

12156

HOUSE

JUDICIARY

Finally, Alaska law docs not need fixed.

No epidemic of newborn abandonment and neonaticide exists in Alaska. In fact, Alaska has one of the cleanest newborn abandonment records in the United States. A survey of The Anchorage Daily News, Fairbanks News-Miner, and Juneau Empire reveal only four reported newborn abandonment cases in Alaska since 1985: 2 in Anchorage (1995, 2005) and 1 each in Muldoon (1986), and Peters Creek (1994).¹⁰ All babies were left where they could be easily found, and all survived

HB 29 trivializes baby abandonment by presenting it as just another consumer choice. No blame. No shame. No name.

By encouraging identity erasure, parental ignorance, irresponsibility, and secrecy, and by subverting the due process rights of parents in Alaska and the mandates of ICWA, HB 29 endangers the integrity and safety of all families in Alaska--not just those at risk for unsafe abandonment.

No law is valid because it might "save a life." Otherwise, we would not have our Bill of Rights. We do not let the police pull drivers over randomly and give them Breathalyzer tests because "it might save a life." We do not outlaw guns because "it might save a life." The state should not help parents hide their own children's identities and histories because "it might save a life."

Alaska has a long history of protecting the rights of its adopted citizens. Let's keep it that way!

Protect Alaska families. Protect ICWA! Vote Do Not Pass on HB 29.

¹⁰ Anchorage Daily News, June 6, 1995, 1; August 6, 2005, B3; September 16, 1986, 1; January 1, 1994, 1A. No cases listed in other cases.

ATTACHMENT B - ICWA

From the U.S. Code Online via GPO Access

[wais.access.gpo.gov]

[Laws in effect as of January 20, 2004]

[Document not affected by Public Laws enacted between
January 20, 2004 and December 23, 2004]

[CITE: 25USC1912]

TITLE 25--INDIANS

CHAPTER 21--INDIAN CHILD WELFARE

SUBCHAPTER I--CHILD CUSTODY PROCEEDINGS

Sec. 1912. Pending court proceedings

(a) Notice; time for commencement of proceedings;
additional time for preparation

In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: Provided, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

From the U.S. Code Online via GPO Access
[wais.access.gpo.gov]
[Laws in effect as of January 20, 2004]
[Document not affected by Public Laws enacted between
January 20, 2004 and December 23, 2004]
[CITE: 25USC1913]

TITLE 25--INDIANS

CHAPTER 21--INDIAN CHILD WELFARE

SUBCHAPTER I--CHILD CUSTODY PROCEEDINGS

Sec. 1913. Parental rights; voluntary termination

(a) Consent; record; certification matters; invalid consents

Where any parent or Indian custodian voluntarily consents to a foster care placement or to termination of parental rights, such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, birth of the Indian child shall not be valid.

(b) Foster care placement; withdrawal of consent

Any parent or Indian custodian may withdraw consent to a foster care placement under State law at any time and, upon such withdrawal, the child shall be returned to the parent or Indian custodian.

(c) Voluntary termination of parental rights or adoptive placement; withdrawal of consent; return of custody

In any voluntary proceeding for termination of parental rights to,

or adoptive placement of, an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of termination or adoption, as the case may be, and the child shall be returned to the parent.

SELECTED ORGANIZATIONS OPPOSED TO SAFE HAVEN LAWS

UNITED STATES and CANADA

Bastard Nation: The Adoptee Rights Organization
Adoptee Caucus for Truth
Advocates for Pregnant Women
American Adoption Congress
American Coalition of Fathers and Children
Ariadne Group
Bay Area Birthmothers (San Francisco)
Canadian Council of Natural Mothers/Conseil canadien des meres naturelles
Center for Family Connections (Massachusetts)
Child's Best Interest
Concerned United Birth parents (CUB)
Ethica: A Voice for Ethical Adoption
Dad's Against Divorce Discrimination (DADS)
Green Ribbon Campaign for Open Records
Holt International
Home for Little Wanderers
Massachusetts Families for Kids
Massachusetts Society for the Prevention to Cruelty to Children
Mouvement Retrouvalles (Quebec)
National Congress for Fathers and Children
Nebraska Children's Home Society
Oregon Adoption Rights Organizations
Origins
Origins-USA
PACER (Post Adoption Center for Education and Research, San Francisco)
Prevent Child Abuse Virginia
Spence-Chapin Services to Family and Children
Virginia Department of Health
Virginia Poverty Laws Center
Virginians for Adoption Reform

INTERNATIONAL

France

Association des Mere de 'Ombre
Association pour le Droit aux Origins les Enfants Nes sous X (ADONX)
Coordination des Actions pour les Droit la Connaissance des Orgines (CADCO)

Germany

Babvklappen, Nein Danke!

Italy

Figli Adottvi de Genitori Naturall (FaeGN)

Spain

Andas (Derrecho a Saber)

Bastard Nation

Mary Deane Bridge RPh

1000 1st St
St. Paul, MN 55102
612-291-1111
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HB

50



HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120
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COMMITTEE MEMBERS

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Rep. Ralph Samuels
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Rep. Max Gruenberg
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Rep. Lindsey Holmes
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MEMORANDUM

Date: March 17, 2008

To: Representative Kevin Meyer
Co-Chair House Finance Committee

From: Representative Jay Ramras
Chair House Judiciary Committee

Re: Referral file for CSHB50(JUD) 25-LS0265\K

Attached please find the following documents, which represent the referral file for CSHB50(JUD) 25-LS0265\K:

- Legal memo from Pan Finley re: HJUD Amendment
- CSHB50(JUD) 25-LS0265\K
- Fax to Leg. Legal re: Conceptual Amendment
- Sponsor Statement
- Sectional
- Legal memo re HB50 (25-LS0265\A)
- Fiscal Notes
 - HES
 - ADM - 0
- CSHB50(HES) 25-LS0265\M
- HB50 25-LS0265\A
- Support
- HJUD Report

LEGAL SERVICES

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

MEMORANDUM

March 14, 2008

SUBJECT: CSHB 50(JUD)(Work Order No. 25-LS0265\K)

TO: Representative Jay Ramras
Chair of House Judiciary Committee
Attn: Jane

FROM: Pam Finley *PF*
Revisor of Statutes

Enclosed is the referenced CS with the change you requested. It is, however, odd. If the intent was to allow the Commission to intervene only if the court, in its discretion, allowed the intervention (permissive intervention under Civil Rule 24(b)), then Article XII(A)(4) should be amended to say that (e.g., "has standing to request the court's permission to intervene.") If, however, the Commission has the right to intervene, then the correct reference would be to Civil Rule 24(a), which covers intervention as a matter of right.

PF:lmb
08-059.lmb

Enclosure

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman
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Representative_Jay_Ramras@legis.state.ak.us

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Committee Members:
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Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

Fax

To: Legislative Legal

Fax #: 2029

Number of pages including cover: 1

From: Jane Pierson

Date: March 14, 2008

Re: HJUD final for CSHB50 (25-LS0265\M)

Please go final on the above-referenced bill. There is one conceptual amendment as follows:

1. P. 28, L. 2 after "Rule 24" insert (b)

Thank you.

ALASKA STATE HOUSE OF REPRESENTATIVES

Contact:

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North Pole, AK 99705
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**Session**

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State Capitol
Room 204

REPRESENTATIVE JOHN COGHILL

SPONSOR STATEMENT

HB 50 Interstate Compact for the Placement of Children

In an effort to control the language of a new interstate compact for child placement, I agreed to introduce HB 50. Language in the draft model included relinquishment of state rights by allowing compact language and rules adopted by the commission to supersede state law.

The current ICPC was drafted in 1960 to assure that children placed across state lines were placed with the same protections and services as children placed intrastate. Through the years, however, it has become evident that the ICPC has resulted in unnecessary delays in moving children across state lines, lack of accountability, and an outdated administrative process. Additionally, the current ICPC applies to all interstate placements such as placement with relative and residential treatment centers, not just those placements involving children in state custody.

The new compact holds member states to a higher standard of duty, eliminates regulation of children not in state custody, makes provisions for private child placement agencies, and brings the administrative process into the 21st century with home study incentives, definitions for new terminology, requiring consideration of interstate placements, requires cooperation between member states in sharing information, and gives foster parents more participation in the process.

Throughout the last year my office has been a participant in bringing out our concerns about the original language and working on amending the language to preserve state sovereignty. The HESS committee substitute is the latest version of the compact supported by the American Public Human Services Association and the American Academy of Adoption Attorneys.

HB 50 Interstate Compact for the Placement of Children

Sectional Analysis for Version "C" HESS Committee Substitute

Section 1. Amendment language for title change of Compact.

Sec. 2. Repeals and reenacts Interstate Compact for the Placement of Children

Article I. **PURPOSE.** Provide uniform data collection; administrative rules implementing and regulating child placement in member states; provide coordination with other compacts affecting the placement of children; providing continuing jurisdiction and responsibility as if intrastate placement; promulgation of guidelines of Indian tribes; provide procedures to insure safe and suitable placement for children.

Article II. **DEFINITIONS.** New definitions for approved placement, assessment, child, certification, default, home study, Indian tribe, Interstate Commission for the Placement of Children, Jurisdiction, legal risk, member state, non-custodial parent, non-member state, notice of residential placement, placement, private child-placing agency, private child-placing agency, provisional placement, public child-placing agency, receiving state, relative, residential facility, rule, sending state, service member's permanent duty station, service member's state of legal residence, state, state court, and supervision.

Article III. **APPLICABILITY.** Interstate placement of a child in state custody as a child in need of aid or a child adjudicated delinquent or unmanageable based on the sending state; interstate placement of a child by a public child placement agency or private child placing agency as a preliminary step to a possible adoption.

Does not apply to a child in a custody proceeding in which a public child placing agency is not a party; interstate placement by one relative to another relative; placement of a non-state custody child in a residential facility by a parent; placement of a child with non-custodial parent under certain circumstances.

Article IV. **JURISDICTION.** The sending state retains jurisdiction over child, including power to order return of child; receiving state court shall confer with sending state court to determine forum for adjudication; sending state can terminate its jurisdiction under certain circumstances and is required to notify receiving state of that action; allows receiving state jurisdiction sufficient to deal with truancy, delinquency, crime or behavior involving a child violating receiving state laws; permits receiving state to take emergency jurisdiction for the protection of a child.

