

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

March 28, 2011

1:35 p.m.

**MEMBERS PRESENT**

Senator Hollis French, Chair  
Senator Bill Wielechowski, Vice Chair  
Senator Joe Paskvan  
Senator John Coghill

**MEMBERS ABSENT**

Senator Lesil McGuire

**COMMITTEE CALENDAR**

SENATE BILL NO. 98

"An Act relating to biometric information."

- HEARD & HELD

SENATE BILL NO. 15

"An Act relating to penalties for certain alcohol offenses involving persons under 21 years of age committed by a sex offender or child kidnapper."

- HEARD & HELD

**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)

BILL: SB 15

SHORT TITLE: SEX OFFENDER/UNDERAGE ALCOHOL OFFENSE  
SPONSOR(s): SENATOR(s) MEYER

01/19/11 (S) PREFILE RELEASED 1/7/11  
01/19/11 (S) READ THE FIRST TIME - REFERRALS  
01/19/11 (S) HSS, JUD  
03/16/11 (S) HSS AT 1:30 PM BELTZ 105 (TSBldg)  
03/16/11 (S) Moved CSSB 15(HSS) Out of Committee  
03/16/11 (S) MINUTE(HSS)  
03/18/11 (S) HSS RPT CS 4DP SAME TITLE  
03/18/11 (S) DP: DAVIS, MEYER, EGAN, DYSON  
03/18/11 (S) FIN RPT CS #DP #DNP #NR #AM  
03/18/11 (S) FIN REFERRAL ADDED AFTER JUD  
03/28/11 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

MICHAEL CAULFIELD, Staff to Senator Wielechowski  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Presented a sectional analysis of SB 98,  
version D.

CHRISTOPHER OSWALD, Director  
State Government Affairs  
LexisNexis  
Reed Elsevier Inc.

**POSITION STATEMENT:** Testified in support of the changes made to  
version D of SB 98.

TERESA JENNINGS, Managing Director  
State Government Affairs  
Reed Elsevier Inc.

**POSITION STATEMENT:** Testified in support of the changes made to  
version D of SB 98.

TIMOTHY J. PEARSON, representing himself  
Anchorage, AK

**POSITION STATEMENT:** Testified in opposition to the changes made  
in version D of SB 98.

JASON GIAIMO  
Net Gain Business Consultants  
Anchorage, AK

**POSITION STATEMENT:** Testified in opposition to the changes made in version D of SB 98.

HORST POEPPERL, Chief Executive Officer  
Borealis Broadband, Anchorage, AK,

**POSITION STATEMENT:** Testified in opposition to the changes made in version D of SB 98.

SENATOR KEVIN MEYER  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Sponsor of SB 15.

CHRISTINE, MARASIGAN, Staff to Senator Meyer  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Provided information related to SB 15 on behalf of the sponsor.

ANNE CARPENETI, Assistant Attorney General  
Criminal Division  
Department of Law  
Juneau, AK

**POSITION STATEMENT:** Suggested an amendment to SB 15.

#### **ACTION NARRATIVE**

[1:35:22 PM](#)

**CHAIR HOLLIS FRENCH** called the Senate Judiciary Standing Committee meeting to order at 1:35 p.m. Present at the call to order were Senators Coghill, Paskvan, Wielechowski, and Chair French.

#### **SB 98-BIOMETRIC INFORMATION FOR ID**

[1:35:53 PM](#)

**CHAIR FRENCH** announced the consideration of SB 98 and asked for a motion to adopt the work draft committee substitute (CS).

**SENATOR WIELECHOWSKI** moved to adopt CS for SB 98, labeled 27-LS0661\D, as the working document.

**CHAIR FRENCH** objected for discussion purposes.

[1:36:19 PM](#)

MICHAEL CAULFIELD, staff to Senator Wielechowski, sponsor of SB 98 said version D is substantially different than the State Affairs version B. The proposed new Sec. 18.14.010 now requires a person who is collecting biometric information to specify a specific purpose when they ask for documented consent to collect the information. Unless the person's biometric information was needed for a specific authorized law enforcement, security, or fraud-prevention purpose, the person can revoke that consent at any time.

Sec. 18.14.020 pertains to the disclosure of biometric information. It states that the collector of the information will not disclose, distribute, or transfer the data to anyone other than organizations that are specifically in service to hold biometric information.

CHAIR FRENCH referenced page 2, line 5, and asked who "a contractor" references.

MR. CAULFIELD replied it references a person or the agent of the entity that authenticates the identity of the person who is providing the biometric information.

Sec. 18.14.030 deals with the sale of biometric information. It states that a person cannot sell biometric information unless the storage entity is acquired by another storage entity. For example, LexisNexis bought out ChoicePoint.

