



**HB**

**216**



**DIVISION OF INSURANCE**

*Frank H. Murkowski, Governor*

March 31, 2005

The Honorable Tom Anderson  
Alaska House of Representatives  
House Labor & Commerce Committee  
State Capitol, Room 408  
Juneau, AK 99801-1182

RE: HB 216 – An Act relating to insurance rate-making and form filing

Dear Representative Anderson:

During the hearing on HB 216 on March 21, 2005, Representative Rokeberg asked for information on what other states use for flex-rate bands, how much time it takes to get rates approved and what are typical rate changes. This letter and its attachment provides the requested information.

Please see the attached chart that summarizes the flex-rate laws of other states.

To provide information on typical rate changes, we have looked at rate filings that have been submitted to the division since January 1, 2000 for several different lines of business. For personal lines, personal auto and homeowners lines rate history from 3 different companies for each line are shown below.

*Personal Auto Rate Change History*

*Company A*

Rate Change	Effective Date	Flex-rating
7.0%	8/8/2000	
4.8%	4/22/2002	Yes
8.2%	8/30/2002	No
5.7%	9/8/2003	Yes

Had the flex-rating method proposed in HB 216 been available when these filings were made, the April 2002 filing would have qualified to be filed under the flex-rating provisions. The August 2002 would not qualify since the total rate change in the 12 months prior to August 30, 2002 is 13.4%, which is greater than the 10% flex band. The September 8, 2003 filing would

again qualify for flex-rating since it is the only change in the previous 12 months and the change is less than 10%.

**Company B**

Rate Change	Effective Date	Flex-rating
1.4%	5/15/2000	
5.9%	8/1/2001	Yes
18.2%	1/1/2003	No
10.1%	10/1/2003	No
-0.10%	5/15/2004	Yes
-0.30%	12/15/2004	Yes

Had the flex-rating method been available when these filings were made, the August 2001 rate change would have qualified to be filed under the flex-rating provisions. Neither the January 2003 filing nor the October 2003 filing would qualify for flex-rating as the changes are greater than 10%. The May 2004 filing would qualify for flex-rating since the combined rate change in the 12 months between May 15, 2003 and May 15, 2004 is 9.99%. The December 2004 filing would also qualify for flex-rating since the 2004 filings have a combined impact of -0.4% which is within the flex band.

**Company C**

Rate Change	Effective Date	Flex-rating
8.0%	8/24/2000	
8.3%	2/4/2002	Yes
2.7%	7/22/2002	No
5.4%	2/24/2003	Yes

Had the flex-rating method been available when these filings were made, the February 2002 filing would have qualified for flex-rating. The July 2002 would not qualify for flex-rating since the total rate change over the 12 months between July 22, 2001 and July 22, 2002 is 11.2%. The February 2003 rate change would qualify for flex-rating since the combined rate change between February 24, 2002 and February 24, 2003 is 8.2%.

*Homeowners Rate Change History*

**Company A**

Rate Change	Effective Date	Flex-rating
2.4%	5/22/2000	
15.0%	1/21/2002	No
6.2%	7/22/2002	No

Had the flex-rating method been available when these filings were made, the January 2002 filing would not qualify for flex-rating since the change is greater than 10%. The July 2002 filing also would not qualify for flex-rating since the combined rate change for the 12-month period from July 22, 2001 to July 22, 2002 is 22.1%.

**Company B**

<b>Rate Change</b>	<b>Effective Date</b>	<b>Flex-rating</b>
-0.6%	4/15/2000	
-6.4%	6/15/2001	Yes
12.3%	6/15/2002	Yes
13.2%	10/1/2003	No

Had the flex-rating method been available when these filings were made, the July 2001 filing would qualify for flex-rating. The June 2002 filing would qualify for flex-rating since the combined rate change over the 12-month period from June 15, 2001 to June 15, 2002 is 5.1%. The October 2003 filing would not qualify for flex-rating since the combined rate change from October 1, 2002 to October 1, 2003 is 13.2%.

**Company C**

<b>Rate Change</b>	<b>Effective Date</b>	<b>Flex-rating</b>
3.0%	7/6/2000	
3.0%	8/30/2001	Yes
10.4%	3/5/2003	No

Had the flex-rating method been available when these filings were made, the August 2001 filing would qualify for flex-rating since it is less than 10% and the only filing in the 12 months prior to August 30, 2001. The 2003 filing would not qualify for flex-rating since the change is greater than 10%.

**Commercial Lines**

For the commercial lines, filings submitted by Insurance Services Office, Inc. are considered to be representative of the rate changes for individual companies. Please note however, under HB 216 filings submitted by a rating organization are not eligible for flex-rating.

*General Liability Rate Change History*

<b>Rate Change</b>	<b>Effective Date</b>	<b>Flex-rating</b>
-5.7%	12/1/1999	
-6.2%	10/1/2000	No
4.5%	10/1/2001	Yes
-4.4%	10/1/2004	Yes

Had the flex-rating method been available when these filings were made, the October 2000 filing would not qualify for flex-rating since the combine rate change between October 1, 1999 and October 1, 2000 is -11.5%. Both the 2001 and 2004 filings would qualify for flex-rating since they are the only changes within the 12-month period prior to the effective dates and both are less than +/-10%.

*Commercial Auto Rate Change History*

Rate Change	Effective Date	Flex-rating
4.2%	5/1/2001	
2.5%	10/1/2003	Yes
1.2%	10/1/2005	Yes

Had the flex-rating method been available when these filings were made, both the 2003 and 2005 filings would qualify for flex-rating since the changes are less than 10% and they are the only changes in the 12-month period proceeding the effective date.

*Commercial Property Rate Change History*

Rate Change	Effective Date	Flex-rating
-2.5%	11/1/2001	
-9.8%	11/1/2002	Yes
-8.0%	2/1/2004	Yes
-4.1%	2/1/2005	Yes

Had the flex-rating method been available when these filings were made, the 2002, 2004 and 2005 filings would qualify for flex-rating since there is only one filing in a 12-month period and the changes each fall with the flex band.

**Filing Review Time**

To demonstrate the length of time that it takes a filing to be approved we looked at rate filings that were closed during February 2005. There were a total of 77 rate filings that were closed with an average time of 40 days.

Number of Days to Close	Number of Filings
Less than 15 days	21
15 days	16
16-30 days	9
31-49 days	7
50-100	15
More than 100	9

Thank you for the opportunity to address the issues that were asked at the hearing. If you need additional information, please let me know.

Sincerely,



Linda S. Hall  
Director

Summary of Other State Flex-Rating Laws

State	Flex Range	Lines of Business	Comments
Alabama	+/-10%	Commercial property and casualty insurance excluding workers compensation, medical malpractice and other lines with proposed rate increases of 10% or more	Rate filings subject to the flex range are file and use. Rate filings outside the flex range are prior approval. Personal lines rates are prior approval.
Kentucky	+/-25%	Personal and commercial lines of business.	The flex band applies to <i>any classification of risks in any rating territory</i> within a 12-month period. Rates outside the flex band are prior approval.
Louisiana	+/-10%	Personal and commercial lines of business.	Only one rate increase per classification in any 12-month period. A reduction in rates for a classification may be approved at any time. Flex rate filings become effective not less than thirty days after date of filing. Rate filings outside the flex range are prior approval.
New Jersey	+/-7%; +/-5%	Personal auto and homeowners respectively.	This is a limited rate filing prior approval process for minor rate changes that requires limited supporting information and a decision within 30-45 days.
Oklahoma	+/-15%	Workers compensation	
Oregon	+/-15%	Specified commercial liability lines such as products liability, medical malpractice, liquor law, child care, and a few others.	Oregon is generally file and use with the exception of rate changes exceeding the +/-15% for the specified lines. Rates for the specified lines falling outside this band are prior approval.
South Carolina	+/-7%	Personal auto, fire, homeowners	Filings within the flex band become effective without prior approval provided no more than one rate increase for auto and no more than 2 rate increases for property, with the second rate increase subject to prior approval, may be implemented during any 12-month period. Rates outside the flex band are prior approval. Department position is that the maximum percentage change is 25% to any one policyholder.

Sectional Analysis for Amendments to HB216

Section	Statute	Change	Purpose or Effect
1	21.09.110(b)	Amend	Remove the word "approval" and replace it with "filing" as all forms and rates will no longer require approval. However, filings are still required.
2	21.39.040(a)	Amend	Add "loss cost adjustment" to the required list of types of rates that must be filed. Does not add new filing requirements but clarifies a new type of filing that did not exist when this statute was originally enacted.
3	21.39.040(d)	Amend	New language is added to reference that this section applies to Section 5 and Section 9 and similar language is proposed to be deleted from these sections to eliminate redundancy. Language stating when a filing is open for public inspection has been deleted as this is addressed in the prior approval, flex-rating and file and use sections.
4	21.39.040(g)	Amend	Delete the word "extrahazardous" as this concept can be incorporated in the word "unusual". Allow special filings for rates that are lower than the filed rate in addition to rates that are higher. Clarifies that prior approval or file and use filing methods apply to these filings.
5	21.39.041(a)	Amend	Add mortgage guaranty to list of prior approval filings. Replace "chapter" with "title" for consistency.
5	21.39.041(c)	Amend	Replace "chapter" with "title" for consistency.
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5	21.39.041(f)	Amend	Replace "chapter" with "title" for consistency.
7	21.39.070(b)	Repeal	Removes the requirement that a deviation filing remain in effect for one year for consistency with 21.39.210 that allows more than one filing in a 12 month period.
9	21.39.210(a)	Amend	Add mortgage guaranty to list of prior approval filings for consistency with Section 5.
9	21.39.210(c) and (d)	Amend	Replace "chapter" with "title" for consistency.
9	21.39.220(d)	Amend	Replace "chapter" with "title" for consistency.
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12	21.42.123(a)	Amend	Clarify that a filing must be disapproved by order only when the disapproval occurs after the review period or the after the filing has been previously disapproved.
12	21.42.123(b)	Amend	Clarify that a filing must comply with the title not just with the filing process.
12	21.42.125(c)	Amend	Replace "materially false or misleading" certificate with "incomplete or inaccurate" certificate to describe when an insurer may no longer be able to submit form filings under file and use procedures.



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Company A

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**Company C**

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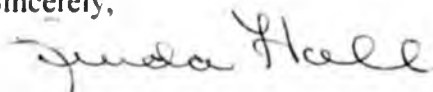
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P.O. Box 110805, Juneau, Alaska 99811-0805

Telephone: (907) 465-2515 Fax: (907) 465-3422 Text Telephone: (907) 465-5437

Email: [insurance@commerce.state.ak.us](mailto:insurance@commerce.state.ak.us) Website: <http://www.commerce.state.ak.us/insurance>

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-2.5%	11/1/2001	
-9.8%	11/1/2002	Yes
-8.0%	2/1/2004	Yes
-4.1%	2/1/2005	Yes

Had the flex-rating method been available when these filings were made, the 2002, 2004 and 2005 filings would qualify for flex-rating since there is only one filing in a 12-month period and the changes each fall with the flex band.

**Filing Review Time**

To demonstrate the length of time that it takes a filing to be approved we looked at rate filings that were closed during February 2005. There were a total of 77 rate filings that were closed with an average time of 40 days.

Number of Days to Close	Number of Filings
Less than 15 days	21
1-15 days	16
16-30 days	9
31-49 days	7
50-100	15
More than 100	9

Thank you for the opportunity to address the issues that were asked at the hearing. If you need additional information, please let me know.