Article V. **PLACEMENT EVALUATION.** Sets out in the compact a process for the sending state requesting an assessment from the receiving state on placement.

provide evidence the placement is legal, certification that consent or relinquishment is in compliance, and obtain approval of public child placement agency in the receiving state. Allows the Commission to develop uniform standards for the assessment of the safety and suitability of interstates placements. A final decree of adoption cannot happen until the placement is authorized as an "approved placement" by the public child placing agency in the receiving state.

Article VI. PLACEMENT AUTHORITY. Placement cannot be made until approval is obtained from receiving state or until administrative reversal of a denial of placement.

Article VII. PLACING AGENCY RESPONSIBILITY.

- A. Sending state has financial responsibility for ongoing support and maintenance of child, including those services beyond the public services available in the receiving state. Receiving state's financial responsibility is for any assessment conducted and supervision conducted by the receiving state at the level necessary to support placement.
- B. Private child placement agencies shall be legally and financially responsible for the child as provided by law in the sending state until adoption is final and legally financial absent a contractual agreement to the contrary.
- C. Receiving state assessment shall be done in a timely manner.
- D. Public child placement agency will provide supervision and services for the child including timely reports to the sending state.
- E. Receiving state agency provides supervision and services for the child, including timely reports during the period placement.
- F. Compact does not limit receiving state from contracting for assessments, supervision or services for the child.
- G. Member states shall provide coordination among its branches of government by forming an advisory council or use of existing board.
- H. Requires each member state to have a central state compact office.
- I. Public child placement agency will oversee ICWA compliance.
- J. With consent of Interstate Commission, states may enter into limited agreements that facilitate the timely assessment and provision of services and supervision of placements under this compact. (Does this conflict with E?)

Article VIII. INTERSTATE COMMISSION FOR THE PLACEMENT OF CHILDREN.

Establishes the commission to be a joint commission of member states that shall have responsibilities, powers and duties set forth in HB 50 and additional powers as conferred by concurrent action of respective legislatures of the member states. Each member state will have a commissioner appointed by the HSS Commissioner and this member shall have legal authority to vote on policy related matters by the compact which binds the state. A majority constitutes a quorum and a member can delegate to another person from his or her state but cannot proxy their vote to another member of the commission.

The commission can appoint ex officio members who are from interested organizations and an executive committee shall be established to administer the day-to-day activities of the commission, which do not include rulemaking.

Article IX. POWERS AND DUTIES OF THE INTERSTATE COMMISSION.

- (A) Promulgate rules and take all necessary actions to effect the goals, purposes, and obligations enumerated in the compact.
- (B) Provide dispute resolution to member states.
- (C) Issue advisory opinions concerning interpretation of compact, bylaws, rules or actions.
- (D) Enforce compliance with compact.
- (E) Determine needs for collection of data and collect that data.
- (F) Establish and maintain offices.
- (G) Purchase and maintain insurance and bonds,
- (H) Hire or contract for services of personnel or contracts.
- (I) Establish and appoint committees and officers, including the executive committee.
- (J) Accept funds.
- (K) Lease, purchase, accept contributions or donations of real, personal, or mixed properties.

- (L) Sell, convey, mortgage, pledge, lease, exchange, abandon or dispose of real or personal property.
- (M) Establish budget and make expenditures.
- (N) Adopt a seal and bylaws.
- (O) Establishes annual reporting requirements to legislatures, governors, judiciary and state advisory councils.
- (P) Coordinate public awareness of the commission and its purpose.
- (Q) Maintenance of books and records.
- (R) Perform functions necessary to achieve purposes of this compact.

Article X. ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION.

Requirement to set up by laws within one year of first commission meeting and make all records public unless records would adversely affect the personal privacy rights or proprietary interests.

The Commission must meet at least once a year and have proper public notice. A public meeting could be closed by a two-thirds vote if discussion would include personnel issues; information privileged, proprietary or confidential in nature; accusation or a crime or censuring a person; investigative records; matters exempted by federal law; civil or legal proceedings; Meetings may be held by telecommunications or other electronic communication.

The Commission may appoint, through its executive committee, a non-voting staff director as secretary to the commission. It may also elect a chairperson and vice chairperson from among the commission members.

The commission's staff director and employees are immune from suit and liability unless the liability was caused by a criminal act or intentional or willful and wanton misconduct of such person.

Article XI. RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION.

Commission shall promulgate and publish rule that substantially conform to the principles of "Model State Administrative Procedures Act", 1981, Uniform Laws Annotated, Vol. 15, p.1 (2000) or other acts commission deems appropriate. Rules promulgated by the Interstate Commission shall have the force and effect of administrative rules.

Allows for an interested person to challenge a rule in the U.S District Court for the District of Columbia within 60 days of the rule being enacted. A majority of members may reject a rule. The new rules shall be enacted and the existing rules voided. Emergency rules can be adopted by a majority vote of the commission.

Article XII. OVERSIGHT, DISPUTE RESOLUTION, ENFORCEMENT.

The commission shall oversee the administration and operation of the compact and make sure the three branches of state government enforce the compact. The compact and its rules will be binding on compact states as administrative rules.

Requires state courts to take judicial notice of the compact and rules in any judicial or administrative proceedings. If there is a judicial challenge of a rule as provided for in Article XI, the Commission is entitled to receive service of process.

The commission shall adopt rules providing for mediation and binding dispute resolution and the cost of such actions will be the responsibility of the parties to the dispute. This would apply to disputing member states and member non-member disputes.

If the Commission determines a member has defaulted it may provide remedial training and specific TA or provide written notice of default and the means of curing the default. By a majority vote, the Commission can initiate legal action against the member state in the U.S. District Court for the District of Columbia or a federal district court where the Commission has its principal office. The relief sought may be both injunctive relief and damages.

Rule 24, Alaska Rules of Civil Procedure is amended by entitling the Commission to have standing to intervene in a judicial proceeding in a state pertains to the Compact and in which the validity of a compact provision or rule is an issue for which judicial determination has been sought.

Article XIII. FINANCING OF THE COMMISSION.

The Commission can levy on and collect an annual assessment from each member state to cover cost of operations. The Commission shall determine what formula to use and shall promulgate a rule binding upon all member states.

The Commission cannot incur any obligations prior to securing funding and shall not pledge credit of any member state without prior to being given authority to do so by that member state.

The Commission shall keep accurate books and have an annual audit by a certified or licensed public accountant.

Article XIV. MEMBER STATES, EFFECTIVE DATE AND AMENDMENT.

Any state is eligible to become a member of the Commission and Compact will become effective upon legislative enactment by thirty-five (35) states. Non-member states can participate on a non-voting basis.

No proposed amendments to the Compact may be enacted without unanimous consent of the member states.

Article XV. WITHDRAWAL AND DISSOLUTION.

Member states may withdraw from the compact by repealing the statute that adopted the compact and the effective date of the repeal will be the effective date of withdrawal. The withdrawing state shall be responsible for all assessments, obligations, and liabilities incurred through the effective date of the withdrawal. Reinstatement is accomplished by readopting the compact.

Dissolution of the compact occurs when only one state remains in the compact.

Article XVI. SEVERABILITY AND CONSTRUCTION.

The provision of the Compact are severable. If one or more provisions in the compact are found to be unenforceable, the remaining provisions are enforceable.

Article XVII. BINDING EFFECT OF COMPACT AND OTHER LAWS.

A. Other Laws

Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with this compact.

(B) Binding Effect of the Compact

All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the member states.

If any provision of the compact exceeds constitutional limits of a member state, that provision will be ineffective to the extent of the constitutional conflict.

Article XVIII. INDIAN TRIBES.

The Commission may promulgate guidelines to permit Indian Tribes to utilize the compact and make reasonable effort to consult with Indian tribes in promulgating guidelines.

Sec. 3. Conforming language for financial responsibility section of the Compact.

Sec. 4. Conforming language for entering into agreements with appropriate officers or agencies.

Sec. 5. Conforming language for delegation by agreement for visitation, inspection, or supervision of children, homes, institutions, or other agencies in another party state.

Sec. 6. Redefines executive head from the governor to the commissioner of health and social services and provides for establishing a central compact office.

Sec. 7. Language conformance on short title of Compact.

Sec. 8. The following statutes are repealed:

AS 47.70.030. Designation of authority. The term appropriate public authority is no longer used in this title as the compact is now administered by the member states' member of the commission.

AS 47.70.070. Violations of the compact. The Commission will now determine the violations and the enforcement of the compact, so this section is no longer needed.

Sec. 9. Court Rule change to provide the Commission with notice when a judicial proceeding has been filed relating to the validity of a compact rule or provision is an amendment to Rule 4, Alaska Rules of Civil Procedure.

Rule 24, Alaska Rules of Civil Procedure is amended by entitling the Commission to have standing to intervene in a judicial proceeding in a state pertains to the Compact and in which the validity of a compact provision or rule is an issue for which judicial determination has been sought.

Sec. 10. Those sections of Art. XII(4) become effective only if Section 9 amending court rules is approved by a two-thirds majority vote of each house.

Sec. 11. Effect of Act occurs when 34 other states have ratified the Compact. The Department shall notify the lieutenant governor and the revisor of statutes when this occurs.

Sec. 12. The effective date of sections 1 through 10 is one day after the Health and Social Services notifies the revisor of statutes that 34 other states have ratified the Compact.

LEGAL SERVICES

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MEMORANDUM

September 11, 2007

SUBJECT: Issues Regarding the Proposed Interstate Compact for the Placement of Children (HB 50; Work Order No. 25-LS0265\A)

TO: Representative John Coghill
Attn: Rynniva Moss

FROM: Jean M. Mischel
Legislative Counsel

You have asked for an opinion regarding any state sovereignty and unlawful delegation issues raised in HB 50 that proposes to adopt an Interstate Compact for the Placement of Children. I am uncertain about the meaning of this question as it relates to state sovereignty since the proposed compact does not enact federal law but instead aims to unify state laws if all states adopt the proposed compact as state law.

With regard to any unlawful delegation issues raised in this bill, there are two areas that may be generally said to delegate or waive legislative powers: (1) the "provisional placement" provisions that call for a temporary waiver of state "standards or requirements" pending parent training; and (2) the delegation of fee, enforcement, and rulemaking authority to an Interstate Commission.