CHAIR FRENCH asked for confirmation that no one could buy or sell his biometric data by itself but the agency that collected the data could be bought and sold.

MR. CAULFIELD answered yes.

Sec. 18.14.040 sets time limits on how long biometric information can be stored. Biometric information will be removed upon request of the individual or when the original reason for the collection is no longer necessary. The collecting entity has 30 days to notify the storage entity and 120 days for the storage entity to delete the data.

[1:39:58 PM](#)

Sec. 18.14.050 says the biometric information cannot be used for marketing or general surveillance purposes, but it may be used for specific authorized security or fraud prevention purposes.

Sec 18.14.060 states that the company or organization that is storing data will do so in a safe and secure manner.

Sec 18.14.070 is a private right to action. It is substantially the same as the previous version except it now includes the word "knowingly" to ensure the party at fault is the one responsible.

Sec 18.14.080 and Sec 18.14.090 deal with exemptions and definitions. They are unchanged from the previous bill version.

[1:41:24 PM](#)

SENATOR WIELECHOWSKI said most of concerns that were raised centered on security issues related to the alternate identification section, and he decided to remove that section in order to move forward with the bill. To offset that change he tightened other provisions to increase the security of the information that's collected. Hopefully this will help the bill to gain broader support.

[1:42:47 PM](#)

CHRISTOPHER OSWALD, Director, State Government Affairs, LexisNexis, Reed Elsevier Inc., explained that the LexisNexis True ID product is an identity verification and biometric authentication solution that is designed to verify identities and face-to-face transactions. These applications help their clients fight fraudulent enrollment and access to controlled systems.

LexisNexis Risk Solutions is the repository for biometric data, not the owner. Therefore, they don't sell the data and they don't use it beyond the original purpose for which it was given. This data is held in a secured database in two U.S. locations and domestic customers' data is never transferred outside the U.S.

MR. OSWALD stated that the current version of SB 98 strikes a balance that allows the legitimate commercial use of biometric technology while protecting the privacy interests of the individual.

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SENATOR PASKVAN asked what specific types of biometric data LexisNexis Risk Solutions collects.

MR. OSWALD replied they collect the information that their customers give them. Right now that's generally limited to

fingerprint scans, but in the future it could include voiceprint and other biometric solutions.

SENATOR PASKVAN asked how often LexisNexis Risk Solutions uses fingerprints to confirm that someone took a particular test.

MR. OSWALD explained that they hold the initial fingerprint scan in reserve as a template in order to verify a print compared to that template. Electronic verification can be done as often as the entity seeking the solution requires; this can be in real time or in batches at the end of the day or the end of the week.

SENATOR PASKVAN asked, if someone comes to take a test and gives a fingerprint for ID, what do you compare that biometric data against and how did you get the information in the first place?

MR. OSWALD explained that LexisNexis needs to have an initial fingerprint scan on file. It's at that point that the individual is given notice that their biometric data is being collected and he/she can choose to consent or not. LexisNexis is the matching service and can authenticate that person's identity against that original fingerprint.

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TERESA JENNINGS, Managing Director, State Government Affairs, Reed Elsevier Inc., compared the large amount of information that LexisNexis holds to a bank vault and a safe deposit box. LexisNexis is a repository for a great deal of information just as a bank vault holds a great deal of money, but they can only verify information about a person's identity based on what the client gives to LexisNexis. That information is secure like a safe deposit box and can only be accessed by the individual who put the information into the box. An individual's information never gets co-mingled with the rest of the information that LexisNexis holds.

CHAIR FRENCH asked how he, as a person taking the bar exam, would be identified by his fingerprint.

MS. JENNINGS replied your fingerprint will be scanned each time you enter the exam room. The issue has been that individuals will leave the exam and another individual comes in and finishes the test or steals the test questions. She noted that this version of the bill provides a mechanism for the individual to get their information deleted from the system if they no longer need their identity to be authenticated.

[1:54:52 PM](#)

CHAIR FRENCH asked who makes sure it's really him who puts his fingerprint down the very first time.

MS. JENNINGS replied that would be their client. They determine the information they want in order to verify a person's identity. This could include a driver's license or passport. We don't establish what goes into that safe deposit box, she stated. We simply hold that information and the client tells us when to destroy it or give it back.

SENATOR PASKVAN asked the cumulative number of fingerprints they have in storage in the U.S. in any format.

MS. JENNINGS replied they have about one million records from 86 countries stored in their U.S. facilities, but she doesn't know the breakdown by country.

MR. OSWALD concurred. He added that these countries believe that the U.S. and the LexisNexis security system is the best in the world.