Sincerely,



Linda S. Hail  
Director

Summary of Other State Flex-Rating Laws			
State	Flex Range	Lines of Business	Comments
Alabama	+/-10%	Commercial property and casualty insurance excluding workers compensation, medical malpractice and other lines with proposed rate increases of 10% or more	Rate filings subject to the flex range are file and use. Rate filings outside the flex range are prior approval. Personal lines rates are prior approval.
Kentucky	+/-25%	Personal and commercial lines of business.	The flex band applies to <i>any classification of risks in any rating territory</i> within a 12-month period. Rates outside the flex band are prior approval.
Louisiana	+/-10%	Personal and commercial lines of business.	Only one rate increase per classification in any 12-month period. A reduction in rates for a classification may be approved at any time. Flex rate filings become effective not less than thirty days after date of filing. Rate filings outside the flex range are prior approval.
New Jersey	+/-7%; +/-5%	Personal auto and homeowners respectively.	This is a limited rate filing prior approval process for minor rate changes that requires limited supporting information and a decision within 30-45 days.
Oklahoma	+/-15%	Workers compensation	
Oregon	+/-15%	Specified commercial liability lines such as products liability, medical malpractice, liquor law, child care, and a few others.	Oregon is generally file and use with the exception of rate changes exceeding the +/-15% for the specified lines. Rates for the specified lines falling outside this band are prior approval.
South Carolina	+/-7%	Personal auto, fire, homeowners	Filings within the flex band become effective without prior approval provided no more than one rate increase for auto and no more than 2 rate increases for property, with the second rate increase subject to prior approval, may be implemented during any 12-month period. Rates outside the flex band are prior approval. Department position is that the maximum percentage change is 25% to any one policyholder.

Sectional Analysis for Amendments to HB216

Section	Statute	Change	Purpose or Effect
1	21.09.110(b)	Amend	Remove the word "approval" and replace it with "filing" as all forms and rates will no longer require approval. However, filings are still required.
2	21.39.040(a)	Amend	Add "loss cost adjustment" to the required list of types of rates that must be filed. Does not add new filing requirements but clarifies a new type of filing that did not exist when this statute was originally enacted.
3	21.39.040(d)	Amend	New language is added to reference that this section applies to Section 5 and Section 9 and similar language is proposed to be deleted from these sections to eliminate redundancy. Language stating when a filing is open for public inspection has been deleted as this is addressed in the prior approval, flex-rating and file and use sections.
4	21.39.040(g)	Amend	Delete the word "extrahazardous" as this concept can be incorporated in the word "unusual". Allow special filings for rates that are lower than the filed rate in addition to rates that are higher. Clarifies that prior approval or file and use filing methods apply to these filings.
5	21.39.041(a)	Amend	Add mortgage guaranty to list of prior approval filings. Replace "chapter" with "title" for consistency.
5	21.39.041(c)	Amend	Replace "chapter" with "title" for consistency.
5	21.39.041(d)	Amend	Delete duplicate requirement for supporting information as this language appears in Section 3. Replace "may deem" with "shall consider" as deem is not terminology generally used.
5	21.39.041(f)	Amend	Replace "chapter" with "title" for consistency.
7	21.39.070(b)	Repeal	Removes the requirement that a deviation filing remain in effect for one year for consistency with 21.39.210 that allows more than one filing in a 12 month period.
9	21.39.210(a)	Amend	Add mortgage guaranty to list of prior approval filings for consistency with Section 5.
9	21.39.210(c) and (d)	Amend	Replace "chapter" with "title" for consistency.
9	21.39.220(d)	Amend	Replace "chapter" with "title" for consistency.
9	21.39.220(e)	Amend	Replace "rate" with "filing" for consistency.

9	21.39.220(f)	Amend	Delete duplicate requirement for supporting information as this language appears in Section 3.
9	21.39.220(g)	Amend	Add language to clarify when a filing becomes open for public inspection.
9	21.39.220(h)	Amend	Replace "chapter" with "title" for consistency.
12	21.42.123(a)	Amend	Clarify that a filing must be disapproved by order only when the disapproval occurs after the review period or the after the filing has been previously disapproved.
12	21.42.123(b)	Amend	Clarify that a filing must comply with the title not just with the filing process.
12	21.42.125(c)	Amend	Replace "materially false or misleading" certificate with "incomplete or inaccurate" certificate to describe when an insurer may no longer be able to submit form filings under file and use procedures.

Progressive Insurance supports HB 216 and strongly encourages you to <sup>support</sup> pass CS House Bill 216.

*This Committee Substitute*  
We believe ~~HB 216~~ represents a win for consumers, regulators, and industry.

Consumers will benefit from this bill because it will stimulate further competition among insurance companies. Competition will be heightened for two reasons. One, we believe non-present carriers will see the passage of this bill as a sign that the State of Alaska and the Alaska DOI are serious about attracting new carriers. HB 216 makes it less burdensome for carriers to file their rates and maintain a program. States with a small market, such as Alaska, need to make it easier, not harder, for companies to do business, otherwise it just isn't worth it to carriers. ~~With the arrival of new carriers, Alaskan's will gain more choices and likely lower premiums relative to the current market.~~ Competition will also be heightened because insurance carriers will feel more comfortable being aggressive with lower premiums. In the current environment, lowering rates is perceived to be a risky move because raising rates, <sup>if rates</sup> if rates costs rise, might take longer than is desired, resulting in unprofitability. The more financially sound strategy is to maintain, rather than lower rates. The flex band is designed to allow carriers some wiggleroom with respect to pricing. ~~If a carrier lowers rates and their costs suddenly rise, they can move quickly to maintain profitability and fulfill their duty to their shareholders.~~ Clearly consumers win if they have more choices and there is heightened competition among those choices.

This bill is a win for the DOI as well. Less time will be spent reviewing insurers' filings for a small rate change. Resources can be re-deployed more efficiently to ~~review~~ rate and program changes. More time can be spent on other insurance issues of importance to Alaskans.

Finally, we like the bill because it reduces our administrative cost to conduct business in the state and allows us to more easily bring new products and services to Alaska. When we prioritize new programs to be rolled out in the US, the most heavily regulated states get put at the bottom of the list, if they make the list at all. This means consumers in Alaska are not benefitting from new innovations that could very well be saving them hundreds of dollars a year on car insurance. With the passage of this bill we hope to bring our product in Alaska up to par with other states. We believe this will generate growth for us as innovation helps us out perform our competitors and is one of the keys to our success.

Thank you for your time in hearing testimony on this bill. We support HB 216 and ask you ~~for your support~~ *to adopt the CS and move it through the process.*  
Sincerely,

Marcus Linden  
Agency Product Manager AK  
*Progressive Insurance*  
10929 Disk Drive  
Rancho Cordova, CA 95670  
916-864-6175

*Alaska  
Washington  
Oregon*

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Possibly  
Tighten  
Title - Rep. Crumb

## Bill Presentation House L&C

Under existing law property/casualty insurance rates and forms are subject to the insurance commissioner's prior approval before they may be put in place. While maintaining the insurance commissioner's authority to oversee rate changes, a key component of the bill is its creation of a percentage "flex band." HB 216 allows an insurer to make rate increases and decreases within the flex band without having to first obtain the insurance commissioner's prior approval. Rate changes outside of the flex band must be filed with the insurance commissioner for her review before the rates are put into effect. For forms, HB 216 gives the insurance company a choice. The insurer may seek the commissioner's prior approval, or the insurer may file the form with the commissioner for a period of time before the form is used.

HB 216 has three basic purposes. First, the bill will create an environment where insurers compete more vigorously on rates and products offered to consumers. Second, HB 216 will encourage insurers who are in the Alaska market to stay here and will attract new insurers to Alaska. This will result in more competition, which will give consumers more choices and more competitive prices. Third, HB 216 is in line with the national movement away from strict government price controls toward a more flexible, more competitively oriented system for the regulation of insurance rates and forms.

HB 216 is the result of discussions among insurance companies, agents and the Director of insurance and her staff. The discussions started last July and have been ongoing over the past nine months. The participants in this effort used the flex-rating model law adopted by the National Conference of Insurance Legislators (NCOIL) as a starting point. Some elements of the NCOIL model were adopted - others were discarded. However, HB 216 is consistent with the NCOIL model's goal of modernizing state insurance regulation. We believe that HB 216 will create a more dynamic; more competitively oriented insurance market in Alaska. The competition on rates and forms that HB 216 will encourage will benefit Alaska insurance consumers.

Sarah McHair-Grove

We have here and online representatives from both the Division of Insurance and Industry who can better explain the minutiae of the bill - the motivations behind it's introduction and to answer any questions you may have.

John George

24-LS0349\Y

Bullock

3/3/05

**CS FOR HOUSE BILL NO. 216(L&C)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE LABOR AND COMMERCE COMMITTEE**

**Offered:**

**Referred:**

**Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to insurance rate-making and form filing."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 **\* Section 1.** AS 21.09.110(b) is amended to read:

4 (b) Policy forms and rates that require filing [APPROVAL] under AS 21.39 or  
5 AS 21.42 shall be submitted under AS 21.39.041, AS 21.39.220, or AS 21.42.120(b)  
6 [AS 21.39.040(j) OR AS 21.42.120(g)] and may not be submitted with the application  
7 for a certificate of authority.

8 **\* Sec. 2.** AS 21.39.040(a) is repealed and reenacted to read:

9 (a) Each insurer shall file with the director, except as to inland marine risks,  
10 which by general custom of the business, are not written according to manual rates or  
11 rating plans, and except for rates for commercial insurance for which the director, by  
12 regulation authorizes an informational filing as set out in (k) of this section, every  
13 manual, minimum, class rate, rating schedule, loss cost adjustment, or rating plan and  
14 every other rating rule, and each modification of any of them that it proposes to use.

15 Each filing

1 (1) shall be made under the applicable filing procedures in  
2 AS 21.39.041, 21.39.210, or 21.39.220;

3 (2) must state the proposed effective date; and

4 (3) must indicate the character and extent of the coverage  
5 contemplated.

6 \* Sec. 3. AS 21.39.040(d) is repealed and reenacted to read:

7 (d) When a filing is not accompanied by the information upon which the  
8 insurer supports the filing, and the director does not have sufficient information to  
9 determine whether the filing meets the requirements of this chapter, the director shall  
10 require the insurer to furnish the information upon which the insurer supports the  
11 filing. The waiting period in AS 21.39.041(a) or 21.39.220(b) begins on the date the  
12 information is furnished to the director. The information furnished in support of a  
13 filing may include (1) the experience or judgment of the insurer or rating organization  
14 making the filing; (2) the insurer's interpretation of the statistical data it relies upon;  
15 (3) the experience of other insurers or rating organizations; (4) any other relevant  
16 factors. Specific inland marine rates on risks specially rated, made by a rating  
17 organization, shall be filed with the director.

18 \* Sec. 4. AS 21.39.040(g) is amended to read:

19 (g) Upon the written application of the insured describing the unusual  
20 characteristics that are not otherwise contemplated in the filed rating plan, the  
21 insurer may file [, STATING THE REASONS, FILED WITH AND APPROVED  
22 BY THE DIRECTOR,] a rate other than a rate [IN EXCESS OF THAT] provided  
23 for in an applicable rate filing that [BY A FILING OTHERWISE APPLICABLE]  
24 may be used on a specific risk. The filing shall be made under the applicable filing  
25 procedures in AS 21.39.041 or 21.39.220.

26 \* Sec. 5. AS 21.39 is amended by adding a new section to read:

27 **Sec. 21.39.041. Prior approval.** (a) Except for workers' compensation  
28 prospective loss cost filings and workers' compensation assigned risk pool rates by a  
29 rating organization under AS 21.39.043, an insurer or rating organization shall file  
30 medical malpractice, workers' compensation and assigned risk plan rating systems as  
31 specified in AS 21.39.040(a) with the director for review and approval prior to use.

1 Each filing shall be on file for a waiting period of 15 days before it becomes effective.  
2 This period may be extended by the director for an additional period not to exceed 15  
3 days if the director gives written notice within the waiting period to the insurer or  
4 rating organization that made the filing stating that additional time for the  
5 consideration of the filing is required. The director shall approve the filing upon a  
6 determination that the filing meets the requirements of this title.

7 (b) The filing must include the effective date. In place of a specific date, the  
8 insurer or rating organization may specify a reasonable time period after approval for  
9 the filing to be effective.

10 (c) Upon written application by the insurer or rating organization, the director  
11 may authorize a filing that the director has approved to become effective before the  
12 expiration of the waiting period. A filing shall be considered to meet the requirements  
13 of this title unless disapproved by the director within the waiting period.

14 (d) If the insurer or rating organization fails to provide information requested  
15 by the director under AS 21.39.040(d) within 30 days after the director requests the  
16 information, the response period may be extended by the director for an additional 15  
17 days upon written application of the insurer or rating organization within the initial 30-  
18 day response period. The director shall consider the failure to provide information as  
19 a request by the insurer or rating organization to withdraw the filing from further  
20 consideration.

21 (e) A filing and supporting information shall be open to public inspection after  
22 the filing becomes effective.