The legislature may delegate its law making function only to the extent that the parameters and standards are clearly described by the legislature. What I have in the past advised during meetings on this bill, in order to avoid inconsistencies that are undesirable to an interstate agreement, is to amend other sections of state law that provide for the Department of Health and Social Services to waive, in specified circumstances, training requirements and other standards for foster and adoptive parents, and to review and adopt rules adopted by the Interstate Commission that are otherwise consistent with state laws. I am unable to say with any certainty whether the proposed fee structure to support the Interstate Commission will work since such fees will likely become part of the department's annual budget, subject to legislative appropriation.

If I may be of further assistance, please advise.

JMM:ljw
07-331.ljw

FISCAL NOTE

**STATE OF ALASKA
2008 LEGISLATIVE SESSION**

Fiscal Note Number: _____
 Bill Version: HB 50
 () Publish Date: _____
 Dept. Affected: Health & Social Services
 RDU: Children's Services
 Component: Children's Services Management

() (File name) HB50-DHSS-CSM-02-21-08
 Title: CHILD PLACEMENT COMPACT
 Sponsor: COGHILL
 Requester: HOUSE (HES)

Component No. 2666

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

	Appropriation		Information				
	Required						
OPERATING EXPENDITURES	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Personal Services				81.8	361.0	361.0	361.0
Travel				10.2	244.5	244.5	244.5
Contractual				28.2	62.1	62.1	62.1
Supplies				1.5	5.0	5.0	5.0
Equipment				2.0	5.0	5.0	5.0
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	123.7	677.6	677.6	677.6

CAPITAL EXPENDITURES							
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CHANGE IN REVENUES (0)							
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FUND SOURCE	(Thousands of Dollars)						
1002 Federal Receipts				18.5	98.3	98.3	98.3
1003 GF Match				105.2	579.3	579.3	579.3
1004 GF							
1037 GF/Mental Health							
Other(Specify Type-do not abbreviate)							
Other(Specify Type-do not abbreviate)							
TOTAL	0.0	0.0	0.0	123.7	677.6	677.6	677.6

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time				1	5	5	5
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

The purpose of this Interstate Compact for the Placement of Children is to provide a process through which children subject to this compact are placed in safe and suitable homes in a timely manner; to facilitate ongoing supervision of a placement, the delivery of services, and communication between the states; to provide operating procedures that will ensure that children are placed in safe and suitable homes in a timely manner, and to provide for the promulgation and enforcement of administrative rules implementing the provisions of this compact and regulating the covered activities of the member states

Con't on page 2

Prepared by: Tammy Sandoval, Director
 Division: Office of Children's Services
 Approved by: Karleen Jackson, Commissioner
 Agency: Department of Health and Social Services

Phone 907-465-3191
 Date/Time 02/17/2008
 Date 02/21/2008

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

BILL NO: HB 50

ANALYSIS CONTINUATION

The Office of Children's Services does not anticipate additional need for funding in FY 2009 or FY 2010 for the following reasons:

- (1) Alaska is one of the first states to take no legislation to adopt the new language and 34 other states must also adopt the compact before it can be ratified. Ratification could take up to two years.
- (2) Administrative rules and procedures will take an additional year to develop and implement.

The OCS will need to return to the Legislature for funding in 2011 and 2012 once the compact has been ratified by the states and the start date for implementation of new rules and procedures has been determined.

Once implemented, the Office of Children's Services anticipates that the establishment of an interstate commission for the placement of children, the incorporation of federal home study timelines, development and implementation of home study assessment standards, increased data collection and reporting, more interaction and support with the new commission, expanded training to include other agencies and stakeholders, and increased expenses related to membership participation will require \$677.6 annually.

Personal services: Current staffing for this program is a program coordinator (range 20) and a clerk (range 8). There are approximately 550 interstate cases, both private and custody cases. In addition, the coordinator facilitates and maintains records for private residential placements, which total about 400 cases. The program coordinator facilitates the request process; monitors supervision reports and correspondence between states; provides case management and supervision of cases; and provides liaison activities with other states, state attorneys, private attorneys, court appointed special advocates, and families. The program coordinator also provides training and technical assistance to all interested parties to ensure compliance with compact and OCS policy.

With the new requirements in HB 50, current staff levels will not be able to comply with new data and reporting requirements, higher levels of training, support of the commission, and higher levels of administrative case management and supervision in the field and in the Central, administrative office in Juneau. The OCS will need an additional case worker in Juneau to meet case management, data collection, and reporting requirements to allow the program coordinator to expand case management and supervision of cases. In addition, the program coordinator will be required to expand training to other agencies involved in the new process, including the Division of Juvenile Justice, the courts, guardians ad litem and tribes, while continuing to coordinate, act as liaison and facilitate meetings and activities of the commission. These costs will begin in 2011 as indicated in this note. In 2012, there will also be a need for four additional workers in the field in order to meet the compact's homestudy and supervision deadlines and requirements. (Continued on Page 3)

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

BILL NO: HB 50

ANALYSIS CONTINUATION

The OCS anticipates the need for a Social Worker III in the Central, administrative office in Juneau in 2011 (range 18 – \$81.8), plus an additional \$279.2 in 2012 for 4 additional Social Worker I's – Anchorage, Mat Su, Kenna and Fairbanks (3 range 15's -\$69.7 each, 1 range 15 (Fairbanks) \$70.1).

The OCS anticipates additional expenses in support of the interstate commission for the placement of children to include training, administrative support, travel, meeting and teleconference costs. In 2011, OCS estimates a need for \$10.2 to support travel for the coordinator and commission; \$28.2 contractual for interstate commission membership dues, increased overhead costs (human resources, IT, Dept. of Law services) and other related service costs; and \$3.5 for supplies and equipment. The department estimates an additional need in 2012 of \$234.3 to support travel for homestudy and supervision; \$33.9 contractual for increased overhead costs (human resources, IT, Dept. of Law services) and other related service costs; and \$6.5 for supplies and equipment.

Of the total \$677.6, the federal share will be \$98.3

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 50(HES)
 (H) Publish Date: 2/29/08

Identifier (file name): HB050-DOA-OPA-2-20-08 Dept. Affected: Administration
 Title: "An Act relating to the Interstate Compact for the Placement of Children . . ." RDU: Legal and Advocacy Services
 Component: Office of Public Advocacy
 Sponsor: Reps Coghill, Neuman, Wilson, Hawker, Lynn
 Requester: _____ Component Number: 43

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
-------------------------------	--	--	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This bill would include Alaska among the states agreeing to set up a commission to establish rules regarding the out of state placement of children. It is not expected to have a fiscal impact on OPA.

Prepared by: Joshua P. Fink, Director
 Division: Office of Public Advocacy
 Approved by: Rachael Petro, Deputy Commissioner
Department of Administration

Phone 907-269-3501
 Date/Time 2/20/08, 10:30 a.m.
 Date 2/20/2008

REPRESENTATIVE
JOHN COGHILL
HOUSE RULES
COMMITTEE CHAIRMAN

During Interim: (June-Dec.)
3340 Badger Road
Suite 290
North Pole, Alaska 99705
(907) 488-5725
Fax (907) 488-4271

Alaska State Legislature



DISTRICT 11

During Session: (Jan.-May)
State Capitol, Room 214
Juneau, Alaska 99801-1182
(907) 465-3719
Fax (907) 465-3258
1-877-465-3719

House of Representatives

March 6, 2007

Steve Dale, Commissioner
Department for Child and Family Services
103 S Main Street
Waterbury VT 05671-9800

Dear Mr. Dale:

I introduced HB 50 in the Alaska Legislature after hearing the need at a CSG meeting for a new Interstate Compact. However, we have not scheduled the bill for committee at this time due concerns we have with the current revised ICPC.

We have met with our local ICPC administrator as well as other groups concerned with the revised ICPC and have come to the conclusion that specific items need to be addressed before we can proceed with the bill. These problems include:

- Art. XII (A)(2); Art. XII (C)(c): Enforcement issues
- Art. XIII (B): Program cost
- Art. VI. (B); Art. XI (D): Potential conflicts with state sovereignty
- Art. IX. (A) (C) (D); Art. XI (A) (D) (H): Formulation of regulations

We are strongly supportive of working with the ICPC and other states to improve the process of adopting and placing foster children in order to ensure a safe and timely procedure. This requires a process that is open and responsive. To this end we would like to have the opportunity to view the feedback that the drafters received from the various states about the concerns they had with the draft as well as suggestions for improvement.

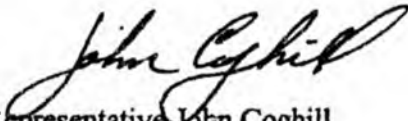
We would like to work with the commission and compact coordinators of CSG to come up with proposals to current problems that we have with the new ICPC and we look

forward to the opportunity to do this. We want an ICPC that we can fully support and will work for passage in our state legislature. However, we are just as strongly committed to block the passage of the ICPC in its current form.

The need for fixing problems that exist with the current ICPC is real and urgent and we support this effort. We look forward to hearing from you and would appreciate your comments and recommendations regarding the issues aforementioned.

Thank you for your work on the new ICPC.

Sincerely,



Representative John Coghill
Rules Chairman

cc:

Leslie McGee
Dr. Bruce Goldberg
Howard Hendrick
Carmen Hooker Odom
Chris Peterson
Lewis H. Spence
Brenda Harvey
Kevin Concannon
Jim Robertson
John Mountjoy



**AMERICAN ACADEMY OF
Adoption Attorneys**

**P.O. Box 33053
WASHINGTON, D.C. 20033-0053
www.adoptionattorneys.org**

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January 14, 2008

VIA EMAIL ATTACHMENT

Carla Fults, Project Manager
American Public Human Services Association (APHSA)
810 First Street, N.E., Suite 500
Washington, DC 20002

Dear Ms. Fults:

On behalf of the American Academy of Adoption Attorneys (AAAA), it is my pleasure to inform you that the January 7, 2008, draft of the new Interstate Compact for the Placement of Children (ICPC) that you provided to us has been approved by AAAA Board of Trustees.

In a message to all the Fellows of the Academy sent today, I announced the official position of the Academy to recommend passage of this version by the states.

Please let me know if you need anything further at this time regarding AAAA's support of The New Compact.

