OSWALD replied that there were ethical questions and concerns for emerging technology. He said that Biometrics was

contractually obligated not to sell the data, and that no other data was co-mingled in storage with the biometric data.

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REPRESENTATIVE DICK expressed his concern for a lack of consequence for fraudulent use.

MR. OSWALD, in response, said that there was a risk of large penalties, as it would "chill the technology." He expressed his concerns with the proposed bill, as it was legislating use of the technology. He opined that biometric data could enhance someone's privacy, as, unlike key cards and identifications, the biometric data could not be lost.

[3:51:33 PM](#)

REPRESENTATIVE MILLETT opined that the need for biometric information to secure a testing room when leaving to use the bathroom was "lame." She asked why multiple pieces of identification could not be used for validation, no matter the location. She expressed concern with giving any biometric information as there could not be a guarantee of its security. She pointed out that even if LexisNexis destroyed the biometric information, Prometric would still retain it. She acknowledged concern for the use of her social security number, even though it could be replaced; whereas, biometric data could not be changed and replaced. She stated that the technology for theft was equal to that of the data collection companies.

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MR. OSWALD, in response, expressed his understanding for the concerns. He directed attention to a number of examples of security issues [Included in members' packets]. He offered examples of ways to compromise conventional security.

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CHAIR KELLER reminded that fingerprints were only one aspect of biometric information.

[3:56:08 PM](#)

ERNEST PRAX, Staff, Representative Wes Keller, Alaska State Legislature, said that CPAs were available to explain the need for the biometric policy for CPA exams.

3:57:02 PM

SENATOR WIELECHOWSKI, offering examples to the history for various security breaches suffered by LexisNexis, including 2005 and 2009, asked if there were any other security breaches.

MR. OSWALD explained that there would be breaches to every system to protect information, and he asked what the harm was in the breach. He noted that the LexisNexis biometric information was all encrypted, which was useless without the algorithmic key. He stated that LexisNexis was always striving for greater improvement to stay ahead of the fraudsters.

3:59:15 PM

JASON GIAMO, Co-Chair, Alaskan Citizens for Privacy, stated that he was also a certified management accountant and certified internal auditor. He said that the issues were clear, and declared that, as a United States passport was sufficient identification to travel throughout the world, it was sufficient identification to take a test. He emphasized that elected Alaskan lawmakers had a role to play in the protection of individual privacy, which was guaranteed in the Alaska State Constitution. He stated that the fingerprinting of innocent people for identification was becoming more widespread, even though it was in violation of the Alaska State Constitution. He reiterated that a passport was sufficient identification to take a test, and stated that no significant fraud for the CPA exam had been reported. He declared that the possibility of an identical twin trading places during an examination was nonsensical. He pointed out that the Prometric policy required that a person carry identification during the exam process. He expressed his concern that the release of fingerprints to "a global, foreign owned, data mining firm" would not enhance privacy. He agreed with Mr. Oswald that breaches of data security would occur, and he reminded the committee that, as fingerprints could not be changed, this breach of security would last as long as a person was alive. He referred to a report from Privacy Rights.org, which stated that 223 million data records of U.S. residents had been exposed through security breaches in the last three years.

MR. GIAMO, referencing a letter from Reed Elsevier dated December 28, 2011, said that Reed Elsevier was storing more than 1 million fingerprints of individuals from 80 countries. He questioned the right to deny Alaskans the opportunity for

professional licensing because they were unwilling to submit their fingerprints to a biometric data base in order to take an examination, declaring this to be a key issue. He pointed out that, in addition, there was a fee to each individual for this collection of fingerprints. He asked that the committee review the contracts among the data security and data storage companies.

MR. GIAMO asked how the sale of data would be traced, much less regulated, after the fact. He declared the importance for the preventative aspects of proposed SB 98.