23 (f) If within the review period provided for in (a) of this section, the director  
24 finds that a filing does not meet the requirements of this title, the director shall send to  
25 the insurer or rating organization that made the filing written notice of disapproval of  
26 the filing specifying in what respects the filing fails to meet the requirements of this  
27 title and stating that the filing may not become effective.

28 \* Sec. 6. AS 21.39.050(c) is amended to read:

29 (c) If at any time subsequent to the applicable review period provided for in  
30 AS 21.39.041(a) or 21.39.220(b) [(a) OR (b) OF THIS SECTION], the director finds  
31 that a filing does not meet the requirements of this title [CHAPTER], the director

1 shall, after a hearing held upon not less than 10 days written notice[,] specifying the  
2 matters to be considered at the hearing and [,] given to each insurer and rating  
3 organization that made the filing, issue an order specifying in what respects the filing  
4 fails to meet the requirements of this title [CHAPTER] and stating when, within a  
5 reasonable period thereafter, the filing shall be considered no longer effective. Copies  
6 of the order shall be sent to each insurer and rating organization that made the filing.  
7 The order may [SHALL] not affect a contract or policy made or issued before the  
8 expiration of the period set out in the order.

9 \* **Sec. 7.** AS 21.39.110(a) is amended to read:

10 (a) Each group, association, or other organization of insurers ~~that~~ engages in  
11 joint underwriting or joint reinsurance is subject to regulation in accordance with this  
12 section. In addition, joint underwriting is subject to all other provisions of this  
13 chapter, except for AS 21.39.210, and joint reinsurance is subject to AS 21.39.120,  
14 21.39.160, and 21.39.170.

15 \* **Sec. 8.** AS 21.39 is amended by adding new sections to read:

16 **Sec. 21.39.210. Flex-rating.** (a) Except for workers' compensation, medical  
17 malpractice, and assigned risk plan rates, an insurer's rate level increase or decrease  
18 may take effect without prior approval if the cumulative rate level change for all  
19 coverages combined, calculated from the effective date to 12 months before the  
20 effective date, is not greater than 10 percent.

21 (b) An insurer may make multiple rate filings under this provision during any  
22 12-month period if the cumulative rate level change is within the specified limitation  
23 as described in (a) of this section. For an insurer adopting a rating organization  
24 prospective loss cost filing, the cumulative rate level change includes both the rating  
25 organization's prospective loss cost change as well as the insurer's loss cost adjustment  
26 change.

27 (c) Notwithstanding any other provision of this title, for a policy governed by  
28 this section, a filing that produces a rate level change within the limitations provided  
29 in (a) of this section is effective without prior approval and may take effect on the date  
30 specified in the filing, but not earlier than the date it is received by the division. A rate  
31 level change within the limitation in (a) of this section may not be applied to a policy

1           until the beginning of the policy period.

2           (d) A filing submitted under (a) of this section must include an exhibit  
3 showing the calculation of the overall rate level change and an exhibit showing the  
4 insurer's expense provisions. An insurer submitting a loss cost adjustment filing shall  
5 include supporting information showing how the loss cost adjustment is calculated.  
6 The director may request additional supporting information if the director does not  
7 have enough information upon which to determine if the filing meets the requirements  
8 of this title.

9           (e) A filing submitted under (a) of this section is considered to comply with  
10 this title. However, if the director determines that the filing does not meet the  
11 requirements of this title, the director shall issue an order specifying in detail the  
12 specific statutes the insurer has violated and the reasons the filing is not in compliance.  
13 The order must state a reasonable future date on which the filing is to be considered no  
14 longer effective. An order by the director under this subsection is prospective and  
15 does not affect any contract issued or made before the effective date of the order.

16           (f) The director may adopt regulations implementing the provisions of this  
17 section.

18           (g) This section does not apply to rating organizations or to any impaired or  
19 insolvent insurer operating under a rehabilitation plan, an order of supervision, or an  
20 impaired financial condition as determined by the director.

21           **Sec. 21.39.220. File and use, filing of rates, supplementary rate**  
22 **information, and supporting information.** (a) An insurer's rate level increase or  
23 decrease filing falling outside of the limitation provided in AS 21.39.210(a) is subject  
24 to file and use provisions under this section, unless the filing is otherwise exempt from  
25 those provisions under another provision in this chapter. A rate filing from a rating  
26 organization shall be submitted to the director under the file and use provisions. A  
27 rate filing from an insurer operating under a rehabilitation plan, an order of  
28 supervision, or under an impaired financial condition as determined by the director  
29 shall be submitted to the division under the prior approval provisions. The insurer  
30 shall submit a filing for a new product or coverage introduction that does not have a  
31 rate on file under the file and use provisions.

1 (b) Each insurer shall file with the director all rates, supplementary rate  
2 information, and supporting information at least 30 days before the proposed effective  
3 date. The director shall review the filing within 15 days. This period may be  
4 extended by the director for an additional period not to exceed 15 days if the director  
5 gives written notice within the initial 15 day period to the insurer or rating  
6 organization that made the filing that states additional time for the consideration of the  
7 filing is required. The waiting period is the 30-day period following the date the  
8 director receives the filing.

9 (c) The filing must include the effective date that may not be before the end of  
10 the waiting period. Upon written application by the insurer or rating organization, the  
11 director may authorize a filing that the director has reviewed to become effective  
12 before the expiration of the waiting period.

13 (d) A filing shall be considered to meet the requirements of this chapter and to  
14 become effective unless disapproved by the director within the waiting period.

15 (e) The director shall disapprove a filing if the director finds that the filing  
16 does not meet the requirements of this title.

17 (f) If the insurer or rating organization is unable to provide information  
18 requested by the director under AS 21.39.040(d) within 30 days after the director's  
19 request, the response period may be extended by the director for an additional 15 days  
20 upon written application of the insurer or rating organization within the initial 30 day  
21 response period. The director may disapprove the filing for failure to provide the  
22 requested information during the response period. The disapproval notice must state a  
23 reasonable future date on which the filing is to be considered no longer effective.

24 (g) A filing and supporting information shall be open to public inspection after  
25 the director completes the review of the filing or after the filing becomes effective,  
26 whichever is later.

27 (h) If within the waiting period in (b) of this section, the director finds that a  
28 filing does not meet the requirements of this title, the director shall send to the insurer  
29 or rating organization which made the filing, written notice of disapproval of the filing  
30 specifying in what respects the filing fails to meet the requirements of this title and  
31 shall state a reasonable future date on which the filing is to be considered no longer

1 effective.

2 \* **Sec. 9.** AS 21.42.120(b) is repealed and reenacted to read:

3 (b) Each insurer or rating organization shall submit a filing under one of the  
4 following procedures, clearly specifying the filing procedure under which the filing is  
5 being made:

6 (1) for prior approval under AS 21.42.123; or

7 (2) for file and use under AS 21.42.125.

8 \* **Sec. 10.** AS 21.42.120 is amended by adding a new subsection to read:

9 (i) The director may by order require an insurance document, form, or type of  
10 insurance document or form as specified in the order, to be submitted for prior  
11 approval if in the opinion of the director the approval of the insurance document,  
12 form, or type of insurance document or form is necessary for the protection of the  
13 public.

14 \* **Sec. 11.** AS 21.42 is amended by adding new sections to read:

15 **Sec. 21.42.123. Form filing subject to prior approval.** (a) A prior approval  
16 filing shall be made not less than 30 days before the effective date. At the end of the  
17 30-day period the form filed shall be considered approved unless before the end of the  
18 30-day period it has been affirmatively disapproved by the director. Approval of the  
19 form by the director before the end of the 30-day period constitutes a waiver of the  
20 unexpired portion of the waiting period. The director may extend by not more than an  
21 additional 30 days the period for approving or disapproving the form, by giving notice  
22 of the extension during the initial 30-day period. At the expiration of the extended  
23 period, and in the absence of a prior approval or disapproval, the form shall be  
24 considered approved. The director may, by order, at any time after the notice, and for  
25 cause shown, withdraw the approval.

26 (b) The director may require the insurer or rating organization to revise the  
27 filing to comply with this title. Failure of the insurer or rating organization to provide  
28 the information within 30 days after the director's request, or an extension of the  
29 period by the director for an additional 15 days upon written request of the insurer or  
30 rating organization within the response period, is considered to be a request by the  
31 insurer or rating organization to withdraw the filing from further consideration.

1 (c) The filing must state an effective date. In place of a specific date, the  
2 insurer or rating organization may specify a reasonable time period after approval for  
3 the filing to be effective.

4 (d) A prior approval filing shall be open to public inspection after the filing  
5 becomes effective.

6 **Sec. 21.42.125. Form filing subject to file and use; penalties.** (a) A file and  
7 use filing shall be filed with the director for a waiting period of not less than 30 days.  
8 The period may be extended by the director or the insurer or rating organization for an  
9 additional 30 days if notice is given within the initial 30-day period that additional  
10 time is needed for the consideration of the filing. The filing may become effective at  
11 the end of the waiting period unless disapproved by the director before the expiration  
12 of the waiting period.

13 (b) The filing must state an effective date that must be after the waiting period.  
14 Upon written notice by the insurer or rating organization, the director may authorize a  
15 filing that has been reviewed to become effective before the expiration of the waiting  
16 period.

17 (c) A file and use form filing must include a signed compliance certificate  
18 certifying that the filing complies with this title. An authorized officer or state filings  
19 manager of the insurer shall sign the compliance certificate stating that, to the best of  
20 the individual's knowledge, the filing complies with this title. The director may issue  
21 an order requiring an insurer who submits an incomplete or inaccurate compliance  
22 certificate to submit future form filings for prior approval. The order must specify the  
23 conditions under which the insurer may again submit filings under this section. In  
24 addition to any other penalty provided by law, a person that the director finds has  
25 submitted a materially false or misleading compliance certificate may be subject to  
26 either a civil penalty of not more than \$10,000 for each violation, or a civil penalty of  
27 not more than \$25,000 for each violation if the director finds that the person  
28 knowingly violated the provisions of this title. A filing that does not include the  
29 signed compliance certificate shall be reviewed under the prior approval procedure  
30 under AS 21.42.123. In this subsection, "knowingly" has the meaning given in  
31 AS 11.81.900.

1           (d) The director may require an insurer or rating organization to provide  
2 additional information to demonstrate that a file and use filing meets the requirements  
3 of this title or to revise the filing to meet the requirements of this title. If an insurer or  
4 rating organization fails to provide the information within the waiting period described  
5 in (a) of this section, the director shall consider the failure to be a request to withdraw  
6 the filing from further consideration.

7           (e) A file and use filing shall be open to public inspection after the filing  
8 becomes effective.

9 \* Sec. 12. AS 21.39.050(a) and 21.39.070(b) are repealed.

**HB**

**226**



24-LS0689L  
Bannister  
4/20/05

**CS FOR HOUSE BILL NO. 226(L&C)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE LABOR AND COMMERCE COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVES GARA, Coghill, McGuire, Kerttula, Gutteneberg, Dahlstrom, LeDoux,  
Anderson**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to breaches of security involving personal information; and relating to**  
2 **credit report security freezes."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 **\* Section 1. AS 45 is amended by adding a new chapter to read:**

5 **Chapter 48. Information Security.**

6 **Article 1. Breach of Security Involving Personal Information.**

7 **Sec. 45.48.010. Disclosure of breach of security.** (a) If a business or  
8 governmental entity engages in activities in the state and uses an information system  
9 that includes personal information, and a breach of the security of the system occurs,  
10 the business or governmental entity shall, after discovering the breach, disclose the  
11 breach to each state resident whose personal information, if unencrypted, was, or is  
12 reasonably believed to have been, acquired by an unauthorized person due to the  
13 breach.

14 (b) A business or governmental entity shall make the disclosure required by

1 (a) of this section in the most expedient time possible and without unreasonable delay,  
2 except as provided in AS 45.48.020 and 45.48.040 and as necessary to determine the  
3 scope of the breach and restore the reasonable integrity of the information system.

4 (c) In this section, "activities in the state" means activities that provide at least  
5 the minimum contacts required by substantive due process for the state to exercise  
6 jurisdiction over the business or governmental entity who is engaging in the activities.