Very truly yours,

Herbert A. Brail, President

HAB/cr

APHSA

American Public Human Services Association

TO: Commissioners, Child Welfare Directors, Compact Administrators,
Deputy Compact Administrators and ICPC Staff

FROM: Carla Fults,
Project Manager

DATE: January 25, 2008

SUBJECT: Endorsement and Revisions of the New ICPC of the New Interstate
Compact *for* Placement of Children. (ICPC)

It is with great pleasure that I inform you that the **American Academy of Adoption Attorneys (AAAA or Quad A) has agreed to full approval and support of the attached version of the New Interstate Compact *for* the Placement of Children (ICPC or New ICPC).** After careful negotiation with the American Academy of Adoption Attorneys, we have successfully negotiated new provisions which address the concerns raised by various private and independent adoption groups throughout the country. The attached document is a result of contributions from state compact administrators, state legal counsels, stakeholders and child and family welfare judges. **The Executive Committee of the National Council of State Human Services (APHSA Policy Council) has endorsed the attached revised version of the New Interstate Compact *for* the Placement of Children (ICPC) for introduction to state legislatures.** In addition, **the executive committees of the National Association of Public Child Welfare Administrators (NAPCWA) and the Association of Administrators of the Interstate Compact on the Placement of Children (AAICPC) have endorsed the attached version of the New ICPC.**

You may recall, between June, 2006 and July, 2007, approximately fifteen (15) states introduced the Proposed New Compact. However, only Ohio, Missouri and Maine were successful in passing the legislation. Private and independent adoption agencies launched an effective campaign to oppose the Proposed New ICPC, asserting that the draft did not adequately address many of the problems and barriers existing under the current ICPC. Such barriers included excessive wait times for ICPC processing before prospective adoptive parents could travel or return to their home state with a child; arbitrary requests and requirements which were not an important or necessary part of the ICPC process; and conflict of laws and unclear processes where two or more states were involved in an interstate adoption. In addition, the group argued that the Proposed New Compact needed to clarify the definition and application of an assessment compared to a home study and whether these terms would represent and require a separate and

additional review when placing a child; to include language that would provide for a choice of law in the state where an adoption is finalized; and lastly, to amend language which indicated that the rules promulgated by the interstate commission would "supersede state law". State legislatures also expressed opposition to language which stipulated that the rules would "supersede state law".

The New Compact now provides for a choice of law (**Article IV**) in the state where the adoption will be finalized; clarifies the definition of assessment and home study and the application of each term (**Article II**); provides for provisional travel for prospective adoptive parents, contingent upon submission, receipt and review of required documents to verify and ensure safety (**Article V**); and clarifies that rules promulgated by the interstate commission shall have the force and effect of administrative rules (**Article XI**). A list of the revised articles is included below. In addition, please find attached the New Compact with revisions in red, the endorsement letter from the American Academy of Adoption Attorneys, a clean copy of the New Compact which does not highlight changes and may be used as enabling legislation when introducing the New ICPC in your state legislature, and the email cover memo in Word format (document).

APHSA will hold an all-state call for questions and answers (Q&A) on Thursday, January 31, 2008 at 3 p.m. E.T. For those states that are planning to introduce the New ICPC before the all-state call and have questions and (or) need assistance, please feel free to contact Carla Fults at (202) 682-0100, ext. 242. APHSA will continue to provide the states with the following services to support enactment of the New ICPC.

- Develop boiler-plate legislative testimony to be used during legislative committee hearings and/or other public events where the primary goal is education on the ICPC. The model testimony will be developed in such a manner as to be customizable for a variety of uses and for a variety of champions and staff.
- Respond to specific questions from the states.
- Convene meetings via teleconference with your attorney general or other state/agency officials to provide clarification of provisions contained within the Compact.
- If necessary, convene an on site briefing with key legislators, legislative staff, executive branch and agency officials and relevant stakeholder groups.
- Provide tailored assistance to individual states at your request.
- Provide expert(s) to testify with you.
- Work with your attorney general or your ICPC staff to include necessary state legislative language which does not alter or change the intent or foundation of the Compact.

On behalf of APHSA, I would like to extend a special thank you to the AAICPC, NAPCWA, and to the many state legal counsels, judicial and interstate administrators and staff who participated in producing this revised version of the New ICPC. If you have questions, please feel free to contact me by email at cfults@aphsa.org or at (202) 682-0100, ext. 242. Thank you in advance for your continued support of the New ICPC.

List of Articles Amended

- Article II. Definitions (Assessment, Home Study; other definitions were added to support overall changes)
- Article IV. Jurisdiction (Choice of Law)
- Article V. Placement Evaluation (Provisional Travel/Placement)
- Article XI. Rulemaking Functions of the Interstate Commission (Interstate Commission)

Attachments:

- The revised copy of the New ICPC with changes in red – Entitled “ The New Compact with revisions shown 010708”
- Endorsement letter from the American Academy of Adoption Attorneys
- Clean version of the New ICPC to be used for state introduction/enactment - Entitled “The New ICPC 2008”
- Word version of the email cover memo – Cover memo for Endorsement of the New ICPC

ALASKA STATE HOUSE OF REPRESENTATIVES



Contact:

Interim Address:

3340 Badger Road
North Pole, AK 99705
(907)-488-5725
Fax# (907)-488-4271

Session

(907)-465-3719
FAX# (907)-465-3258
State Capitol
Room 204

REPRESENTATIVE JOHN COGHILL

MEMORANDUM

Date: September 14, 2007
To: Representative John Coghill
From: Rynnieva Moss, Legislative Aide *R. Moss*
Re: Interstate Compact for the Placement of Children

Everyone agrees the existing compact doesn't work. However, sixteen states have expressed concerns about the power of the Interstate Commission being given the authority to promulgate rules and regulations that would supersede state law.

The areas of the compact that are being questioned are as follows:

1. **Article VI (B)** – a state has **no due process** when it disagrees with the placement authority of the Interstate Commission.
2. **Article IX (A), (C), & (D)** – allows the Interstate Commission to promulgate, interpret, and enforce rules that **supersede "state law, rules or regulation"**.
3. **Article XI (A), (D), & (H)** – Gives the Interstate Commission authority to promulgate rules that have the "force and effect of statutory law and shall supersede any state law, rule or regulation to the extent of any conflict". If adopted by a state, this provision relinquishes the sovereignty of state law.
4. **Article XII (A)(2)** – Gives the compact sovereignty over the states adopted the compact.
5. **Article XII (C)(c)** – Gives the Interstate Commission authority to bring legal action against any state adopting the compact.

6. **Article XIII (B)** – Gives the Interstate Commission authority to assess fees on states and allows the commission to promulgate rules to bind the states to the fees. The Alaska State Legislature has appropriation powers and this clause would, in effect, waive that authority.

It should be noted that the Attorney General's Office has advised OCS Director Tammy Sandoval and Health & Social Services Commissioner Karleen Jackson not to agree to the Compact in its current form.

I have attached HB 50 and highlighted the sections with concerns. Also attached is the legal opinion I received from Jean Mischel yesterday.

HB

65

ALASKA STATE HOUSE OF REPRESENTATIVES

**Contact:**

Interim Address:

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(907)-488-5725
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State Capitol
Room 204

REPRESENTATIVE JOHN COGHILL

SPONSOR STATEMENT

HB 65 *"An Act relating to breaches of security involving personal information, credit report and credit score security freezes, consumer credit monitoring, credit accuracy, protection of social security numbers, care of records, disposal of records, identify theft, furnishing consumer credit header information, credit cards, and debit cards, and to the jurisdiction of the office of administrative hearings; amending Rule 60, Alaska Rules of Civil Procedures; and providing for an effective date."*

In a time when information of every personal type is transmitted and stored electronically, it is necessary that those that have access to the use, storage, and disposal of sensitive consumer information be accountable and responsible.

This legislation deals with eight specific areas designed to secure consumer's private information and ensure their affordable access to their credit information.

- (1) **Breach of Security of Personal Information** - requires disclosure of breaches of security involving personal information.
- (2) **Credit Report and Credit Score Security Freeze** - allows consumer to freeze and unfreeze access to their credit information at their discretion.
- (3) **Consumer Credit Monitoring - Credit Accuracy**
- (4) **Protection of Social Security Number** - by restricting sale and distribution.
- (5) **Disposal of Records** - requires complete destruction of electronic and paper records that contain personal information.
- (6) **Right to File Police Report Regarding Identity Theft** - allowing a person that falls victim to identify theft to make a factual declaration of innocence.
- (7) **Consumer Credit Header Information** - restricts distribution of credit header information.
- (8) **Truncation of Card Information** - setting up guidelines for use of card numbers on receipts.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB085-GOV-OMB-3-25-07
 Bill Version: HB 65
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: All
 Title Security breaches -- Identity theft RDU _____
 Component _____
 Sponsor Rep. Coghill
 Requester House Labor and Commerce Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	***	***	***	***	***	***

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	***	***	***	***	***	***

Estimate of any current year (FY2007) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation establishes a number of requirements and penalties relating to the protection and disclosure of personal information, such as social security numbers.

The bill, if enacted in its current form, could result in the imposition of extremely large financial penalties on the State of Alaska. Article 4 of the bill, relating to social security numbers, would allow individuals to sue the State of Alaska for damages of \$5,000 or actual damages, whichever is greater, in the event of a security breach resulting in disclosure of social security numbers.

Although the State is pursuing all prudent and practical security measures to protect (continued)

Prepared by: Jack Kreinheder, Senior Analyst Phone 465-4676
 Division: Office of Management and Budget Date/Time 3/25/07 10:30 AM
 Approved by: Karen J. Rehfeld, Director Date 3/25/2007
 Agency: Office of Management and Budget

FISCAL NOTE

**STATE OF ALASKA
2007 LEGISLATIVE SESSION**

BILL NO. HB 65

ANALYSIS CONTINUATION

personal information, it is possible that despite these security measures, a security breach could occur that would result in disclosure of over 500,000 records containing individual social security numbers. Under this scenario, an attorney could file a class action lawsuit against the State seeking damages of **\$2.5 billion** or more (500,000 records multiplied by damages of \$5,000 per individual). Even if the State settled such a case for 10 cents on the dollar, the cost to the State would still be \$250 million.

A number of State agencies are required, in order to provide necessary services to Alaskans, to maintain databases containing personal information on hundreds of thousands of Alaskans. In some cases, these databases contain historical information that includes personal information on millions of people. Agencies that are required to maintain databases on large numbers of Alaskans include the Division of Motor Vehicles, the Division of Elections, the Permanent Fund Division, the Department of Health and Social Services, the Department of Public Safety, and the Department of Labor and Workforce Development.