[1:57:03 PM](#)

TIMOTHY J. PEARSON, representing himself, stated that he is testifying in opposition to the proposed changes to SB 98. First, Sec. 18.14.010(b) addresses biometric data but it doesn't provide any alternate forms of identification. Second, Sec. 18.14.[050] creates a timed-out opt-out system that requires individuals to trust that the collector and the collectors contractor will remove or destroy the biometric data. ChoicePoint in 2006 was fined \$10 million in civil penalties and \$5 million for customer redress for data security breach charges by the Federal Trade Commission (FTC). The personal financial records of more than 163,000 customers in its database were compromised and at least 800 cases of identity theft occurred. Third, collecting biometric data is a poor security practice; once a person's fingerprints are stolen they'll have to live with the issues associated with a compromised identity forever. Security experts recommend using other techniques like multifactor authentication to establish database, computer, and building security.

Eleven days ago the New York Times reported that RSA, the Security Division of EMC, suffered a sophisticated data breach potentially compromising computer security products widely used by corporations and governments. This is relevant in that Sec. 18.14.[070] provides that a collector and contractor can store

biometric information using encryption but encrypted security is false security. The only way to protect biometric data is not to collect it. He urged the committee to return to the language in the State Affairs version, which provides for alternative forms of identification. That will really protect the privacy rights of Alaskans

[2:02:57 PM](#)

JASON GIAIMO, Net Gain Business Consultants, said it's absurd to say that a passport isn't adequate security to prove identification to take a test. The fact that you can travel the world on a U.S. passport but you can't sit at a computer terminal to take a test because it's not adequate ID is silly. The issue of requiring fingerprints to sit for the bar exam came up in Canada and was ruled illegal under Canadian privacy laws. There's no reason to mandate collection of employees' fingerprints for security purposes and it would be very risky as a policy in Alaska, he stated.

MR. GIAIMO said the changes in the current version effectively take out all real assurances that Alaskan's data will be protected after it's collected. He urged the committee to put real protection for Alaskans back in the bill by reinserting the provision about exemption from fingerprinting for ID for individuals who present a U.S. passport and driver's license.

[2:07:53 PM](#)

HORST POEPPERL, Chief Executive Officer, Borealis Broadband, said he's been an IT specialist his entire career and is well versed in IT, data communication, and data storage. The purpose behind this bill, he said, is to prevent the collection of biometric data in the first place. Trying to regulate its use after it's has been collected doesn't work. He asked why, if other IDs are used to verify the initial fingerprint, you need the fingerprint in the first place. Any data that's kept is at risk, which is demonstrated by the fact that breaches occur every day. The best protection against these breaches is to not collect the data.

Data can also be intercepted, he said, regardless of whether or not it's encrypted. Anyone with reasonable knowledge in data communication can intercept queries that are transmitted across the Internet. Right now information about spending habits, shopping habits, online habits, income, expenses, personal preferences, and where you travel is available. With a thousand dollar printer and an image manipulation program, it's extremely easy to lift and use a fingerprint for whatever purpose. Forget

about removing this data once it's hit the Internet or is in someone's database because it's almost impossible to verify that it's gone. The best way to enhance security is to maintain privacy, dignity and rights.

[2:14:00 PM](#)

CHAIR FRENCH asked Ms. Jennings if she'd say that it's not her company that wants the fingerprints, it's their clients that want them.

MS. JENNINGS confirmed she would say that; their clients set the standards for verifying individuals for a particular purpose and LexisNexis holds the information for the client. She reiterated that LexisNexis completely destroys the information when directed to do so.

SENATOR PASKVAN commented that it's over-inclusive under Alaska privacy laws to require every Alaskan who wants to take a test to consent to fingerprinting because certain companies have chosen this means to target professional test takers. A distinction should be made between job-specific requirements and proof of one's identity, he said.

CHAIR FRENCH observed that the companies who want the fingerprints to verify identity didn't enter the debate today.

[2:16:49 PM](#)

CHAIR FRENCH announced he would hold SB 98 in committee.

**SB 15-SEX OFFENDER/UNDERAGE ALCOHOL OFFENSE**

[2:17:12 PM](#)

CHAIR FRENCH announced the consideration of SB 15.

[2:17:32 PM](#)

SENATOR KEVIN MEYER, sponsor of SB 15, said this bill would provide an enhanced penalty for convicted sex offenders and child kidnappers who furnish alcohol to minors in exchange for sexual favors. He said that Ms. Carpeneti is available to discuss the bill and how it's drafted. He added that he understands that the bill needs to be amended to include only the folks who are currently on the sex offender registry.