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HORST POEPPERL, Borealis Broadband, Inc., Privacy Now Alaska, stated that he had been an informational technology (IT) professional for 25 years, pointing out that this was his fourth testimony on proposed SB 98. As a representative of the IT industry, he reported that the IT industry was governed by ethics rules, and that the misuse of data was grounds for dismissal, as it was a most serious breach of professional ethics. He declared that businesses now existed which violated these ethics daily, selling personal data solely for profit. He explained that Google had software programs which collected personal data from e-mails and other sources, with the capability to reveal an individual's personal life. He declared that this data for personal habits, including purchases and travel, was worth millions of dollars to "the right company" for marketing. He reported that the website, privacyrights.org, chronologically listed privacy data breaches, and reported that his personal data had been lost five times in the last eight years. He stated that the argument for data release and distribution to protect national security was "absurd in the extreme and [was] a downright Orwellian argument." He suggested speaking to anyone who had to deal with the money, time, and aggravation from the personal harm arising from identity theft. He expressed his desire for even "tighter privacy action," stating that legislating after data collection was impossible. He pointed out that it was almost impossible to delete personal data once it had been collected and stored. He expressed support for proposed SB 98.

[4:12:21 PM](#)

The committee took a brief at-ease. [Due to technical difficulties, the initial part of the teleconferenced testimony was indiscernible.]

4:15:51 PM

PAUL RESENZWEIG, Heritage Foundation, opined that committee members should be skeptical of any discussion which included sloganeering, such as 1984, minority report, or Orwellian, and stated his skepticism for the arguments of proponents to proposed SB 98 which misidentified. He offered his belief that fingerprints were a better means of identification than paper identification. He declared that identity enrollment with a biometric required authentication through biographic sets of information. He pointed out that identity enrollment included a host of sociological questions with answers only known to the individual, such as what was your childhood phone number, or your high school. These questions verified the identity, as they were linked to the fingerprint, and provided an identification of the individual which was more sophisticated than a passport. He directed attention to the Government Accountability Office (GAO) report 10-922T, which detailed instances of fraud in procurement of passports. He stated that many countries were moving toward use of fingerprint identification, as a better way of identity assurance, in lieu of passports. He professed his agreement that there was risk inherent in the accumulation of biometric data, but opined that there was a lower risk than that from the accumulation of biographic data. He also acknowledged that there was a risk for fraud for professional occupation examinations. He suggested that any determination needed to be a value judgment as to which method had a more realistic risk. He declared that any legislation with an alternate identification requirement would increase the likelihood of fraud.

4:21:13 PM

REPRESENTATIVE SEATON stated that the Alaska State Constitution had different requirements than many other state constitutions. He asked for more information from the witnesses who suggested not protecting the privacy of Alaskans, as to how the legislature could meet its responsibility to protect the privacy of Alaskans.

CHAIR KELLER asked that Mr. Resenzweig submit a written response.

REPRESENTATIVE KERTTULA asked whether there had been any cases of fraud with the Alaska CPA examination.

CHAIR KELLER replied that the CPA testifiers would respond.

[4:23:21 PM](#)

WALTER HAMILTON, Chairman & President, International Biometrics & Identification Association (IBIA), explained that IBIA was a non-profit trade association. He stated that he was also a technology consultant. He offered his belief that proposed SB 98 was the result of a misconception regarding biometric technology. He proposed that there was less potential for harm from the collection of personal biometric data than there was from the collection of other sensitive personal information, such as credit cards or financial information. He reported that IBIA believed that biometric data should be treated as personally identifiable information and properly protected, noting that the biometrics industry had supported standards for the protection of biometric data for the last ten years. He expressed his concern that the proposed bill singled out a specific technology as a threat to society. He declared that password hacking was the source of most data breaches, stating that the data breaches would have been prevented if the data owner had been using biometric authentication of their authorized users, instead of passwords. He stated that IBIA did not object to legislation which defined reasonable standards for the protection of the personally identifiable information, or the inclusion of biometrics in the definition of personally identifiable information. He opined that the proposed bill would have "a chilling effect on the deployment of a technology which is significantly beneficial to the citizens of Alaska."