The legislation would also require notification of affected individuals in the event of a security breach resulting in disclosure of personal information. Under a scenario in which the State was required to notify 500,000 individuals by mail, the cost would be over \$100,000 for postage at bulk rates, plus any overtime and/or contractual assistance required to determine the affected individuals and locate current addresses.

While notification of individuals affected by disclosure of personal information is an appropriate practice, certain requirements of the bill, such as written notice (versus e-mail where possible), may increase the cost of such notification.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: HB065-DOA-ETS-3-26-07
 Bill Version: HB 65
 () Publish Date: _____

Revision Date/Time (Note if correction): _____

Dept. Affected: Administration

Title: "An Act relating to Breaches of Security Involving..."

RDU: Enterprise Technology Services

Component: Enterprise Technology Services

Sponsor: Reps. Coghill, Gara

Component No. 2082

Requester: _____

Expenditures/Revenues

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	275.0	319.0	319.0	319.0	319.0	319.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	1,765.6	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	2,040.6	319.0	319.0	319.0	319.0	319.0

CAPITAL EXPENDITURES		0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	2,040.6	319.0	319.0	319.0	319.0	319.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
1156 Receipt Supported Services	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	2,040.6	319.0	319.0	319.0	319.0	319.0

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB65 has 2 primary components related to security breaches: 1) Preventative and 2) Remediation. This fiscal note addresses the Preventative component by providing funding to continue the department's efforts to secure the state's networks and data.

For the past two years, the department has been working on strengthening the security components of our network. We have installed Cisco Security Agent (CSA) on desktop computers and servers throughout the state. We are also working to deploy a demilitarized zone (DMZ) that places all of our databases behind two firewalls, with our public-facing servers deployed between the two firewalls. This effort is scheduled to be completed by June 2008.

Prepared by: Frank Bailey, Special Assistant II

Phone 269-6293

Division: Department of Administration

Date/Time 3/26/04 12:00 PM

Approved by: Kevin Brooks, Deputy Commissioner

Date 3/26/2007

Agency: Department of Administration

FISCAL NOTE

**STATE OF ALASKA
2007 LEGISLATIVE SESSION**

BILL NO. HB 65

ANALYSIS CONTINUATION

The third phase of this security effort is deployment of encryption hardware and software to protect our network as well as legacy data stored and processed on the state's mainframe computer. This fiscal note will provide funding for this final phase of security enhancements to insure that data used by state agencies to provide services is secure from known types of attack. This will be an ongoing effort as attackers have become more sophisticated over time.

Previous funding for security efforts is as follows:

FY05 Supplemental \$5,002,500
FY06 Capital Project \$3,537,500
FY07 Capital Project \$2,000,000
FY08 Capital Request \$4,400,000

The amount requested in this fiscal note would have been requested as an FY09 Capital project, but passage of this legislation will require funding now with an anticipated project completion date of June 2008.

SECTIONAL
CS for House Bill 65(JUD)
(25-LS0311AM)

Article 1. Breach of Security Involving Personal Information

Sec. 45.48.010 Disclosure of breach of security

Describes what a person who owns or uses personal information must do in case of a breach of information.

Sec. 45.48.020 Allowable delay in notification

Describes reasons for delaying notification of a breach of information.

Sec. 45.48.030 Methods of notice

Describes the methods to be used to notify a person that there has been a breach of information. Lists exceptions to the methods of notification relating to cost and number of consumers to be notified.

Sec. 45.48.040 Notification of certain other agencies

Describes when it is necessary to notify other consumer reporting agencies about a breach. There are exceptions to these requirements are also set out.

Sec. 45.48.050 Exception of employees and agents

Lists exceptions for acquisition of personal information by an employee or agent of an information collector.

Sec. 45.48.060 Waivers

No waivers of these sections are allowed.

Sec. 45.48.070 Treatment of certain breaches

A breach of information by an information recipient must be reported to the information distributor so they can comply with the notification requirements if the breach occurred to an information system maintained by the information distributor.

Sec. 45.48.080 Violations

Sets out fines for violations of 45.48.010-45.48.090 by a governmental agency that is an information collector, and information collectors who are not governmental agencies. Defines "governmental agency".

Sec. 45.48.090 Definitions

Defines the following terms: breach of the security; information collector; information distributor; information recipient; and personal information.

Article 2. Credit Report and Credit Score Security Freeze

Sec. 45.48.100 Security freeze authorized

Rights of consumers to prohibit release of their personal information.

Sec. 45.48.110 Placement of security freeze

Sets out procedures for a consumer to request a consumer credit reporting agency to freeze their information.

Sec. 45.48.120 Confirmation of security freeze

Describes the responsibility of the consumer credit reporting agency to notify the consumer when a security freeze has been placed.

Sec. 45.48.130 Access and actions during security freeze

Describes how a consumer can allow access to their information by a third party when a security freeze is in place; how an insurer is to treat a consumer's application if a security freeze prevents access to the consumer's information, and what changes are allowed when a security freeze is in place, and notification requirements. Defines "official information" and "technical change".

Sec. 45.48.140 Removal of security freeze

Sets out procedure for removing a security freeze, how the request for the freeze is to be made, how the consumer credit reporting agency shall respond, and what identifiers are necessary to remove the freeze.

Sec. 45.48.150 Prohibition

Sets out guidelines for reporting to third parties when a security freeze is in place.

Sec. 45.48.160 Charges

Charges to a consumer regarding security freezes.

Amendment No. 2 - Page 10, line 20 (b) Insert: a consumer credit reporting agency may charge a consumer \$10 for placing a security freeze.

Sec. 45.48.170 Notice of rights

Additional notices to be given when a consumer is provided a summary of rights under the Fair Credit Reporting Act (FCRA).

Amendments No. 2 & 3 - Page 11, line 9 (b) Insert: for \$10.
Page 12, lines 17-19 Insert: Under some circumstances, the consumer credit reporting agency may charge \$2 to temporarily lift the freeze.

Sec. 45.48.180 Notification after violation

Describes the notice required if a consumer credit reporting agency violates a security freeze.

Sec. 45.48.190 Resellers

Requires that a consumer credit reporting agency acting as a reseller honor a security freeze that is placed by another consumer reporting agency.

Sec. 45.48.200 Violations and penalties

Describes the rights of a consumer who suffers damages as a result of a breach of their personal information.

Sec. 45.48.210 Exemptions

Lists exemptions to the use of credit information when a security freeze is in place.

Sec. 45.48.290 Definitions

Defines the following terms: account review; consumer; consumer credit reporting agency; reseller of consumer information; security freeze; third party.

Amendment No. 4 – Delete: [Article 3. Consumer Credit Monitoring; Credit Accuracy – In its entirety.]

Article 3. Protection of Social Security Number

Sec. 45.48.400 Use of social security number

Sets out guidelines for handling a person's social security number.

Sec. 45.48.410 Request and collection

Sets out prohibitions and exemptions for requesting or collecting an individual's social security number.

Amendment No. 9 – Page 17, lines 6 - 11 Insert: new paragraph (2) new language to exempt a person engaged in the business of government from being in violation of this section if they request or collect a SSN.

Amendment No. 12 – Page 17, lines 22 - 24 Insert: new paragraph "(6) if the disclosure does not have independent economic value, is incidental to a larger transaction, and is necessary to verify the identity of the individual."

Sec. 45.48.420 Sale, lease, loan, trade, or rental

Prohibitions and exemptions regarding third party use of social security numbers.

Amendment No. 11 – Page 18, lines 4 - 5 Insert: new subsection (c) that makes it a Class A misdemeanor to knowingly sell, lease, loan, trade, or rent an individual's SSN.

Sec. 45.48.430 Disclosure

Prohibitions and exemptions regarding disclosure of social security numbers to third parties.

Amendment No. 9 – Page 18, lines 12 - 17 Insert: new paragraph (2) new language to exempt a person engaged in the business of government from being in violation of this section if they disclose a SSN.

Sec. 45.48.440 Interagency disclosure

Describes when and to whom disclosure is authorized.

Sec. 45.48.450 Exception for employees, agents, & independent contractors

Describes when and to whom disclosure is authorized.

Sec. 45.48.460 Employment-related exception

Describes when use of a social security number should not be restricted.

Sec. 45.48.470 Agency regulations

Procedures for adopting regulations necessary for a state agency to carry out their duties and responsibilities.

Sec. 45.48.480 Penalties

Rights of the state and individuals against persons that knowingly violate these sections.

Article 4. Disposal of Records

Sec. 45.48.500 Disposal of records

This sets out the measures to be followed when disposing of records which contain personal information.

Sec. 45.48.510 Measures to protect access.

Describes the measures that may be taken to comply with Sec. 45.48.500 (above).

Sec. 45.48.520 Due diligence

Lists procedures that if performed show due diligence.

Sec. 45.48.530 Policy and procedures

A business or governmental agency shall adopt written policies and procedures relating to records disposal.

Sec. 45.48.540 Exemptions

Compliance to these sections is not required if a government agency or business is required by federal law to act in another way, or the business is subject to and in compliance with GLBA, or FCRA.

Sec. 45.48.550 Civil penalty

Liability to the state by an individual, business, or governmental agency for violations of these sections.

Sec. 45.48.560 Court action

An individual damaged by a violation of these sections may file a civil action.

Sec. 45.48.590 Definitions

Defines the following terms: business; conducts business; possesses; dispose; governmental agency; personal information; records.

Amendment No. 5 – Page 23, lines 2 - 10: Inserted new language to define "personal information".

Article 5. Factual Declaration of Innocence after Identify Theft, Right to file Police Report Regarding Identity Theft

Sec. 45.48.600 Factual declaration of innocence after identity theft

Describes the conditions that should exist in order for an individual to petition the superior court for a determination of innocence of a crime involving the theft of their identity.

Sec. 45.48.610 Basis for determination

Lists the type of information that may be made part of the record for the court to make a determination of factual innocence.

Sec. 45.48.620 Criteria for determination; court order

Sets the criteria that the court may use to determine a victim's factual innocence.

Amendment No. 6 – Page 24, line 4 changed shall to may, and Page 24, lines 5 to 13 inserted a new subsection (a) with new language for determining a victim's innocence.

Sec. 45.48.630 Orders regarding records

Describes what the court may order regarding the disposition of incorrect records regarding a victim of identity theft.

Amendment No. 6 – Page 24, line 26 Deleted: "deleted, sealed, or"

Sec. 45.48.640 Vacation of determination

States that a court order may be vacated if there has been a misrepresentation of the material.