[2:19:47 PM](#)

CHAIR FRENCH asked him to remind the committee what the statutes listed on page 1, lines 5-6, refer to.

2:20:04 PM

CHRISTINE, MARASIGAN, staff to Senator Meyer, said AS 04.16.051 relates to furnishing or delivering alcoholic beverages to persons under age 21; AS 04.16.055 relates to room rental for the purpose of consuming of alcoholic beverages; and AS 04.16.057 relates to permitting a minor to illegally possess liquor in a dwelling.

Oftentimes alcohol is used as a grooming tool for minors. This is witnessed by an Anchorage report that talks about the number of sexual assaults to women under age 19 half of which involve alcohol. SB 15 addresses this issue.

CHAIR FRENCH said he agrees with the concept of the bill.

2:23:07 PM

ANNE CARPENETI, Assistant Attorney General, Criminal Division, Department of Law (DOL) said she noticed that the definition of sex offender or child kidnapper cross references a definition in AS 12.63.100. It defines sex offender or child kidnapper as a person who has been convicted in this state or another jurisdiction of a sex offense or child kidnapping offense on or before 1999. This means that a person may come under this provision after they are no longer required to register.

She suggested amending the language to apply just to people who are currently required to register, not people who are no longer required under the law to register.

CHAIR FRENCH summarized that on page 1, lines 9-10, the suggested language is "that was committed by a person required to register as a sex offender or child kidnapper under AS 12.63."

MS. CARPENETI agreed.

CHAIR FRENCH said he'd bring that conceptual amendment before the committee at a future hearing.

SENATOR PASKVAN said that he tends to agree because the definition of "sex offender" can generally include things like indecent exposure under AS 11.41.460.

MS. CARPENETI said that may come under this bill if it's a registerable offense. A second conviction of indecent exposure, for example, is a registerable offense.

CHAIR FRENCH recapped that Ms. Carpeneti pointed out that a second conviction for indecent exposure is a registerable offense and that would put a person under the structure of this bill should he/she in the future serve alcohol to a minor.

MS. CARPENETI corrected the record. Under AS 12.63 a sex offense is included as a registerable offense if the person is convicted of indecent exposure and the exposure is before a person under age 16 and it's a second offense.

[2:26:19 PM](#)

SENATOR PASKVAN referenced AS 11.41.460, indecent exposure, and asked if the additional requirement is that the exposure has to be before a person under the age 16.

MS. CARPENETI said yes and it has to be a second conviction for that offense.

SENATOR PASKVAN referenced AS 11.61.118, harassment in the first degree and asked about harmful offensive contact.

CHAIR FRENCH asked if that's a registerable offence.

MS. CARPENETI said yes if it's a second conviction for the offense. It's offensive touching where the victim doesn't have time to say "no." Sometimes this happens in a bar.

SENATOR PASKVAN said he understands that the proposed language would put the requirement to register with the sex offender.

MS. CARPENETI said yes; as currently drafted she reads it to mean that a sex offender who has come off the registry would again have to register because they had been convicted of an offense that is defined as registerable. This would matter for people who are required to register for 15 years, but it wouldn't matter for those who are required to register for life.

CHAIR FRENCH asked if this is a separate statutory punishment for the crime of serving alcohol to a minor and not an aggravator to the sex offense.

MS. CARPENETI confirmed that it's an increased penalty for committing certain offenses while you have to register as a sex offender. It's not an aggravating factor to the sex offense.

CHAIR FRENCH asked for confirmation that this statute wouldn't capture a first time offender who furnishes alcohol to a minor and has sex with her.

MS. CARPENETI agreed; at that point you wouldn't be a convicted sex offender and you wouldn't be required to register.

[2:29:45 PM](#)

SENATOR COGHILL asked if this could create a double jeopardy issue.

MS. CARPENETI replied she doesn't believe so because it would just be an aggravated penalty because of circumstances in your past. This is common in criminal law.

CHAIR FRENCH said a felon in possession of a firearm is a good example of more severe consequences based on past behavior. Most people are allowed to carry guns, but it's always against the law to serve alcohol to a minor. This bill increases the penalty for people who have a sex crime history.

SENATOR COGHILL said he agrees with the intent, but he wants assurance that it won't get thrown out.

CHAIR FRENCH observed that enticing teenagers with alcohol is a predictable feature of sex offender behavior. Senator Meyer has a good idea to curtail that activity.

[2:32:31 PM](#)

CHAIR FRENCH closed public testimony and announced that he would hold SB 15 in committee awaiting the amendment suggested by Ms. Carpeneti.

[2:32:45 PM](#)

There being no further business to come before the committee, Chair French adjourned the meeting at 2:32 p.m.