7 **Sec. 45.48.020. Notification of law enforcement.** A business or  
8 governmental entity may delay making the disclosures required by AS 45.48.010 if the  
9 Department of Law determines that the disclosures would compromise an  
10 investigation by the Department of Law.

11 **Sec. 45.48.030. Methods of notice.** A business or governmental entity shall  
12 make the disclosures required by AS 45.48.010

13 (1) by a written document that is personally delivered or mailed;

14 (2) by electronic means, if the electronic means is allowed under 15  
15 U.S.C. 7001 et seq. (Electronic Signatures in Global and National Commerce Act); or

16 (3) if the business or governmental entity demonstrates that the cost of  
17 providing notice would exceed \$250,000, that the affected class of individuals to be  
18 notified exceeds 500,000, or that the business or governmental entity does not have  
19 sufficient contact information to provide notice, by

20 (A) electronic mail if the business or governmental entity has  
21 an electronic mail address for the individual;

22 (B) conspicuously posting the disclosure on the Internet  
23 website of the business or governmental entity, if the business or governmental  
24 entity maintains an Internet website; and

25 (C) providing a notice to major statewide media.

26 **Sec. 45.48.040. Exception for disclosure policy.** If the business or  
27 governmental entity described in AS 45.48.010 maintains disclosure procedures as  
28 part of an information security policy for the treatment of personal information, and  
29 the timing of disclosures under the policy is consistent with AS 45.48.010(b), the  
30 business or governmental entity may make the disclosure required by AS 45.48.010(a)  
31 under the disclosure procedures maintained by the business or governmental entity.

1           **Sec. 45.48.050. Exception for employees and agents.** In AS 45.48.010 -  
2           45.48.090, the good faith acquisition of personal information by an employee or agent  
3           of the business or governmental entity described in AS 45.48.010 for the purposes of  
4           the activities of the business or governmental entity is not a breach of the security of  
5           the information system, if the employee or agent does not use the personal information  
6           for a purpose unrelated to the activities of the business or governmental entity and  
7           does not make further unauthorized disclosure of the personal information.

8           **Sec. 45.48.060. Waivers.** A waiver of AS 45.48.010 - 45.48.090 is void and  
9           unenforceable.

10          **Sec. 45.48.070. Violations.** (a) If a business or governmental entity violates  
11          AS 45.48.010 - 45.48.090, an individual may bring a civil action in court to

12                   (1) recover the damages suffered by the individual;

13                   (2) enjoin the business or governmental entity from further violations  
14          of AS 45.48.010 - 45.48.090.

15           (b) If a business or governmental entity violates or proposes to violate  
16          AS 45.48.010 - 45.48.090, the state may bring a civil action in court to enjoin the  
17          business or governmental entity from violating or continuing to violate AS 45.48.010 -  
18          45.48.090.

19           (c) The rights and remedies available under this section are in addition to any  
20          other rights and remedies available under another law.

21          **Sec. 45.48.090. Definitions.** In AS 45.48.010 - 45.48.090,

22                   (1) "breach of the security" means unauthorized acquisition of  
23          information that compromises the security, confidentiality, or integrity of personal  
24          information maintained by the business or governmental entity;

25                   (2) "governmental entity" means a state or local governmental body,  
26          subdivision, or agency, except for an agency of a judicial branch of state government;

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

29                   **Article 2. Credit Report Security Freezes.**

30          **Sec. 45.48.100. Security freeze authorized.** A consumer may prohibit a  
31          credit reporting agency from releasing all or a part of a consumer's credit report or

1 information derived from the credit report without the express authorization of the  
2 consumer by placing a security freeze on the consumer's credit report.

3 **Sec. 45.48.110. Placement of security freeze.** (a) To place a security freeze,  
4 a consumer shall

5 (1) make the request to the credit reporting agency by certified mail;  
6 and

7 (2) provide the credit reporting agency with proper identification.

8 (b) A credit reporting agency shall place a security freeze within five business  
9 days after receiving a request under (a) of this section.

10 **Sec. 45.48.120. Confirmation of security freeze.** (a) Within 10 business  
11 days after a consumer makes the request under AS 45.48.110, a credit reporting  
12 agency shall send a written confirmation of the placement of the security freeze to the  
13 consumer.

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

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

23 (b) To make a request under (a) of this section, the consumer shall contact the  
24 credit reporting agency, authorize the credit reporting agency to allow the access, and  
25 provide the credit reporting agency with

26 (1) proper identification;

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

29 (3) the proper information necessary to identify the third party to  
30 whom the credit reporting agency may allow the access or the time period during  
31 which the credit reporting agency may allow the access to third parties who request

1 the access.

2 (c) A consumer reporting agency that receives a request from a consumer  
3 under (b) of this section shall comply with the request within three business days after  
4 receiving the request.

5 (d) A credit reporting agency may develop procedures involving the use of  
6 telephone, facsimile, or, if the consumer consents under 15 U.S.C. 7001 (Electronic  
7 Signatures in Global and National Commerce Act), the Internet or other electronic  
8 media to receive and process a request from a consumer under (a) of this section in an  
9 expedited manner.

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

13 (f) If a security freeze is in place, if a third party applies to a credit reporting  
14 agency to provide the third party with access to the consumer's credit report or  
15 information derived from the credit report, and if the consumer does not allow access  
16 for that specific party or during that specific period of time, the credit reporting agency  
17 may treat the third party's application as incomplete.

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

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

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

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

30 (2) the consumer made a material misrepresentation of fact to the  
31 credit reporting agency when the consumer requested the security freeze under

1 AS 45.48.110; if a credit reporting agency intends to remove a security freeze on a  
2 consumer's credit report under this paragraph, the credit reporting agency shall notify  
3 the consumer in writing before removing the security freeze.

4 (b) A credit reporting agency shall remove a security freeze placed under  
5 (a)(1) of this section within three business days after receiving a request for removal  
6 from the consumer who requested the security freeze if the consumer provides proper  
7 identification to identify the consumer and the unique personal identification number  
8 or password provided by the consumer reporting agency under AS 45.48.120.

9 **Sec. 45.48.150. Disclosure of process.** If a consumer requests a security  
10 freeze under AS 45.48.100, the credit reporting agency shall disclose to the consumer  
11 the process under AS 45.48.100 - 45.48.290 of placing a security freeze, allowing  
12 access to a third party during a security freeze, and allowing access during a specific  
13 period of time during a security freeze.

14 **Sec. 45.48.160. Charges.** (a) A credit reporting agency may not charge a  
15 consumer more than

16 (1) \$10 for each time that the consumer places a security freeze under  
17 AS 45.48.100, removes a freeze under AS 45.48.140, or allows access for a specific  
18 period of time during a security freeze under AS 45.48.130; or

19 (2) \$12 for each time that the consumer allows access for a specific  
20 person during a security freeze under AS 45.48.130.

21 (b) Notwithstanding (a) of this section, a credit reporting agency may not  
22 charge a consumer a fee for placing a security freeze under AS 45.48.100, removing a  
23 freeze under AS 45.48.140, or allowing access for a specific person or period of time  
24 during a security freeze under AS 45.48.130, if the consumer provides the credit  
25 reporting agency with a good faith and valid report made by the consumer to a law  
26 enforcement agency that alleges that a piece of personal property containing personal  
27 information of the consumer has been stolen.

28 **Sec. 45.48.170. Additional identification information.** A credit reporting  
29 agency may require additional information about the consumer's employment,  
30 personal history, and family history in order to verify the consumer's identity only if  
31 the consumer is unable to reasonably identify the consumer with proper identification.

1           **Sec. 45.48.180. Duties during security freeze.** (a) If a security freeze is in  
2 place, a credit reporting agency may not change a consumer's name, date of birth,  
3 social security number, or address in the consumer's credit report without sending a  
4 written confirmation of the change to the consumer within 30 days after the change is  
5 posted to the consumer's file.

6           (b) Written confirmation under (a) of this section is not required for a  
7 technical modification of a consumer's name, date of birth, social security number, or  
8 address, including making or expanding abbreviations, correcting spellings, or  
9 correcting transposed numbers or letters.

10           (c) In the case of an address change under (a) of this section, the written  
11 confirmation shall be sent to both the new address and the former address.

12           **Sec. 45.48.190. Violations and remedies.** (a) A consumer who suffers  
13 damages as a result of a person's violation of AS 45.48.100 - 45.48.290 may bring an  
14 action in court against the person and recover, in the case of a violation where the  
15 person acted

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

18                   (2) knowingly,

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

20                           (B) punitive damages that are not less than \$100 nor more than  
21 \$5,000 for each violation as the court determines to be appropriate; and

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

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

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

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

2 **Sec. 45.48.270. Reports not covered.** The provisions of AS 45.48.100 -  
3 45.48.290 do not apply to a credit report if the credit report is

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

6 (2) a communication of the information that is described in (1) of this  
7 section or that is taken from a credit application by a consumer, if

8 (A) the communication is limited to internal communication  
9 within the organization of the person making the report or made to another  
10 person who is owned by, or affiliated with, the person making the report; and

11 (B) the consumer is informed by a clear and conspicuous  
12 written disclosure that the information contained in the credit application may  
13 be communicated as allowed under (A) of this paragraph, except that, if a  
14 credit application is taken by telephone, the consumer shall initially be  
15 informed orally when the application is taken, and a clear and conspicuous  
16 written disclosure shall be made to the consumer in the first written  
17 communication to the consumer after the application is taken;

18 (3) an authorization or approval of a specific extension of credit  
19 directly or indirectly by the issuer of a credit card or similar device;

20 (4) a report that conveys a person's decision whether to make a specific  
21 extension of credit directly or indirectly to a consumer in response to a request by a  
22 third party if the third party advises the consumer of the name and address of the  
23 person to whom the request was made;

24 (5) a report containing information solely about a consumer's  
25 character, general reputation, personal characteristics, or mode of living and the  
26 information is obtained through personal interviews with neighbors, friends, or  
27 associates of the consumer reported on, or others with whom the consumer is  
28 acquainted or who may have knowledge concerning those items of information; or

29 (6) a consumer credit report furnished for use in connection with a  
30 transaction that consists of an extension of credit to be used solely for a commercial  
31 purpose.

1           **Sec. 45.48.280. Exemptions.** (a) The provisions of AS 45.48.100 - 45.48.290  
2 do not apply to the use of a credit report by

3           (1) a person, if the purpose of the person's use is account review or  
4 collection of a financial obligation owing for an account, contract, or negotiable  
5 instrument, and the consumer

6           (A) has, or had before an assignment of the account or contract  
7 by the person, an account or contract with the person, including a demand  
8 deposit account; or

9           (B) issued a negotiable instrument to the person;

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

13          (3) when acting under a court order, warrant, or subpoena, a state  
14 agency, an agency of a political subdivision of the state, a law enforcement agency, a  
15 court, or a private debt collection agency;

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

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

20          (6) the Department of Revenue, its agents, or its assigns when  
21 investigating or collecting delinquent taxes or unpaid court orders or when  
22 implementing its other statutory responsibilities;

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

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

27          (9) a person providing a consumer with a copy of the consumer's credit  
28 report at the consumer's request.

29          (b) In (a)(1) of this section, "person" includes the person's subsidiary, affiliate,  
30 or agent, an assignee of a financial obligation owed by the consumer to the person, or  
31 a prospective assignee of a financial obligation owed by the consumer to the person

1 when in conjunction with the proposed purchase of the financial obligation.

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

3 (1) "account review" includes activities related to account  
4 maintenance, account monitoring, account credit line increases, and account upgrades  
5 and enhancements;

6 (2) "affiliate" means a corporation that directly, or indirectly through  
7 one or more intermediaries, controls, is controlled by, or is under common control  
8 with another corporation; in this paragraph, "control" means the possession, direct or  
9 indirect, of the power to direct or cause the direction of the management and policies  
10 of a corporation;

11 (3) "consumer" means an individual;

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

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

19 (B) employment purposes;

20 (C) the rental of a dwelling unit; or

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

23 (5) "credit reporting agency" means a person who, for monetary fees,  
24 dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the  
25 business of assembling or evaluating consumer credit information or other information  
26 on consumers for the purpose of furnishing credit reports to third parties, and these  
27 activities provide at least the minimum contacts required by substantive due process  
28 for the state to exercise jurisdiction over the person who is engaging in the activities;  
29 "credit reporting agency" does not include a governmental agency whose records are  
30 maintained primarily for traffic safety, law enforcement, or licensing purposes;

31 (6) "employment purposes" means, when used in connection with a

1 consumer credit report, a report used for the purpose of evaluating a consumer for  
2 employment, promotion, reassignment, or retention as an employee;

3 (7) "file" means, when used in connection with information on a  
4 consumer, all of the information on that consumer recorded and retained by a credit  
5 reporting agency, regardless of how the information is stored;

6 (8) "permissible use" means a permissible use under 15 U.S.C. 1681b;

7 (9) "person" has the meaning given in AS 01.10.060 and includes a  
8 governmental body, a governmental subdivision, or a governmental agency;

9 (10) "proper identification" means the information generally  
10 considered sufficient to identify a person;

11 (11) "security freeze" means a prohibition against a credit reporting  
12 agency from releasing all or a part of a consumer's credit report or information derived  
13 from the credit report without the express authorization of the consumer.