Amendment No. 6 – Page 24, line 25 Deleted: “fraudulent material”
Inserted: “omission, or false information”

Sec. 45.48.650 Court form

Development of a form to be used under 45.48.620

Sec. 45.48.660 Data base

This section allows the establishment and maintenance of a data base of victims of identity theft, and who has authorization to the information.

Sec. 45.48.670 Toll-free telephone number

Establishes a toll-free number that accesses the information in the data base established in 45.48.660.

Sec. 45.48.680 Right to file police report regarding identity theft

Sets out rights of an individual to file a police report if they suspect they are a victim of identity theft, and the responsibility of a law enforcement agency to make the report even if they do not have jurisdiction.

Sec. 45.48.690 Definitions

Defines the following terms: crime, department, identity theft, perpetrator, and victim.

Amendment No. 7 – Delete Article 7. Consumer Credit Header Information – In its entirety.

Article 6. Truncation of Card Information

Sec. 45.48.750 Truncation of card information

Describes limits on a business regarding the printing of credit or debit card numbers and the exceptions depending on whether the receipt is produced electronically or is handwritten or imprinted.

States that a person may not sell a device that prints more than the last four digits of a credit or debit card on the consumer or merchant copy. Provides for an effective date of January 1, 2009.

Article 7. General Provisions

Sec. 45.48.990 Definitions

Provides definitions of terms.

Sec. 45.48.995 Short Title

Gives Alaska Personal Information Protection Act as the short title of this legislation, amends AS 45.50.471(b) by adding a new paragraph (52), amends the uncodified law of the State of Alaska by adding a new section, and provides for an immediate effective date under AS 01.10.070(c).

INDIRECT COURT RULE AMENDMENTS

Amendment No. 8 – Page 28, line 7 – Insert: new subsection (b) AS 45.48.480(b) added language that changes Rule 82, Alaska Rules of Civil Procedure.

LEGAL SERVICES

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

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MEMORANDUM

April 23, 2007

SUBJECT: CSHB 65(L&C) relating to personal information
(Work Order No. 25-LS0311VE)

TO: Representative Kurt Olson
Chair of the House Labor and Commerce Committee
Attn: Eleanor Wolfe

FROM: *TB*
Theresa Bannister
Legislative Counsel

This memo accompanies the bill described above.

1. Technical change. A technical change was made to sec. 45.48.700(a)(1). The name of the referenced federal act was corrected to read "Fair Credit Reporting Act" (the correct name and the name used elsewhere in the bill) instead of "Fair Credit Protection Act."
2. Interstate commerce. Because this bill could apply to out-of-state businesses that operate in the state, including through the Internet, it raises a constitutional interstate commerce issue. Whenever a bill establishes a requirement that may affect persons operating from another state, there is always a question whether the requirement places a burden on interstate commerce that would not satisfy the federal constitutional commerce clause.
3. Federal law preemption. As you are probably aware, certain federal laws may preempt your new provisions in certain areas. If you would like further information on this issue, please advise.

If I may be of further assistance, please advise.

TLB:ljw
07-223.ljw

Enclosure

HB 65 LIABILITY ISSUES

The Department of Law does not oppose the concept behind HB 65, which will add significant protections for consumers against identity theft. The state does, however, oppose provisions in the bill that will impose liability on the state and its agencies.

The section that causes the Department the most concern is in Article 4 (protection of social security numbers) at Sec. 45.48.480 (penalties) beginning on page 21 of the bill. This section allows the recovery of *actual damages or \$5,000*, whichever is greater, for knowing violations of AS 45.48.400 – 45.48.430. The state's monetary exposure under this section could be enormous. The Department believes this exposure is completely unnecessary:

* This penalty provision will not change the states conduct, and will not further any goals of this bill. The state is committed to securing all of the personal information it must collect and maintain, and has spent millions of dollars upgrading its systems. This effort will continue regardless of HB 65.

* The requirement that the violation be a "knowing" violation does not protect the state. The definition of "knowing" in AS 11.81.900 is broad, and includes only that you be "aware" of your conduct.

* No other state has imposed this kind of liability on its state agencies for these kinds of violations. And for good reason. There is no reason to expose state coffers to billions of dollars in potential damage awards.

* Removing the state from these penalty provisions WILL NOT create a "double standard" between private business and state government for a variety of reasons:

1. Unlike private business, the state does not profit from the sale or use of personal information.

2. Unlike private business, the state is REQUIRED to perform specific statutory duties under state law that require the use, disclosure, and sharing of personal information.

3. Unlike private business, the state cannot insure itself against a potential loss resulting from an inadvertent disclosure of a SSN. Private industry can build these risks into its business plan, and price its products accordingly.

From:
Ed Sniffen
Dept of Law
4/20/2007

4. The state is routinely treated differently than private business when liability is concerned. For example, the state enjoys "discretionary function" immunity for certain tort actions (AS 09.50.250); and state employees have qualified immunity for performing duties required by statute. The state is also exempt of punitive damage awards. The policy behind treating the state differently is clear, and does not create a "double standard."

* HB 65 will, therefore, create liability where none currently exists, and will have the effect of amending state law that currently provides immunity to the state.

* The state is always an attractive target for litigation. If the legislature creates state liability through this bill, the state will get sued. Regardless of the merit of any lawsuit, it will take significant resources to defend the lawsuit.

* Because the state must utilize, process, and maintain records that can contain personal information on hundreds of thousands of state residents, just one breach of the requirements in HB 65 could result in billions of dollars of exposure.

* The state has no objection to requiring its agencies to comply with the provisions of HB 65. But failure to comply should be addressed through the political process, not the legal process.

The Department of law proposes the following amendment to Sec. 45.48.480(b) and (c):

(b) An individual may bring a civil action in court against a person, other than a governmental agency, who knowingly violates AS 45.48.400 – 45.48.430 and may recover actual damages or \$5,000, whichever is greater, and court costs and attorney fees allowed by the rules of court.

(c) A person, other than a governmental agency, who knowingly violates AS 45.48.400 – 45.48.430 is guilty of a class A misdemeanor.

These changes will address the Department's concerns with liability.

Good morning Chairman Olson and other members of the committee

My name is Craig Dahl and I am the President & CEO for Alaska Pacific Bank, which is headquartered here in Juneau. Alaska has been my home for more than 45 years, which includes 34 years of community banking. I am a member and past president of the Alaska Bankers Association and a member of the American Bankers Association Government Relations Council for the past 18 years.

I am here this morning representing the Alaska Bankers Association and my comments will be made in reference to HB 65.

You should have all received a copy of a letter written to chairman Coghill by David Lawer, who is the current President of the Alaska Bankers Association but I would like to reinforce the message contained in Mr. Lawer's letter.

The Alaska Bankers Association, which represents all 9 banks in the state, supports the intention of HB 65 to protect customers' financial information, recognizing the legislature's desire to address these critical issues.

At the same time, we believe it is in the best interest of the bill itself to track as close to federal regulations as possible, and where appropriate, clearly acknowledge the federal preemption for those operating under those regulations.

Our industry already operates under more than 20 federal regulations all intended to address the issues surrounding the transfer and protection of customer information. The most prominent ones for the banks are:

- **Gramm-Leach-Bliley Act of 1999**
- **Fair and Accurate Credit Transactions Act of 2003**
- **Fair Credit Reporting Act**
- **The Electronic Fund Transfer Act**
- **The Right to Financial Privacy Act**
- **The Telephone Consumer Protection Act**

This binder is one of our desk references for "Safeguarding Customer Information"

Most relevant to the discussion on HB65 is **Section V of the Gramm-Leach-Bliley Act**, and the **Fair and Accurate Credit Transactions Act..or FACT Act**.

The FACT Act was a complex piece of federal legislation passed in November of 2003 that involved the efforts of the American Bankers Association, The Credit Union National Association, the Federal Reserve, The Securities and Exchange Commission and the Federal Trade Commission. This ACT addressed several key issues:

- Provided for the full and permanent reauthorization of seven existing key national uniformity provisions
- Added two national uniformity provisions for identity theft prevention measures
- Established permanent preemption of state law related to the nine uniformity provisions which were:
 - Fraud alerts
 - Red flag guidelines
 - Blocking of information resulting from identity theft
 - The truncation of credit card and debit card account numbers
 - The truncation of Social Security Numbers
 - Prohibition of the sale or transfer of debt caused by identity theft
 - Notice by deb' collectors of fraudulent information
 - Coordination of identity theft complaint investigations
 - Prevention of re-pollution of consumer reports
- The Act also acknowledged the states' ability to address matters outside of these nine areas of national uniformity such as laws governing the sale or use of SSN's, alerts for database hacking and increased penalties for identity theft.

The point to be made is simply to assure the committee and those working on this bill, that the financial services industry is fully engaged in this process. At the very core of our industry is "**customer confidence**" with a common commitment to our customers to protect their financial resources and their privacy while meeting their expectations for service.

The Alaska Bankers Association has reviewed HB 65, and reduced our recommended changes to three amendments as outlined in Mr. Lawer's letter. We believe these changes will enable financial institutions to protect the privacy of our customers without inhibiting our ability to provide our customers with the benefits resulting from the responsible transfer of information – i.e. fraud protection, quick credit approvals and convenient ATM services

The first amendment addresses the need for consistent security breach requirements;

- On page 2, line 13, after "breach," insert:
"made a reasonable determination as to whether misuse of the information has occurred or is likely to occur, and if so,"
- On page 3, strike lines 23 and 24 in their entirety
- On page 3, line 25, strike "(d)" and insert "(c)" in its place.
- On page 6, between lines 14 and 15, insert an entirely new section as follows:
"**Sec. 45.48.095. Exemption.** This chapter does not apply to an information collector who is subject to 15 U.S.C. 6801-6827 (Gramm-Leach-Bliley Financial Modernization Act)."

The second amendment suggests language so that restrictions on the use of the SSN# would not inadvertently inhibit an institution to protect the customer;

- On page 19, strike lines 24 – 31 in their entirety.
- On page 20, strike lines 1- 18 in their entirety.
- In their place insert the following:

Sec. 45.48.420. Sale, lease, loan, trade, rental or disclosure. A person may not sell, lease, loan, trade, rent or otherwise intentionally disclose an individual's social security number to a third party unless (i) the person or entity has the written consent to the disclosure from the individual, or (ii) the disclosure is required or authorized by federal or state law. Nothing in this paragraph prohibits the sale,

transfer or disclosure of an individual's Social Security number to a third party if the sale, transfer or disclosure has no independent economic value and is incidental to a larger transaction and is necessary for the purpose of verifying the identity of the individual.