CHAIR KELLER acknowledged that the written testimony submitted by Mr. Hamilton was available.

REPRESENTATIVE SEATON offered his belief that the proposed bill did not prohibit the data collection, it prohibited mandatory, unwilling collection of data. He asked Mr. Hamilton for his specific objection to SB 98.

MR. HAMILTON offered his belief that the option for an alternative form of identification was less secure, and could weaken the security of the overall system. He agreed that alternate forms of identification would be allowed in the rare circumstances for individuals physically unable to provide a biometric modality.

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MR. HAMILTON stated that commercial biometric data was stored in a template format, and not used in the original collected image. He acknowledged that law enforcement used the original images.

[4:30:18 PM](#)

REPRESENTATIVE SEATON asked to clarify whether the data collectors prohibited, or preferred not to use, the original images for storage of the collections of facial data and retinal scans.

MR. HAMILTON replied that commercial practices matched the registered biometric sample with the presented sample, which was compared as a template, not as a raw image. For operational efficiency, the data was in a template format and, as the images were not used by commercial entities, they were generally discarded.

REPRESENTATIVE SEATON asked to clarify whether the data was "generally discarded," or was there a legal prohibition from retaining the data.

MR. HAMILTON clarified that there was no legal prohibition for retaining the data.

[4:31:43 PM](#)

JIM HARPER, Director, Information Policy Studies, The Cato Institute, explained that he had studied the public policy for means of identification without encountering the dangers to liberty and privacy. He stated that both technology and privacy values were changing, making it difficult "to pin down the right answers." He declared his support for the intentions of SB 98, although he expressed his concern "that a bill like this is the right way to go." He directed attention to the written testimony he had submitted [Included in members' packets]. He offered his belief that the definition for biometric data in the proposed bill would not stand up over time, as it did not precisely address the concerns for biometrics. Addressing the issue of notice and consent, he declared that consumers did not act to protect their own privacy, as they often regarded it as interference and more paperwork. He opined that education over time was more successful for showing consumers how things worked. He reported that it was a very complex and costly burden to revoke permission for data use, once it had been put into a system. He offered his belief that outlawing the use of

biometrics for marketing was too broad, and did not think about future systems, suggesting that the draconian penalties imposed by a potentially unintentional error would keep people from providing biometrics. He proposed that the bill have a "lighter touch" and that "an eye on the longer haul would serve Alaskans well." He suggested ensuring that contract and tort liability applied for Alaskans in Alaska should any harm be suffered due to the collection and use of biometrics. He suggested that Alaska clarify whether there was a third party doctrine under its constitutional law, as Alaska could then determine that biometric information shared with a third party, under contractual or regulatory protections, would get constitutional protection for that data. He suggested an investigation to determine whether the CPA exam was controlled by an occupational cartel that required the biometric requirements. He suggested prevention of the use of biometrics in national identification systems, noting that other states had denied the federal government access to state identity data.

[4:37:28 PM](#)

CHAIR KELLER invited Mr. Harper to testify in future discussion to any blind spots.

[4:38:05 PM](#)

CHAIR KELLER invited the remaining witnesses, whose testimony would not be heard, to submit written testimony.