#### 14 **Article 3. General Provisions.**

15 **Sec. 45.48.300. Relationship to federal law.** If a provision of this chapter is  
16 preempted by or conflicts with federal law in a particular situation, the provision does  
17 not apply to the extent of the preemption or conflict.

18 **Sec. 45.48.390. Definitions.** In this chapter, "personal information" means  
19 information that is not publicly available information lawfully made available to the  
20 general public from federal, state, or local government records; and consists of

21 (A) a combination of an individual's first name or first initial,  
22 the individual's last name, and one or more of the following information  
23 elements, when the name or the information elements are not encrypted or  
24 redacted:

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

26 (ii) the number of the individual's driver's license or  
27 state identification card;

28 (iii) the individual's account number, credit card  
29 account number, or debit card account number, if circumstances exist  
30 where the number could be used without additional identifying  
31 information, access codes, or passwords;

1  
2  
3  
4  
5

(iv) account passwords or personal identification numbers or other access codes; or  
(B) an information element listed in (A)(i) - (iv) of this paragraph if the item would be sufficient to engage in or attempt to engage in the theft of the individual's identity.

24-LS0689U  
Bannister  
4/13/05

**CS FOR HOUSE BILL NO. 226( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVES GARA, Coghil, McGuire, Kerttula**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to breaches of security involving personal information; and relating to**  
2 **credit report security freezes."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 **\* Section 1.** AS 45 is amended by adding a new chapter to read:

5 **Chapter 48. Information Security.**

6 **Article 1. Breach of Security Involving Personal Information.**

7 **Sec. 45.48.010. Disclosure of breach of security.** (a) If a person engages in  
8 business activities in the state, uses in the business an information system that includes  
9 personal information, and a breach of the security of the system occurs, the person  
10 shall, after discovering the breach, disclose the breach to each state resident whose  
11 personal information, if unencrypted, was, or is reasonably believed to have been,  
12 acquired by an unauthorized person due to the breach.

13 (b) A person shall make the disclosure required by (a) of this section in the  
14 most expedient time possible and without unreasonable delay, except as provided in

1 AS 45.48.020 and 45.48.040 and as necessary to determine the scope of the breach  
2 and restore the reasonable integrity of the information system.

3 (c) In this section, "business activities in the state" means business activities  
4 that provide at least the minimum contacts required by substantive due process for the  
5 state to exercise jurisdiction over the person who is engaging in the business activities.

6 **Sec. 45.48.020. Notification of law enforcement.** A person may delay  
7 making the disclosures required by AS 45.48.010 if the Department of Law  
8 determines that the disclosures would compromise an investigation by the Department  
9 of Law.

10 **Sec. 45.48.030. Methods of notice.** A person shall make the disclosures  
11 required by AS 45.48.010

12 (1) by a written document that is personally delivered or mailed;

13 (2) by electronic means, if the electronic means is allowed under 15  
14 U.S.C. 7001 et seq. (Electronic Signatures in Global and National Commerce Act); or

15 (3) if the person demonstrates that the cost of providing notice would  
16 exceed \$250,000, that the affected class of persons to be notified exceeds 500,000, or  
17 that the business does not have sufficient contact information to provide notice, by

18 (A) electronic mail if the business has an electronic mail  
19 address for the person;

20 (B) conspicuously posting the disclosure on the Internet site of  
21 the person, if the person maintains an Internet site; and

22 (C) providing a notice to major statewide media.

23 **Sec. 45.48.040. Exception for disclosure policy.** If the person described in  
24 AS 45.48.010 maintains for the business disclosure procedures as part of an  
25 information security policy for the treatment of personal information, and the timing  
26 of disclosures under the policy is consistent with AS 45.48.010(b), the person may  
27 make the disclosure required by AS 45.48.010(a) under the disclosure procedures  
28 maintained by the person.

29 **Sec. 45.48.050. Exception for employees and agents.** In AS 45.48.010 -  
30 45.48.090, the good faith acquisition of personal information by an employee or agent  
31 of the person described in AS 45.48.010 for the purposes of the business is not a

1 breach of the security of the information system, if the employee or agent does not use  
2 the personal information for a purpose unrelated to the business and does not make  
3 further unauthorized disclosure of the personal information.

4 **Sec. 45.48.060. Waivers.** A waiver of AS 45.48.010 - 45.48.090 is void and  
5 unenforceable.

6 **Sec. 45.48.070. Violations.** (a) If a person violates AS 45.48.010 -  
7 45.48.090, an individual may bring a civil action in court to

8 (1) recover the damages suffered by the individual;

9 (2) enjoin the person from further violations of AS 45.48.010 -  
10 45.48.090.

11 (b) If a person violates or proposes to violate AS 45.48.010 - 45.48.090, the  
12 state may bring a civil action in court to enjoin the person from violating or continuing  
13 to violate AS 45.48.010 - 45.48.090.

14 (c) The rights and remedies available under this section are in addition to any  
15 other rights and remedies available under another law.

16 **Sec. 45.48.090. Definitions.** In AS 45.48.010 - 45.48.090,

17 (1) "breach of the security" means unauthorized acquisition of  
18 information that compromises the security, confidentiality, or integrity of personal  
19 information maintained by the business;

20 (2) "state resident" means an individual who satisfies the residency  
21 requirements under AS 01 10.055.

## 22 **Article 2. Credit Report Security Freezes.**

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

27 **Sec. 45.48.110. Placement of security freeze.** (a) To place a security freeze,  
28 a consumer shall

29 (1) make the request to the credit reporting agency by certified mail;

30 and

31 (2) provide the credit reporting agency with proper identification.

1 (b) A credit reporting agency shall place a security freeze within five business  
2 days after receiving a request under (a) of this section.

3 **Sec. 45.48.120. Confirmation of security freeze.** (a) Within 10 business  
4 days after a consumer makes the request under AS 45.48.110, a credit reporting  
5 agency shall send a written confirmation of the placement of the security freeze to the  
6 consumer.

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

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

16 (b) To make a request under (a) of this section, the consumer shall contact the  
17 credit reporting agency, authorize the credit reporting agency to allow the access, and  
18 provide the credit reporting agency with

19 (1) proper identification;

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

22 (3) the proper information necessary to identify the third party to  
23 whom the credit reporting agency may allow the access or the time period during  
24 which the credit reporting agency may allow the access to third parties who request  
25 the access.

26 (c) A consumer reporting agency that receives a request from a consumer  
27 under (b) of this section shall comply with the request within three business days after  
28 receiving the request.

29 (d) A credit reporting agency may develop procedures involving the use of  
30 telephone, facsimile, or, if the consumer consents under 15 U.S.C. 7001 (Electronic  
31 Signatures in Global and National Commerce Act), the Internet or other electronic

1 media to receive and process a request from a consumer under (a) of this section in an  
2 expedited manner.

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

6 (f) If a security freeze is in place, if a third party applies to a credit reporting  
7 agency to provide the third party with access to the consumer's credit report or  
8 information derived from the credit report, and if the consumer does not allow access  
9 for that specific party or during that specific period of time, the credit reporting agency  
10 may treat the third party's application as incomplete.

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

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

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

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

23 (2) the consumer made a material misrepresentation of fact to the  
24 credit reporting agency when the consumer requested the security freeze under  
25 AS 45.48.110; if a credit reporting agency intends to remove a security freeze on a  
26 consumer's credit report under this paragraph, the credit reporting agency shall notify  
27 the consumer in writing before removing the security freeze.

28 (b) A credit reporting agency shall remove a security freeze placed under  
29 (a)(1) of this section within three business days after receiving a request for removal  
30 from the consumer who requested the security freeze if the consumer provides proper  
31 identification to identify the consumer and the unique personal identification number

1 or password provided by the consumer reporting agency under AS 45.48.120.

2 **Sec. 45.48.150. Disclosure of process.** If a consumer requests a security  
3 freeze under AS 45.48.100, the credit reporting agency shall disclose to the consumer  
4 the process under AS 45.48.100 - 45.48.290 of placing a security freeze, allowing  
5 access to a third party during a security freeze, and allowing access during a specific  
6 period of time during a security freeze.

7 **Sec. 45.48.160. Charges.** (a) A credit reporting agency may not charge a  
8 consumer more than

9 (1) \$10 for each time that the consumer places a security freeze under  
10 AS 45.48.100, removes a freeze under AS 45.48.140, or allows access for a specific  
11 period of time during a security freeze under AS 45.48.130; or

12 (2) \$12 for each time that the consumer allows access for a specific  
13 person during a security freeze under AS 45.48.130.

14 (b) Notwithstanding (a) of this section, a credit reporting agency may not  
15 charge a consumer a fee for placing a security freeze under AS 45.48.100, removing a  
16 freeze under AS 45.48.140, or allowing access for a specific person or period of time  
17 during a security freeze under AS 45.48.130, if the consumer provides the credit  
18 reporting agency with a good faith and valid report made by the consumer to a law  
19 enforcement agency that alleges that a piece of personal property containing personal  
20 information of the consumer has been stolen.

21 **Sec. 45.48.170. Additional identification information.** A credit reporting  
22 agency may require additional information about the consumer's employment,  
23 personal history, and family history in order to verify the consumer's identity only if  
24 the consumer is unable to reasonably identify the consumer with proper identification.

25 **Sec. 45.48.180. Duties during security freeze.** (a) If a security freeze is in  
26 place, a credit reporting agency may not change a consumer's name, date of birth,  
27 social security number, or address in the consumer's credit report without sending a  
28 written confirmation of the change to the consumer within 30 days after the change is  
29 posted to the consumer's file.

30 (b) Written confirmation under (a) of this section is not required for a  
31 technical modification of a consumer's name, date of birth, social security number, or

1 address, including making or expanding abbreviations, correcting spellings, or  
2 correcting transposed numbers or letters.

3 (c) In the case of an address change under (a) of this section, the written  
4 confirmation shall be sent to both the new address and the former address.

5 **Sec. 45.48.190. Violations and remedies.** (a) A consumer who suffers  
6 damages as a result of a person's violation of AS 45.48.100 - 45.48.290 may bring an  
7 action in court against the person and recover, in the case of a violation where the  
8 person acted

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

11 (2) knowingly,

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

13 (B) punitive damages that are not less than \$100 nor more than  
14 \$5,000 for each violation as the court determines to be appropriate; and

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

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

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

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

26 **Sec. 45.48.270. Reports not covered.** The provisions of AS 45.48.100 -  
27 45.48.290 do not apply to a credit report if the credit report is

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

30 (2) a communication of the information that is described in (1) of this  
31 section or that is taken from a credit application by a consumer, if

1 (A) the communication is limited to internal communication  
2 within the organization of the person making the report or made to another  
3 person who is owned by, or affiliated with, the person making the report; and

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

11 (3) an authorization or approval of a specific extension of credit  
12 directly or indirectly by the issuer of a credit card or similar device;

13 (4) a report that conveys a person's decision whether to make a specific  
14 extension of credit directly or indirectly to a consumer in response to a request by a  
15 third party if the third party advises the consumer of the name and address of the  
16 person to whom the request was made;

17 (5) a report containing information solely about a consumer's  
18 character, general reputation, personal characteristics, or mode of living and the  
19 information is obtained through personal interviews with neighbors, friends, or  
20 associates of the consumer reported on, or others with whom the consumer is  
21 acquainted or who may have knowledge concerning those items of information; or

22 (6) a consumer credit report furnished for use in connection with a  
23 transaction that consists of an extension of credit to be used solely for a commercial  
24 purpose.