The third amendment offers language to conform this section to federal law and other state laws to prevent abuse of this provision.

On page 17, replace lines 25-26 with the following:

"...immediately (1) initiate an investigation in to the accuracy of such information, (2) indicate that the accuracy of such information has been disputed in any subsequent consumer report containing such information pending completion of the reinvestigation; and, if such information cannot be reverified within thirty days, correct or delete such information in any subsequent consumer reports."

So on behalf of the Alaska Bankers Association, I would urge the committee to consider these amendments as presented.

Thank you for the opportunity to comment on this bill.

Craig E. Dahl, President & CEO
Alaska Pacific Bank

790-5101



AKPIRG

A ALASKA ALASKA PUBLIC INTEREST RES ALASKA PUBLIC INTEREST RESEARCH
PO Box 101093 ♦ Anchorage, Alaska 99510-1093 ♦ Ph: (907) 278-3661 ♦ Fax: (907) 278-9300 ♦ email: akpirg@akpirg.org

AkPIRG Supports HB 65 – Identity Theft Protections for Alaskan Consumers

AkPIRG urges support for HB 65. Identity Theft is an increasing problem, particularly in Alaska. This bill's bi-partisan co-sponsorship shows the importance of this issue and AkPIRG is pleased that members of both parties are working to protect Alaskans from Identity Theft.

According to the Privacy Rights Clearinghouse, over 100 million data records of U.S. residents have been exposed due to security breaches since February 2005. Alaska topped the nation in fraud complaints in 2005: 249 per 100,000 people, according to the Federal Trade Commission (FTC). Identity theft topped the list of nationwide complaints for the sixth year in a row, according to the FTC's annual report. Alaskans lost an average of \$1,062. According to the Privacy Rights Clearinghouse, the average consumer spends 175 hours clearing their name after an identity theft. Identity Theft also costs businesses, large and small, an incredible amount each year.

HB 65 will help Alaskan consumers better protect themselves. The two most important measures of HB 65 will mandate that consumers be notified after a security breach and will allow consumers to freeze their credit reports.

Twenty-five states currently have laws allowing consumers to restrict access to their credit reports, with more states taking this necessary step to protect consumers. This security freeze allows consumers to stop identity thieves before they can set up new accounts in the consumer's name without the consumer's knowledge. Alaskans deserve this protection.

Mandatory notification after a security breach has passed in at least 34 states. Indeed, it was the fact that California had such a law in place in early 2005 that Choicepoint Inc. put security breaches on all of our radar.

It is time for Alaska to take these steps to better protect Alaskan consumers. Other provisions in HB 65 will further shield consumers from identity thieves by protecting private information and assuring that victims of identity theft will be treated fairly in their attempts to clear their name.

Thank you for your attention to this matter and for doing what you can to pass Identity Theft protection legislation as soon as possible.

Thank you for your support of HB 65.
Sincerely,

Steve Cleary
AkPIRG Director

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

SARAH PALIN, GOVERNOR

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-5903
PHONE: (907)269-5100
FAX: (907)276-8554

January 15, 2007

Honorable Jay Ramras
House of Representatives
State Capitol
MS 3100, Room 118
Juneau, Alaska 99801-1182

Re: HB 31, HB 65; Identity Theft Legislation

Dear Representative Ramras:

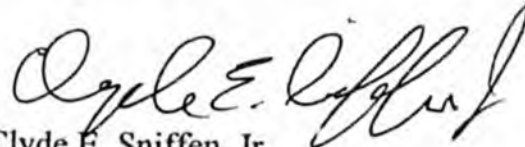
As sponsors of Identity Theft legislation, the Department of Law would like to share with you its letter to Senator Gene Therriault, attached, that explains the Department's concerns with SB 21. HB 31 and HB 65 appear to be identical copies of SB 21. Please share this with you committee members.

Please let me know if you have any questions.

Sincerely,

TALIS J. COLBERG
ATTORNEY GENERAL

By:


Clyde E. Sniffen, Jr.

Assistant Attorney General

CES/mdz
Enclosure

cc: Craig Tillery
Gail Voightlander
Deborah Behr

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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December 19, 2006

The Honorable Gene Therriault
State Capitol
MS 3100
Room 119
Juneau, AK 99801-1182

Re: HCS for CS for SB 169(FIN) am H; Identity Theft Legislation

Dear Senator Therriault:

Thank you again for sponsoring legislation that we hope will make a difference in the fight against identity theft. The Department of Law continues to offer its support for this legislation, although we hope to work with you to resolve some concerns we continue to have. This bill adds comprehensive requirements on individuals, business, and state agencies to safeguard personal information, including social security numbers (SSN's) and the disposal of records containing personal information. The Department of Law has testified in support of the intent of this bill, but has concerns about how this bill may expose the state to substantial liability for inadvertent disclosure of personal information, including SSN's, or the improper disposal of records. As you know, numerous state agencies must collect, disclose, and use personal information for a variety of important state governmental functions.

The state is not suggesting that its agencies should not comply with the requirements of this bill. It should be subject to the same compliance as anyone who handles personal information. The only concern is the potential liability of the state for inadvertent mistakes that will surely be capitalized on by creative class action attorneys. Because the state does not operate like private business, it should not be exposed to the same liability. Unlike private business, the state does not have the choice of simply not engaging in activity that involves the collection of personal information as an option to avoid liability under the bill. The state is required by law to administer a variety of programs. The state does not make money by collecting and selling personal information.

It is also noteworthy that the majority of states with security breach and credit freeze laws do not impose liability on governmental entities. The laws we have reviewed consistently apply to only private business entities and individuals, not state government. Most of these laws also provide enforcement by the attorney general of the state, penalizing violations under the state's consumer protection laws. This is consistent with the principles of sovereign immunity, which recognizes that states should not be held liable for performing the functions of state government.

The Department appreciates the change in Sec. 45.48.080 that limits state penalty exposure to \$50,000. The bill contains two other provisions, however, that allow individuals to sue the state for actual damages (unlimited) or \$3,000, whichever is greater. The first is Sec. 45.48.480, relating to the illegal disclosure of SSN's. The second is Sec. 45.48.550, relating to disposal of records.

The scope of potential liability of the state under these two provisions is much higher than nearly every business subject to the bill because the state is required to engage in transactions involving hundreds of thousands of individuals (i.e., driver's licenses, fishing licenses, PFD applications, etc.). Each of these transactions could involve the use of SSN's. And nearly every transaction will result in records that may contain personal information. Where the actual damage is less than \$3,000, the penalty is punitive. The state is not required to ever pay punitive damages.

These seemingly low amounts of damages imposed for liability under the act grow to huge numbers when multiplied by the potential number of affected consumers. A class action claim for 300,000 drivers or PFD recipients creates a penalty exposure to the state of \$1.5 billion, regardless of whether a consumer has suffered any damages. The potential for a class action lawsuit and the recovery of huge damages will encourage plaintiffs' attorneys probing the law for a loophole and could result in potential liability not intended by the legislature. Even if ultimately successful in defending these lawsuits, the cost of litigation will be substantial.

Sec. 45.48.480 and .550 both contain a requirement that before liability can be found, a person must act "knowingly." This standard does not protect the state from liability for several reasons. The standard is actually fairly low when the definition under AS 11.81.900 is considered. A state employee can act "knowingly" if he or she has a "substantial probability" of knowledge that the conduct is prohibited. Additionally, some state employment contracts may require the state to both indemnify and defend individual employees for a "knowingly" type of act or failure to act.

The Honorable Gene Therriault

December 19, 2006

Page 3

The Department proposes the addition of the following language to both Sec's. 45.48.480 and .550:

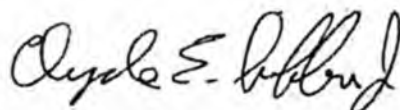
() No claim may be made under this subsection against a governmental entity or its employees.

We believe this language resolves the state's concerns, while still preserving the intent of the bill.

While the Department supports the concepts embodied in this legislation, exposing the state to the potential liability created by this bill is unnecessary. The target of this bill should remain on private industry. Thank you again for your efforts on this legislation. We are available at your convenience to discuss any issues related to the state's concerns.

Sincerely,

TALIS J. COLBERG
ATTORNEY GENERAL

By: 

Clyde E. Sniffen, Jr.
Senior Assistant Attorney General

cc: Craig Tillery, Deputy Attorney General
Kevin Jardell
Gail Voightlander
Randy Ruaro

CES/sjm

DEPARTMENT OF LAW

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COMMENTS FOR THE HOUSE JUDICIARY COMMITTEE
CONCERNING LIABILITY ISSUES
CS FOR HOUSE BILL NO. 65(L&C) (VERSION A)

The Department of Law does not oppose the concept behind HB 65, which will add significant protections for consumers against identity theft. The state does, however, oppose provisions in the bill that will impose liability on the state and its agencies. The Department cannot support this bill until these liability provisions are addressed.

The section that causes the Department the most concern is found in Article 4 (protection of social security numbers) at Sec. 45.48.480 (penalties) beginning on page 22 of the bill. This section allows the recovery of *actual damages or \$5,000*, whichever is greater, for knowing violations of AS 45.48.400 – 45.48.430. Thus, *even with no damages*, a consumer could collect \$5,000 from the state for a simple mistake. When multiplied by the potential number of disclosures, the state's monetary exposure under this section could be enormous while consumers have suffered *NO DAMAGES*. The Department believes this exposure is completely unnecessary, does nothing to further the goals of the bill, and should be amended. The Department has prepared a proposed amendment that is attached.

The following are some common misconceptions about the effect of this amendment:

1. **Shouldn't the State be accountable for disclosing a social security number just like everyone else?**

YES. But the penalty provision in this bill will not change the states conduct, and will not further any goals of this bill. The state is committed to securing all of the personal information it must collect, maintain and disclose, and has spent millions of dollars upgrading its systems. This effort will continue regardless of whether the state is exposed to liability. THE STATE WILL STILL BE SUBJECT TO ALL THE REQUIREMENTS OF THIS BILL.

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2. Why should the state be treated differently than private business under this bill?