[4:39:12 PM](#)

MAX MERTZ, CPA, Alaska Board of Public Accountancy, stated that the Alaska Board of Public Accountancy had concerns with proposed SB 98, as the Alaska CPA community was very concerned for the ability for CPA candidates to be tested. He shared that he had been Chair of the board during the time that Prometric developed and implemented biometric imaging for the CPA examinations. He clarified that Prometric owned and administered the CPA examination process and the security protocol for biometric imaging of fingerprints, in conjunction with the American Institute of CPAs (AICPA) and National Association of State Boards of Accountancy (NASBA), and that the Alaska CPA community did not have direct control over this. He explained that the security protocol was developed because of the threat of question strippers, who can remember verbatim four or five questions and then sell them after the exam, and proxy test takers, who are hired to take the exam. In response to an

earlier question from Representative Kerttula, he said that he was not aware of this occurring in Alaska. He reported that there had been almost 1 million tests administered, with only one objection, and that the Alaska Board of Public Accountancy had extensively reviewed the process prior to agreement to the use of biometric imaging. He reported that the CPA exam was computerized in 2004, prior to which it was a pencil and paper examination. He reported that, as the electronic administration process was very expensive, the distribution was now limited to Anchorage and Fairbanks. He declared that the four part exam was very difficult, noting that the pass rate, when taking all four parts at the same time, was 4 percent; therefore, most candidates had to take multiple trips to Anchorage or Fairbanks for the examination. He stated that the Anchorage and Fairbanks test sites would be discontinued unless the administration process included biometric imaging. He expressed his concern that the committee would find an acceptable solution. He relayed that both Prometric and NASBA agreed that there was not acceptable alternative identification for repeat test takers. He requested an exception to allow biometric imaging for occupational licensing examinations, asking that proposed AS 18.14.040 is clarified to include this.

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REPRESENTATIVE SEATON reflected that, as most of the prior testimony had indicated that fraudulent monitors and test takers were prevalent, Alaska was not yet plagued by these actions.

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MR. MERTZ explained that, prior to the implementation of electronic examination in 2004, the tests were scheduled twice annually, on the same day, with the testing times coordinated nationally so that all the tests were taken concurrently. He said that a significant amount of reported fraud, from 2004 - 2008, resulted in the implementation of biometric imaging.

[4:46:26 PM](#)

REPRESENTATIVE MILLER asked how Mr. Mertz had been identified for his CPA examination.

MR. MERTZ, in response, said that it had required the standard normal identification.

REPRESENTATIVE MILLER asked how the CPA business had survived without biometrics.

MR. MERTZ replied that although biometrics had resolved common the instances of fraud after the initial exam, there was still a problem with fraud on the initial test.

[4:47:57 PM](#)

CHAIR KELLER reflected that breeches had existed under the older system, as well.

CHAIR KELLER said that SB 98 would be held over.

The committee took a brief at-ease.

Presentation: FASD

[4:49:41 PM](#)

CHAIR KELLER announced that the final order of business would be a presentation on FASD (Fetal Alcohol Spectrum Disorder).

TERI TIBBETT, Coordinator, Alaska FASD Partnership, said that all the participants were members of the Alaska FASD Partnership Steering Committee, as well as participants in the "FASD and the Legal System" work group. The panel would discuss the priorities from the work group, which the partnership was pursuing relative to FASD and the justice system.

[4:51:18 PM](#)

DIDI RAYMOND, Mental Health Clinician, Department of Corrections (DOC), explained that she worked as the statewide coordinator for a national best practice release program, APIC (Assess, Plan, Identify). She said that the program worked with the mental health clinicians inside the DOC correctional facilities to put together plans for the release of those inmates with serious mental illness. She noted that this program was in effect up to 90 days prior to release and up to 60 days after release, working as a transitional program for release. She shared that the program included mental health court, mental health commissions, and supervision of individuals with psychotic disorders on felony probation or parole. She said that all the programs were geared toward severely mentally ill individuals, and that those people with FASD were offered services, such as housing and continuity of medication, under

APIC. She declared a need for the individualized services geared for this group. She shared that her group also supervised released individuals with severe mental illness, including FASD, who most benefited from ongoing supervision. She reported that DOC had moved toward a justice model which took into account the cost and the quality of life for the community, the individual, and the family by working to reduce recidivism, reduce the number of victims, and bring communities, families, and individuals together.