25 **Sec. 45.48.280. Exemptions.** (a) The provisions of AS 45.48.100 - 45.48.290  
26 do not apply to the use of a credit report by

27 (1) a person, if the purpose of the person's use is account review or  
28 collection of a financial obligation owing for an account, contract, or negotiable  
29 instrument, and the consumer

30 (A) has, or had before an assignment of the account or contract  
31 by the person, an account or contract with the person, including a demand

1 deposit account; or

2 (B) issued a negotiable instrument to the person;

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

6 (3) when acting under a court order, warrant, or subpoena, a state  
7 agency, an agency of a political subdivision of the state, a law enforcement agency, a  
8 court, or a private debt collection agency;

9 (+) an agency of a state or municipality that administers a program for  
10 establishing and enforcing child support obligations;

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

13 (6) the Department of Revenue, its agents, or its assigns when  
14 investigating or collecting delinquent taxes or unpaid court orders or when  
15 implementing its other statutory responsibilities;

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

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

20 (9) a person providing a consumer with a copy of the consumer's credit  
21 report at the consumer's request.

22 (b) If (a)(1) of this section, "person" includes the person's subsidiary, affiliate,  
23 or agent, an assignee of a financial obligation owed by the consumer to the person, or  
24 a prospective assignee of a financial obligation owed by the consumer to the person  
25 when in conjunction with the proposed purchase of the financial obligation.

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

27 (1) "account review" includes activities related to account  
28 maintenance, account monitoring, account credit line increases, and account upgrades  
29 and enhancements;

30 (2) "affiliate" means a corporation that directly, or indirectly through  
31 one or more intermediaries, controls, is controlled by, or is under common control

1 with another corporation; in this paragraph, "control" means the possession, direct or  
2 indirect, of the power to direct or cause the direction of the management and policies  
3 of a corporation;

4 (3) "consumer" means an individual;

5 (4) "credit report" means a written, oral, or other communication of  
6 information by a credit reporting agency bearing on a consumer's credit worthiness,  
7 credit standing, or credit capacity if the communication is used or expected to be used,  
8 or collected in whole or in part, to serve as a factor in establishing the consumer's  
9 eligibility for

10 (A) credit to be used primarily for personal, family, or  
11 household purposes;

12 (B) employment purposes;

13 (C) the rental of a dwelling unit; or

14 (D) any other purpose authorized under section 15 U.S.C.  
15 1681b;

16 (5) "credit reporting agency" means a person who, for monetary fees,  
17 dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the  
18 business of assembling or evaluating consumer credit information or other information  
19 on consumers for the purpose of furnishing credit reports to third parties, and these  
20 activities provide at least the minimum contacts required by substantive due process  
21 for the state to exercise jurisdiction over the person who is engaging in the activities;  
22 "credit reporting agency" does not include a governmental agency whose records are  
23 maintained primarily for traffic safety, law enforcement, or licensing purposes;

24 (6) "employment purposes" means, when used in connection with a  
25 consumer credit report, a report used for the purpose of evaluating a consumer for  
26 employment, promotion, reassignment, or retention as an employee;

27 (7) "file" means, when used in connection with information on a  
28 consumer, all of the information on that consumer recorded and retained by a credit  
29 reporting agency, regardless of how the information is stored;

30 (8) "permissible use" means a permissible use under 15 U.S.C. 1681b;

31 (9) "person" has the meaning given in AS 01.10.060 and includes a

1 governmental body, a governmental subdivision, or a governmental agency;

2 (10) "proper identification" means the information generally  
3 considered sufficient to identify a person;

4 (11) "security freeze" means a prohibition against a credit reporting  
5 agency from releasing all or a part of a consumer's credit report or information derived  
6 from the credit report without the express authorization of the consumer.

7 **Article 3. General Provisions.**

8 **Sec. 45.48.300. Relationship to federal law.** If a provision of this chapter is  
9 preempted by or conflicts with federal law in a particular situation, the provision does  
10 not apply to the extent of the preemption or conflict.

11 **Sec. 45.48.390. Definitions.** In this chapter, "personal information" means  
12 information that is not publicly available information lawfully made available to the  
13 general public from federal, state, or local government records; and consists of

14 (A) a combination of an individual's first name or first initial,  
15 the individual's last name, and one or more of the following information  
16 elements, when the name or the information elements are not encrypted or  
17 redacted:

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

19 (ii) the number of the individual's driver's license or  
20 state identification card;

21 (iii) the individual's account number, credit card  
22 account number, or debit card account number, if circumstances exist  
23 where the number could be used without additional identifying  
24 information, access codes, or passwords;

25 (iv) account passwords or personal identification  
26 numbers or other access codes; or

27 (B) an information element listed in (A)(i) - (iv) of this  
28 paragraph if the item would be sufficient to engage in or attempt to engage in  
29 the theft of the individual's identity.

HOUSE BILL NO. 226  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

A BILL FOR AN ACT ENTITLED

"An Act relating to breaches of security involving personal information; and relating to credit report security freezes."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

\* Section 1. AS 45 is amended by adding a new chapter to read: Chapter 48. Information Security.

Article 1. Breach of Security Involving Personal Information.

Sec. 45.48.010. Disclosure of breach of security. (a) If a person engages in business activities in the state, or any state agency that owns or licenses computerized data that includes personal information, and a breach of the security of the system occurs, the person shall, after discovering or notification of the breach. Disclose the breach to each state resident whose personal information was, or is reasonably believed to have been, accessed by an unauthorized person. (b) A person shall make the disclosure required by (a) of this section in the most expedient time possible and without unreasonable delay, except as provided in AS 45.48.020 and 45.48.040 and as (c) of this section, or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the information system,

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

(d) Any person, business, or state agency that maintains computerized data that includes personal information that the person or business does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, accessed by an unauthorized person.

Sec. 45.48.020. Notification of law enforcement. A person shall delay making the disclosures required by AS 45.48.010 if the Department of Law determines that the disclosures would compromise an investigation by the Department of Law, and such agency has made a request that the notification be delayed. The notification required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation and so notifies the person, business, or state agency.

Sec. 45.48.030. Methods of notice. A person shall make the disclosures required by AS 45.48.010 by one of the following methods:

(1) by a written document (2) by electronic means, if the electronic means is allowed under 15 U.S.C. 7001 et seq. (Electronic Signatures in Global and National Commerce Act); or

(3) Substitute notice, if the person, business, or state agency demonstrates that the cost of providing notice would exceed \$250,000, or that the affected class of subject persons

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to be notified exceeds 500,000, or ~~the person or business does not have sufficient contact information.~~ Substitute notice shall consist of any of the following:

- (A) electronic mail notice when, the person, business, or state agency has an electronic mail address for the person;
- (B) conspicuously posting of the notice on the Internet site of the person, or business, or state agency, if the person, or business, or state agency maintains an Internet site; or
- (C) providing a notice to major statewide media,

Sec. 45.48.035 (a) Notwithstanding Sec. 45.48.030, a person, or business, or state agency that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the timing requirements of this section, shall be deemed to be in compliance with the notification requirements of this section if the person, business, or state agency notifies subject persons in accordance with its policies in the event of a breach of security.

(b) Compliance with the requirements imposed hereunder shall be enforceable by the Attorney General, provided that if there is a breach of security of personal information that is "nonpublic personal information," as defined in Section 509 of the Gramm Leach Bliley Act (15 U.S.C. 6809(4)), compliance shall be enforceable by the regulatory or supervisory authority having primary jurisdiction over the person or business.

Sec. 45.48.040. Exception for disclosure policy. If the person described in AS 45.48.010 maintains for the business disclosure procedures as part of an information security policy for the treatment of personal information, and the timing of disclosures under the policy is consistent with AS 45.48.010(b), the person may make the disclosure required by AS 45.48.010(a) under the disclosure procedures maintained by the person.

Sec. 45.48.050. Exception for employees and agents. In AS 45.48.010 - 45.48.090, the good faith acquisition of personal information by an employee or agent of the person described in AS 45.48.010 for the purposes of the business is not a breach of the security of the information system, if the employee or agent does not use the personal information for a purpose unrelated to the business and does not make further unauthorized disclosure of the personal information.

Sec. 45.48.060. Waivers. A waiver of AS 45.48.010 - 45.48.090 is void and unenforceable.

Sec. 45.48.070. Violations.

(a) If a person violates AS 45.48.010 - 45.48.090, an individual may bring a civil action in court to

- (1) recover the damages suffered by the individual;
- (2) enjoin the person from further violations of AS 45.48.010 - 45.48.090.

(b) If a person violates or proposes to violate AS 45.48.010 - 45.48.090, the state may bring a civil action in court to enjoin the person from violating or continuing to violate AS 45.48.010 - 45.48.090.

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(c) The rights and remedies available under this section are in addition to any other rights and remedies available under another law.

Sec. 45.48.090. Definitions. In AS 45.48.010 - 45.48.090,

(1) "breach of the security" means unauthorized access to electronic files, media, or databases containing personal information when access to the personal information described in Sec. 45.48.090 (2)(A)-(C) has not been secured by encryption or by any other method or technology that renders the personal information unreadable or unusable. Acquisition of personal information or access thereto is not a breach of security if the person, business, or agency establishes with reasonable certainty that the information is not likely to be misused.

**Deleted:** acquisition of information that compromises the security, confidentiality, or integrity of personal information maintained by the business.

(2) "personal information" means information that is not available to the general public from federal, state, or local government records and that consists of a combination of an individual's first name or first initial, the individual's last name, and one or more of the following information elements;

**Deleted:** ¶

(A) the individual's social security number;

(B) the number of the individual's driver's license or state identification card;

(C) the combination of the number of the individual's financial institution account, credit card account, or debit card account, and any required security code, access code, or password that permits access to an individual's financial institution account, credit card account, or debit card account;

**Deleted:** , when the name or the information elements are not encrypted

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

#### Article 2. Credit Report Security Freezes.

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

Sec. 45.48.110. Placement of security freeze. (a) To place a security freeze, a consumer shall

(1) make the request to the credit reporting agency by certified mail; and

(2) provide the credit reporting agency with proper identification.

(b) A credit reporting agency shall place a security freeze within five business days after receiving a request under (a) of this section.

Sec. 45.48.120. Confirmation of security freeze. (a) Within 10 business days after a consumer makes the request under AS 45.48.110, a credit reporting agency shall send a written confirmation of the placement of the security freeze to the consumer.

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

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 226( ), Draft Version "I"

1 Page 1, lines 7 - 8:

2 Delete "engages in business activities in the state, uses in the business"

3 Insert "engages in activities in the state, uses"

4

5 Page 2, line 3:

6 Delete ""business activities in the state" means business activities"

7 Insert ""activities in the state" means activities"

8

9 Page 2, line 5:

10 Delete "business"

11

12 Page 2, line 17:

13 Delete "business"

14 Insert "person"

15

16 Page 2, line 18:

17 Delete "business"

18 Insert "person"

19

20 Page 2, line 19:

21 Delete "person"

22 Insert "individual"

23

1 Page 2, line 24:

2 Delete "for the business"

3

4 Page 2, line 31:

5 Delete "business"

6 Insert "person's activities"

7

8 Page 3, line 2:

9 Delete "business"

10 Insert "person's activities"

11

12 Page 3, line 19:

13 Delete "business"

14 Insert "person"

15

16 Page 3, following line 19:

17 Insert a new paragraph to read:

18 "(2) "person" means a business entity or a state or local governmental  
19 body, subdivision, or agency, except for an agency of a judicial branch of state  
20 government."

21

22 Renumber the foilowing paragraph accordingly.

**AKPIRG**

ALASKA PUBLIC INTEREST RESEARCH GROUP

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April 13th, 2005

**AkPIRG Testimony for the House Labor and Commerce Committee****HB 226: Personal Information Breach / Security Freeze**

The Alaska Public Interest Research Group (AkPIRG), an Alaska membership organization dedicated to protecting consumers, urges quick passage of HB 226. This bill is an appropriate response to the ChoicePoint Inc. security breach, and the other breaches, that have occurred this year. Consumers across the nation were alarmed to find out that nearly 150,000 people across the nation had their personal information stolen from Choicepoint and were at high risk for identity theft. Yet only California had laws on the books that mandated ChoicePoint Inc. to notify those who fell victim.

The total included some 251 Alaskans. This bill will help better protect those individuals and all Alaskans when a similar security breach occurs in the future.

HB 226 is based on two provisions in California law.

First, the bill requires that any business that collects this personal customer information as part of their business must notify consumers if the security of that information is compromised. This common sense step will make sure that companies like Choicepoint Inc. will disclose when consumers are at risk

When a consumer's personal information has been compromised, that person should be able to block access to credit reports and credit scores. Blocking access to a credit report prevents an identity thief from fraudulently opening new lines of credit in his or her name, one of the many dangers of identity theft.

The second section of the bill contains this "security freeze" provision. The three credit reporting agencies - Experian, Equifax and TransUnion - act as consumer financial information clearinghouses. The security freeze provision allows consumers to prevent the clearinghouses from sharing their information. Without access to a consumer's credit report, an identity thief will not be able to open a new account. The provision will allow a consumer to regulate who will receive a copy of their credit report. The security freeze provision allows consumers to use an access code to release their report to a company wishing to extend a line of credit.

Any company that makes a profit from trading financial and personal information has the responsibility to protect that information. HB 226 has strong measures that the Alaska Legislature can enact to better protect consumers. We urge you to pass HB 226.

Sincerely,

  
Steve Cleary, AkPIRG Executive Director

State of Alaska  
Department of Health & Social Services  
Division of Juvenile Justice

**CONFIDENTIALITY AGREEMENT**

I, \_\_\_\_\_, understand that as:

- an individual providing a service for facility residents
- an individual providing a service within the facility
- a participant in this meeting
- a participant in a facility tour
- a volunteer for the Division
- an individual conducting Division authorized research
- other \_\_\_\_\_

I may obtain information that concerns children and/or families being served by the Division of Juvenile Justice. I have received and read a copy of the Division's confidentiality regulations contained in 7 AAC 54.300 to 7 ACC 54.340.\* I agree to maintain the confidentiality of any client information protected by Alaska law or regulations. I understand that I may not reveal to anyone the identity of or any information about any resident of the Johnson Youth Center. I further agree to abide by all Johnson Youth Center policies as explained by facility staff.

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

**\*Note:**

Several statutes that contain confidentiality information are referenced as the statutory authority in the confidentiality regulations. Violation of confidentiality statutes or regulations, including disclosure to friends or family, is serious and may be considered a misdemeanor.

# PERSONAL INFORMATION SECURITY BREACHES

COMPANY	APPROXIMATE NUMBER OF IDENTITIES COMPROMISED	DATE REPORTED
T-Mobile	16.3 million	January 2005 (access occurred in 2003 and 2004.)
Bank of America	1.2 million	Feb. 2005
Lexis/Nexis	310,000	Mar. 2005 (number revised in Apr. 2005)
San Jose Medical Group	185,000	Apr. 2005
ChoicePoint	145,000	Feb. 2005
DSW Shoe Warehouse	100,000+ (customer data from 103 of 175 stores)	Mar. 2005
Pay Maxx	100,000	Feb. 2005
SAIC	45,000+ (employees plus current and former stockholders)	Feb. 2005
Valley Wide Financial Services	1,200 Entire customer base of the Modesto, CA loan company	Mar. 2005
<b>Total:</b>	<b>18,386,200+</b>	<b>Since Jan. 1, 2005</b>

**T-Mobile:**

<http://www.securityfocus.com/news/10271> [note; if you search for other stories, you'll occasionally see reports of 400 people, not 16.3 million. From a more thorough read though, it becomes clear that at least 400 people actually were victimized by the breach, and there's no doubt the hacker had access to all 16.3 million's data

**San Jose Medical:**

<http://www.nwfusion.com/news/2005/0408stolelaptop.html>

**PayMaxx:**

[http://www.boston.com/business/personalfinance/articles/2005/02/25/confidential\\_data\\_on\\_firms\\_sites\\_breached\\_\(as\\_many\\_as\\_100,000\\_is\\_the\\_#\\_given\)](http://www.boston.com/business/personalfinance/articles/2005/02/25/confidential_data_on_firms_sites_breached_(as_many_as_100,000_is_the_#_given))

[http://www.boston.com/business/articles/2005/03/01/payroll\\_website\\_still\\_not\\_secured/\(still\\_insecure\\_a\\_week\\_later\)](http://www.boston.com/business/articles/2005/03/01/payroll_website_still_not_secured/(still_insecure_a_week_later))

**SAIC:**

<http://www.washingtonpost.com/wp-dyn/articles/A17506-2005Feb11.html>

(45,000 employees on p.1, fact of all past and present stockholders p.2)

**Valley Wide Financial:**

<http://www.modbee.com/local/story/10253631p-11064733c.html>

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3887 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 30, 2005

**SUBJECT:** Sectional summary of HB 226 relating to breaches of security involving personal information and to credit report security freezes (Work Order No. 24-LS0689\Y)

**TO:** Representative Les Gara  
Attn: Emily

**FROM:** <sup>TB</sup> Theresa Bannister  
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

**Section 1.** Adds a new chapter on information security.

**Article 1.** Breaches of Security Involving Personal Information.

Sec. 45.48.010 requires certain business persons to disclose breaches of the person's information systems to each state resident whose personal information was acquired by an unauthorized person. Requires that the disclosure be made in the most expedient time possible and without unreasonable delay.

Sec. 45.48.020 allows a person to delay making the disclosures required by sec. 45.48.010 if the Department of Law determines that the disclosures would compromise an investigation.

Sec. 45.48.030 establishes how a person is to make the disclosures required by sec. 45.48.010.

Sec. 45.48.040 allows a business, under certain circumstances, to use its own procedures for making the required disclosures.

Sec. 45.48.050 removes good faith acquisition of personal information by employees and agents of the business from being considered a breach of the security of the business's information system under certain conditions.

Sec. 45.48.060 makes waivers of Article 1 void and unenforceable.

Sec. 45.48.070 provides remedies for violations of Article 1.

Sec. 45.48.090 defines terms for Article 1.

## **Article 2. Credit Report Security Freezes**

Sec. 45.48.100 authorizes a consumer to prohibit a credit reporting agency from releasing all or part of the consumer's credit report or information derived from the report without the consumer's authorization.

Sec. 45.48.110 establishes how a consumer may place a security freeze.

Sec. 45.48.120 requires a credit reporting agency to send written confirmation of the security freeze to the consumer within 10 business days and to provide the consumer with a personal identification number or password.

Sec. 45.48.130 requires a credit reporting agency to allow a third party access to a consumer's credit report or information derived from the report if the consumer requests the agency to allow the access. Describes how the consumer is to make the request. Requires the agency to comply with the request within three business days. Addresses the procedures that an agency may develop for receiving and processing the request. While a freeze is in place, prohibits an agency from releasing the report or information to a third party without the consumer's prior express authorization. While a freeze is in place, allows an agency to treat a third party's application for access to a credit report or information as incomplete under certain conditions. Directs an agency, under certain conditions, to notify a consumer that a third party has attempted to access the consumer's credit report or information. States that this section is not intended to prevent an agency from advising a third party who requests access that a security freeze is in place.

Sec. 45.48.140 prohibits a credit reporting agency from removing a security freeze unless allowed by sec. 45.48.130, the consumer requests it, or the consumer made a material misrepresentation of fact to the agency when requesting the freeze.

Sec. 45.48.150 describes the situations when a credit reporting agency may remove a security freeze. Requires that it be removed within three business days after the consumer requests that it be removed and provides certain information.

Sec. 45.48.160 establishes maximum amounts on what a credit reporting agency may charge a consumer for placing a security freeze and allowing access during a security freeze.

Sec. 45.48.170 allows a credit reporting agency to require additional information about the consumer to verify the consumer's identity only if the consumer can't reasonably identify the consumer with proper identification.

Representative Les Gara

March 30, 2005

Page 3

Sec. 45.48.180 prohibits a credit reporting agency, during a freeze, from changing certain information in the credit report without sending written confirmation of the change, except certain technical changes, to the consumer.

Sec. 45.48.190 provides remedies for violations of Article 2.

Sec. 45.48.270 lists certain types of credit reports to which Article 2 does not apply.

Sec. 45.48.280 lists the situations in which Article 2 does not apply.

Sec. 45.48.290 defines terms for Article 2.

**Article 3. General Provisions.**

Sec. 45.48.300 states that a provision that is preempted by or conflicts with federal law does not apply.

If I may be of further assistance, please advise.

TLB:med

05-224.med

# Victims of ID theft fight for years to repair sprawling mess

■ **UPHILL:** "You're guilty until proven innocent," says woman who was hurt by a criminal.

By FRANK JAMES  
Chicago Tribune

WASHINGTON — Since falling victim to identity theft four years ago, John Harrison has learned the hard way that the crime is like a chronic disease that goes into remission, only to flare up again when least expected.

"I dealt with my latest debt collector just a week ago," the 44-year-old salesman for a firearms retailer said.

"And the Army actually just garnished my retirement pay for the third time," said Harrison, a retired infantry captain who lives in Connecticut.

The man who misused Harrison's personal information not only obtained cred-

*The Federal Trade Commission estimated 10 million people were victimized by the crime in 2002, the most recent year for which it has data.*

it using Harrison's name but also opened checking accounts and wrote more than 125 bad checks as Harrison, some of them on government installations.

"The ones that were written on military bases become government debt," Harrison said. "And because I'm retired and get a government paycheck, when these things surface I just get a government letter in the

mail saying, 'We're taking your money.'"

Recent disclosures by consumer-data collection companies including ChoicePoint, LexisNexis and Bank of America that sensitive information about millions of consumers was compromised have fueled concerns that many more people could be victimized like Harrison.

If these failures to protect consumers' personal data lead to more identity theft, the victims would be added to what experts consider the fastest-growing financial crime in the United States.

The Federal Trade Commission estimated 10 million people were victimized by the crime in 2002, the most recent year for which it has data.

No credible expert believes that number has fallen. Identity theft costs the U.S. economy billions of dollars annually.

See Page J-1, IDENTITY



John Harrison says it has taken him years to straighten out the mess caused when he became a victim of identity theft.

Anchorage Daily News 4/3/05

## IDENTITY: As credit industry, politicians debate costs, victims struggle

Continued from J-1

While federal and state governments and businesses that extend credit have made progress in helping victims regain their financial footing, the experience of victims shows much more is left to be done.

### COUNTY MEASURES

In January, for example, a Springfield, Ill., police officer made a routine traffic stop of a 79-year-old woman, an identity-theft victim, according to Illinois Attorney General Lisa Madigan.

The officer ran the motorist's name through the state's criminal database, which turned up a warrant for writing bad checks. It was the identity thief, however, who wrote the checks.

Nevertheless, "the poor little old lady was hauled off to the police station," Madigan said. That occurred even though the identity theft took place in 1996 and she had reported it to state law-enforcement officials.

The arrest also happened even though the attorney general two years ago had pushed legislation through the Illinois General Assembly meant to prevent that kind of humiliation.

Such an arrest might have been avoided if there had been a statewide database of identity-theft victims, something Madigan is trying to implement.

The financial services industry has raised concerns about such databases, fearing that unscrupulous borrowers could falsely claim to be identity theft victims to avoid paying debts.

Something that could help victims and nonvictims alike would be to

give them the ability to deny prospective credit providers access to credit bureau files for the purpose of issuing new credit. That could stop identity thieves.

Victim advocates say a federal law to that effect would help greatly. So far, only California and Texas allow victims to place security freezes on their files maintained by the three largest national credit bureaus.

But a dozen states are considering following suit, said Gail Hillebrand, a senior attorney with Consumers Union, an advocacy group.

Banks, car dealers and other businesses have opposed such legislation, however, raising doubts about such laws' effectiveness.

A such freezes could deny consumers the instant gratification of walking into stores, getting rapid credit approvals and leaving with cars, televisions or refrigerators.

### CRITICAL MASS

"The problem is, let's say mortgage interest rates dropped and I wanted to refinance," said Neesa Feddis, senior federal counsel at the American Bankers Association.

"It's going to be an impediment. It's an unnecessary cost. It would probably end up frustrating more customers than helping them," Feddis said.