4:54:15 PM

TRISH SMITH, Director, Prevention and Intervention Services, Volunteers of America Alaska, shared that she served on a family care wellness court for the children of the participants in the programs. She said that wellness court taught the children that the problems of the parents were not the fault of the children, and allowed the children to deal with their own defense mechanisms to their parent's problems. She reported that she had identified possible FASD in a number of women, many of whom who had been exited from the programs for not following all the rules. She spoke about the difficulties for many of the participants when they did not have any program structure. She offered her belief that the wellness court programs were adapted to better meet the needs of those affected by substance abuse and would be even better if FASD was also addressed on an individual basis.

4:56:59 PM

CHAIR KELLER directed attention to proposed HB 367, which dealt with FASD, stating that it was scheduled to be introduced in the next House Health and Social Services Standing Committee meeting.

4:58:08 PM

STEPHANIE JOHNSON, Mental Health Clinician, Nome Youth Facility, Youth Facilities, Division of Juvenile Justice, Department of Health and Social Services, explained that she handled crisis intervention and identification for specific mental health issues, including FASD. She said that she travelled with the youth when they were transitioning back into the community, and she looked for safe support systems and school programs, as the program goal was for success. She reported that there was now a focus to target non-conventional ways to help kids find a purpose in the community, including elders and cultural

practices to entwine the kids. She decried that often when youth were forced to leave the community, they were moved to treatment facilities in the cities. She reported that many facilities were no longer accepting youth diagnosed with FASD or IQs lower than 70. She relayed that this increased the difficulty for placement for these youth. She explained a teaching family model for a group home with five youth, and a Bethel cultural based model which taught trapping and fishing, with an elder on staff. She stated that kids in experiential learning programs were doing very well, whereas a non-cultural approach often lead to being institutionalized. She expressed a desire for more rural cultural based treatment programs.

[5:02:10 PM](#)

MICHAEL JEFFREY, Superior Court Judge, said that he was also on the statewide FAS Steering committee and the Alaska Juvenile Justice Advisory committee. He reported that he became involved with FASD in 1996, at a conference in Barrow. He offered an analogy for putting a youth with FASD in the judicial system to that of putting a youth with a club foot on the track team. He explained that FASD youth often look and talk completely normal, yet have a social understanding at a middle school level. He declared that they could not be age appropriate. The conference gave him an awareness for FASD symptoms in behavior, and an understanding for what his options as a judge should become. He listed the difficulties for constant maintenance, but the need for it. He pointed out the need for smart justice, that effective treatments both in and out of jail would allow the person to follow the rules and stay out of trouble. He agreed that the commission of dangerous activities would result in consequences, but there was a need for effective programs to meet the needs of the FAS population. He noted that he simplified his language and court forms, and slowed down the court hearings, to respect the need for FAS populations to better understand.

[5:07:32 PM](#)

CHAIR KELLER remarked that effective programs were necessary, as, although the situation was preventable, the victims had no choice and were victims for life.

[5:07:52 PM](#)

REPRESENTATIVE DICK offered some homilies to the need of physical activity for the developmental process.

5:09:56 PM

REPRESENTATIVE SEATON explained that adoptive parents of FASD children had told him that there was no connection between cause and effect with FASD. He opined as to the difficulty of being within the justice system if there was not an understanding of cause and effect.

5:10:58 PM

JUDGE JEFFREY clarified that he was not testifying as a representative of the Alaska court system, but as an individual. He expressed agreement that it was an issue. He declared that the community needed protection, but that community case management could often have better results than incarceration.

5:12:59 PM

MS. RAYMOND stated that there were also issues with memory, impulsivity, and judgment with FASD; therefore, it was necessary for more treatment options specific to this population. She said that working models existed, but the program capacities were limited.

5:14:35 PM

ADJOURNMENT

There being no further business before the committee, the House Health and Social Services Standing Committee meeting was adjourned at 5:14 p.m.