Creditors say they have taken steps to fight identity theft. Using advanced computer technology, companies can often spot fraud by detecting unusual spending patterns, for instance.

But victim advocates say the financial services industry isn't moving ag-

gressively enough, in part because they say the industry can pass along the costs of identity theft to other customers through fees and additional charges.

Identity theft experts add that while the financial industry often advises consumers to protect themselves from the crime by shredding credit-card statements and the like, consumers are helpless in most cases of identity theft since tax security at companies or unscrupulous employees are often to blame.

Identity-theft victims and their advocates acknowledge the situation has improved in recent years for many victims, who sometimes include children whose Social Security numbers are misused by dishonest parents to obtain credit. They ruin the children's credit, making it hard for them to get loans later.

The improvement started with increased sensitivity to the victims among many law-enforcement officials, government policy makers and financial industry executives who once appeared to operate as though identity theft were a victimless crime.

A 2003 federal law resulted in changes phased in over the past year requiring businesses taken in by identity thieves to provide victims with the fraudulent credit applications. Before, victims routinely were denied such information.

California has a security breach law in which consumer data companies must notify consumers when security around sensitive consumer information has been compromised.

It was that law that required ChoicePoint to go public with its problem. About 30 states are considering similar laws.

Some states also have passed laws requiring police departments to take crime reports from identity-theft victims. Illinois allows victims to go to court to obtain a factual declaration of innocence.

Still, numerous proposals that would have helped identity-theft victims have been rebuffed in Congress and state legislatures.

### 'YOU'RE GUILTY'

During the recent Senate debate over legislation to tighten bankruptcy rules, Sen. Ben Nelson, D-Neb., tried to pass an amendment exempting debtors who could prove their financial problems were caused by identity theft. He failed.

Meanwhile, Linda Foley, executive director of the Identity Theft Resource Center and herself a victim of identity theft, asked, "Why don't we have all states requiring that victims of identity theft are allowed to have police reports taken, that the police must take police reports in the jurisdiction where the victim lives?"

She said even more understanding is needed of the "secondary wounding" that occurs after someone is targeted.

She blames the collection agencies, credit issuers and credit bureaus — as well as law enforcement — for requiring victims to provide copious documentation, which can be time consuming and expensive.

"It's frustrating," Foley said. "You're

guilty until proven innocent."

Harrison, the firearms company salesman, said he stopped keeping track of the time he spent trying to clear his name after he hit 2,000 hours in early 2003, more than a year after he learned his identity was stolen in November 2001.

He blames losing an earlier sales job to the theft when his productivity dropped from having to field calls from collection agents at work.

He suffered from depression and anxiety.

His consumer debt interest rates tripled, and insurance premiums soared inexplicably.

"It's a difficult thing to explain," Harrison said. "I've always been a real strong person. I was a company commander in the 82nd Airborne. I actually kind of thrived in stressful situations."

"But this is (a) different deal because you really don't have any control over what these other people do or don't do," he said. "With identity theft you're not bleeding ... you haven't lost an arm or a leg. It's real difficult for people to see your loss or your damage."

Harrison had trouble finding another job; potential employers were scared off after conducting the standard credit checks. His solace was that the identity thief was caught and served 36 months in prison.

But the thief was released Dec. 15, giving Harrison pause.

"He could still have my Social Security number right in his wallet," he said.

washingtonpost.com

Advertisement

## LexisNexis Data on 300,000 People Feared Stolen

By Jonathan Krim  
Washington Post Staff Writer  
Tuesday, April 12, 2005; 12:22 PM

Information broker giant LexisNexis announced today that previously announced security breaches at the company could affect roughly 300,000 consumers, making it one of the largest potential identity theft incidents on record.

When the company announced last month that its Seisint unit had been compromised by identity thieves in a series of incidents, it estimated that Social Security numbers, drivers' license numbers, names and addresses of 32,000 consumers were exposed.

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Last year LexisNexis bought Florida-based Seisint Inc., which sells data gathered from extensive searches of public records to businesses, law-enforcement agencies, private investigators and others.

"We regret that consumers, who traditionally are the primary beneficiaries of our risk management products and services, may have been affected by these events," Kurt Sanford, head of the company's corporate and federal markets group, said in a statement. "We have taken a number of significant actions in recent weeks to further guard against these types of fraudulent intrusions at our customer sites and to enhance our security procedures and policies overall."

The company said that affected consumers would be offered a free credit report and monitoring for a year.

The announcement is yet another blow to the largely unregulated marketplace of sensitive personal information that involves mega-brokers such as LexisNexis, ChoicePoint and Acxiom to smaller resellers, some private investigators and others. Each of the three large brokers has announced at last one major breach, as have universities, banks and other organizations that store consumer data.

More than two dozen states are now examining identity theft legislation, while several members of Congress have introduced legislation or are preparing to do so.

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# CORRECTION

THE FOLLOWING DOCUMENT(S)  
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ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services  
Department of Education & Early Development  
State of Alaska

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March 30, 2005  
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TLB:med  
05-224.med

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See Page A-1, IDENTITY

Anchorage Daily News 4/3/05

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Continued from A-1

While federal and state governments and businesses that extend credit have made progress in helping victims regain their financial footing, the experience of victims shows much more is left to be done.

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West Coast Office  
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www.consumersunion.org

April 7, 2005

Representative Les Gara  
State Capitol  
Room 418  
Juneau, AK 99801-1182  
907-465-3518 (fax)

Re: Support for HB 226, Breaches of Security and Security Freeze for Credit Reports

Dear Representative Gara:

Consumers Union, the independent, nonprofit publisher of *Consumer Reports*, supports HB 226, relating to Breaches of Security and Security Freeze for Credit Reports. A security freeze is a key tool to prevent identity thieves from getting credit in the consumer's name, by allowing consumers to lock up, or "freeze" access to their consumer credit files for credit granting purposes. A requirement to notify consumers of a breach of security will enable consumers to take preventative steps, including placing a security freeze, at a time when they may be able to head off an identity thief before the consumer experiences ruined credit and other harmful consequences of ID theft.

### Security freeze

Identity theft is one of the fastest growing financial crimes. According to a 2003 report to the Federal Trade Commission, nearly 10 million Americans fall victim to identity theft annually. The Identity Theft Resource Center reports that victims spend an average of \$1,495 and 600 hours to restore their credit histories and their good names. Other estimates of the amount of time spent by victims vary, but it is clear that an incursion upon a consumer's good name by an identity thief is a troubling and time-consuming experience. A 2003 report to the Federal Trade Commission estimated that identity theft costs U.S. businesses nearly \$48 billion annually and costs U.S. consumers both \$5 billion and 297 million hours annually.

A security freeze will help to prevent the damage from identity theft because businesses are highly unlikely to issue new credit to an individual without first reviewing information from his or her credit report. When an individual freezes his or her credit file, this prevents the imposter from using that credit file to get credit in the consumer's name. Because the potential creditor is highly likely to deny the imposter's credit application if it can't see the frozen credit file, a security freeze can prevent the harm that would otherwise occur from the identity theft.

Under this bill, people who choose to freeze access to their credit files may temporarily lift the freeze for new loans and credit that they apply for themselves. When a consumer initially activates the freeze, the credit bureau will issue a unique PIN to the consumer that can be used to

"thaw" or lift the security freeze for a particular creditor. Credit bureaus must release the report within three business days of such a request.

### **Federal law is inadequate to prevent identity theft**

The credit reporting industry may assert that the federal FACT Act, which revised the federal Fair Credit Reporting Act, gives sufficient protection to consumers. We respectfully disagree. Federal law confers the rights of fraud alerts and blocking. Both partially address an identity theft *after* there has been a theft of identity or of information. Nothing in federal law creates a right in the consumer to stop anyone from seeing the consumer's credit file.

The rights available to consumers under federal law are not as effective as a security freeze. Federal law allows identity theft victims to block from the contents of their credit files specific information that is the result of identity theft. But fraud blocking does not block the furnishing of a credit report. It does not prevent identity theft. Similarly, a fraud alert does not prevent a credit report from being issued. Under the federal Fair Credit Reporting Act, when a fraud alert is attached to a credit file, creditors must take additional steps to verify a credit applicant's identity before extending credit. The fraud alert, however, does not prevent the potential creditor from seeing the report, and it does not prevent the credit bureau from selling or sharing the credit report. Only a security freeze can do this.

### **Consumers can make a choice weighing the protective value of a security freeze against any inconvenience it may pose**

The consumer credit reporting industry may also assert that a security freeze will inconvenience consumers who are shopping for credit, as they will have to lift the freeze with respect to each potential creditor. This is a choice Alaskans will be free to make for themselves if the security freeze bill is enacted. Each consumer can decide if the protection of knowing that only creditors authorized by the consumer can review the file for credit granting purposes outweighs the slight delay in requesting that the freeze be lifted for particular potential creditors. This bill will simply give Alaskans the right to make this choice for themselves.

### **The consumer reporting industry has made it hard for consumers to learn about and use freezes**

Consumer reporting agencies have argued in some state legislatures that not many consumers have used the security freeze in the two states where it is already in effect. In one of those states, the freeze is not available to all consumers, but only to ID theft victims. In the other state, California, the Legislature had to go back and amend the statute to cap the fees for placing a freeze after one consumer reporting agency, Experian, was charging consumers \$60 for a freeze. This kind of pricing would depress initial usage of the freeze tool.

*The bill would be stronger if it exempted ID theft victims from the fee to place a security freeze. Many of the states which are considering security freeze legislations are consider providing this important tool to their consumers who have already been victims of ID theft. The California Legislature is considering eliminating its \$10 fee authorization for consumers who have received*

a notice of a security breach. While Consumers Union supports the bill in its current form, these changes would strengthen it.

### Notice of security breach

The purpose of the required notice is to enable individuals whose information has been accessed by an unauthorized person to take steps to protect their identity, a process that usually entails establishing initial fraud alerts with the three credit bureaus and then checking one's credit report on a regular basis to watch for signs of fraud. If this bill becomes law, Alaskans who receive a notice of security breach could also decide if they wish to take the preventative step of placing a security freeze.

The notice of security breach bill appropriately requires notice to all individuals whose information has been accessed by an unauthorized person. In other states, some opponents of giving notice have argued that notice should be limited to breaches which result in a misuse of information, but this argument is not realistic in light of how ID theft works. An identity thief may steal information from one company and use that information to impersonate a consumer at another company. The company who has the security breach will never be able to ascertain with any certainty whether or not the information has been misused. Further, all stolen information is susceptible to misuse. Indeed, misuse is the usual purpose of the theft of information. Every Alaskan affected by a security breach should get notice, so that the individual can choose to take proactive, preventive steps such as establishing a fraud alert, monitoring his or her credit file and placing a security freeze.

Consumers nationwide learned of the ChoicePoint breach only because one state law required notice of security breaches affecting its residents. Almost daily we hear of new instances of security fraud impacting thousands upon thousands of consumers. Legislation to give consumers control over who can see their consumer credit files through the tool of a security freeze, and to require that companies who have a security breach notify the consumers whose information was accessed is an idea which time has come. For these reasons, Consumers Union supports the passage of this bill.

Very truly yours,



Gail Hillebrand



April 13, 2005

The Honorable Tom Anderson, Chair  
House Labor and Commerce Committee  
Alaska State Capitol, Room 408  
Juneau, AK 99801-1182

RE: HB 226 (Gara)--Support

Dear Chair Anderson:

On behalf of the members of AARP in Alaska, we encourage you and your colleagues on the House Labor and Commerce Committee to support HB 226, authored by Representative Les Gara and co-sponsored by Majority Leader Coghill and Representatives McGuire and Kerttula.

As you know, earlier this year ChoicePoint admitted that it had lost personal information affecting 150,000 customers, including some Alaskans. Although the information was illegally stolen from the company, the company failed to notify their customers at the time they first discovered the information was taken last fall.

HB 226 will mandate that any company that has had its customer financial information stolen must notify those customers that they could be victimized.

HB 226 also requires the three companies that have credit information on all of us to offer security freeze protection. Security freeze protections allow the consumer to determine which companies will be allowed credit information which can be used for lines of credit. This will provide an effective tool to prevent false applications for credit because of stolen information/identity theft.

While your Committee is hearing this bill today, the United States Senate is conducting hearings on the millions of Americans who are victims of identity theft and the billions of dollar they have lost.