Removing the state from these penalty provisions **WILL NOT** create a “double standard” between private business and state government for a variety of reasons:

* Unlike private business, the state does not profit from the sale or use of personal information.

* Unlike private business, the state is **REQUIRED** to perform specific statutory duties under state law that require the use, disclosure, and sharing of personal information.

* Unlike private business, the state cannot insure itself against a potential loss resulting from an inadvertent disclosure of a SSN. Private industry can build these risks into its business plan, and price its products accordingly.

* The state is routinely treated differently than private business when liability is concerned. For example, the state enjoys “discretionary function” immunity for certain tort actions (AS 09.50.250); and state employees have qualified immunity for performing discretionary duties required by statute. The state is also exempt from punitive damage awards. The policy behind treating the state differently is clear, and does not create a “double standard.” Payment of penalties by the state simply makes these funds unavailable for public purposes.

3. Don't other states hold government responsible for these kinds of disclosures?

NO. No other state has imposed this kind of liability on its state agencies for these kinds of violations. And for good reason. There is no reason to expose state coffers to billions of dollars in potential damage awards. HB 65 will, therefore, create liability where none currently exists, and will have the effect of amending state law that currently provides immunity to the state. Only two states (that we know of), out of over 20 that have these laws, even allow the government to be sued; Nevada and Louisiana. In Nevada only the AG can bring a suit against a

government agency. In Louisiana, a private right of action against the government exists, but only for actual damages.

4. **If the state is not liable, how can consumers recover damages if the state discloses a SSN in violation of this law?**

Individual consumers who are harmed by the state's conduct in releasing a SSN can bring a civil action against the state for negligence or any other claim the consumer has. This right exists regardless of this statute. The state gets sued regularly by individuals who believe the state has violated the law. Individuals can do the same for violations of this statute.

5. **Doesn't the requirement that the state act "knowingly" protect the state from negligent or inadvertent mistakes?**

NO. The requirement that the violation be a "knowing" violation does not protect the state. The definition of "knowing" in AS 11.81.900 is broad, and includes only that you be "aware" of your conduct.

The state is always an attractive target for litigation. If the legislature creates state liability through this bill, the state will get sued. Regardless of the merit of any lawsuit, it will take significant resources to defend the lawsuit. Because the state must utilize process, and maintain records that can contain personal information on hundreds of thousands of state residents, just one breach of the requirements in HB 65 could result in billions of dollars of exposure. The state has no objection to requiring its agencies to comply with the provisions of HB 65. But failure to comply should be addressed through the political process, not the legal process.

May 2, 2007

Good afternoon Chairman Ramras and other members of the committee

My name is Craig Dahl and I am the President & CEO for Alaska Pacific Bank, which is headquartered here in Juneau. I am here today representing the Alaska Bankers Association in reference to HB 65.

You should have all received a copy of a letter written to Representative Coghill by David Lawer, who is the current President of the Alaska Bankers Association and my purpose here today is to reinforce the message contained in Mr. Lawer's letter.

The Alaska Bankers Association, which represents all 9 banks in the state, supports the intention of HB 65 to protect customers' financial information, recognizing the legislature's desire to address these critical issues.

At the same time, we believe it is in the best interest of the bill itself to track as close to federal regulations as possible, and where appropriate, clearly acknowledge the federal preemption for those operating under those regulations.

Our industry already operates under more than 20 federal laws and statutes all intended to address the issues surrounding the transfer and protection of customer information. The most prominent ones for the banks are:

- **Gramm-Leach-Bliley Act of 1999**
- **Fair and Accurate Credit Transactions Act of 2003**
- **Fair Credit Reporting Act**
- **The Electronic Fund Transfer Act**
- **The Right to Financial Privacy Act**
- **The Telephone Consumer Protection Act**

I have brought along this binder to show you one of our desk references for "Safeguarding Customer Information", a copy of which was given to Representative Coghill at the beginning of this session.

Most relevant to the discussion on HB65 is **Section V of the Gramm-Leach-Bliley Act, and the Fair and Accurate Credit Transactions Act..or FACT Act.**

The FACT Act was a complex piece of federal legislation passed in November of 2003 that involved the efforts of the American Bankers Association, The National Credit Union Association, the Federal Reserve, The Securities and Exchange Commission and the Federal Trade Commission. This ACT addressed several key issues:

- Provided for the full and permanent reauthorization of seven existing national uniformity provisions
- Added two national uniformity provisions for identity theft prevention measures
- Established permanent preemption of state law related to these nine uniformity provisions:
 - Fraud alerts
 - Red flag guidelines
 - Blocking of information resulting from identity theft
 - The truncation of credit card and debit card account numbers
 - The truncation of Social Security Numbers
 - Prohibition of the sale or transfer of debt caused by identity theft
 - Notice by debt collectors of fraudulent information
 - Coordination of identity theft complaint investigations
 - Prevention of re-pollution of consumer reports

- The Act also acknowledged the states' ability to address matters outside of these nine areas of national uniformity such as laws governing the sale or use of SSN's, alerts for database hacking and increased penalties for identity theft.

The point to be made is simply to assure the committee and those working on this bill, that the financial services industry is fully engaged in this process. At the very core of our industry is "customer confidence" with a common commitment to our customers to protect their financial resources and their privacy while meeting their expectations for service.

The Alaska Bankers Association has reviewed HB 65, and reduced our recommended changes to three amendments as outlined in Mr. Lawer's letter. We believe these changes will enable financial institutions to protect the privacy of our customers without inhibiting our ability to provide our customers with the benefits resulting from the responsible transfer of information – i.e. fraud protection, quick credit approvals and convenient ATM services

The first amendment addresses the need for consistent security breach requirements:

- On page 2, line 13, after "breach," insert:
"made a reasonable determination as to whether misuse of the information has occurred or is likely to occur, and if so,"
- On page 3, strike lines 23 and 24 in their entirety
- On page 3, line 25, strike "(d)" and insert "(c)" in its place.
- On page 6, between lines 14 and 15, insert an entirely new section as follows:
"**Sec. 45.48.095. Exemption.** This chapter does not apply to an information collector who is subject to 15 U.S.C. 6801-6827 (Gramm-Leach-Bliley Financial Modernization Act)."

The second & third amendments as described in our letter are being partially taken care of with amendments submitted by Representative Coghill and we urge the committee to accept these amendments as presented.

Again, the Alaska Bankers Association's primary focus is to try to keep HB65 in line with federal regulations as much as possible. Nonetheless, we also want the committee to know that we support the bill and will not oppose it.

We also want to thank Representative Coghill for working with us on this bill.

Thank you for listening.

Craig E. Dahl, President & CEO
Alaska Pacific Bank
2094 Jordan Ave

(907 790-5101)

Jane Pierson

From: Ed Sniffen [Ed_Sniffen@law.state.ak.us]
Sent: Thursday, May 03, 2007 4:20 PM
To: Jane Pierson
Cc: Karen Lidster
Subject: HB 65 questions . .

Hi Jane! Great to meet you on Wednesday.

I see HB 65 is up on Saturday at 8:00 am. I wanted to make sure I had all of Rep. Ramras' questions about employer/employee liability answered before the hearing. He made some reference to the Holiday case, and questioned whether a business owner can be held liable for the actions of an employee. The Holiday case is very specific to a tobacco seller, and has no application to the liability imposed on businesses in HB 65. In Holiday, the court found that the automatic penalty and suspension provisions of AS 43.70.075(d) did not provide a business with sufficient "due process" to challenge the penalty. Under that statute, a tobacco seller is presumed to be responsible for an employee who is convicted of selling tobacco products to a minor, and is automatically issued a license suspension and a penalty.

HB 65 has no provisions like AS 43.70.075. Instead, "regular" principles of employment law will apply. Those laws say that an employer is responsible for the conduct of an employee while the employee is acting in the course and scope of his/her employment. The Alaska Supreme court in a recent case spelled out this liability in Laidlaw Transit v. Crouse, 53 P.3d 1093 (Alaska 2002). There, the Supreme Court held an employer can be responsible for the conduct of its employees, even when the employee does illegal things (in that case, the employee, a bus driver, was smoking marijuana and got in an accident).

In the context of HB 65, all employers will be responsible for the conduct of its employees that are acting in the course and scope of employment. Otherwise, the law would have no teeth. Every information collector, for example, could not be cited because all their activity is handled through employees. We would be left with going after only individual employees, and never be able to get at the business they work for. This would defeat the entire purpose of the bill. An employer can always argue that its employee was not acting in the course and scope of employment to avoid liability, but the Supreme Court has made that argument a tough one.

Let me know if the Representative has any further questions I can answer before Saturday's hearing.

Thanks!

Clyde "Ed" Sniffen, Jr.
Senior Assistant Attorney General
Commercial and Fair Business Section
Department of Law
1031 W. 4th Ave. #200
Anchorage, AK 99501
(907) 269-5100
(907) 276-8554 (fax)
Ed_Sniffen@law.state.ak.us

*Amend #10
Remove 51C*

m

Emily Stancliff

From: KRISTOPHER KNAUSS [knauss@gci.net]
Sent: Wednesday, May 02, 2007 9:53 PM
To: Rep. Jay Ramras
Subject: HB 65 Language

Attachments: ATT1081381.htm; AK HB 65 pci amd summary.doc



ATT1081381.htm (274 B) AK HB 65 pci amd
summary.doc (...)

Jay,

Please consider amendments to HB 65 this Saturday.

Thanks,

Kris Knauss



Office of Government Affairs

May 2, 2007

The Honorable Jay Ramras, Chairman
House Judiciary Committee
State Capitol, Room 118
Juneau, AK 99801-1182

Re: Alaska House Bill 65

Dear Chairman Ramras:

It is my understanding that House Bill 65 will be considered by the House Judiciary Committee, and I am writing on behalf of ChoicePoint Inc. to offer comment. ChoicePoint provides information, identification, verification, and fraud prevention tools to insurance companies, employers, local, state and federal law enforcement agencies, and local, state, and federal government agencies.

Article 2. Credit Report and Credit Score Security Freeze

Article 9. General Provisions

Our comments relating to **Article 2** are directed at definitions used in the bill that would significantly and negatively alter the application and scope of the bill resulting in unintended consequence.

Specifically, our concerns are in **Article 9, Section 45.48.990**, and the definitional language used for "consumer credit reporting agency," "credit report" and "security freeze."

The provisions of Article 2 relating to credit report security freeze correctly apply to a "credit report" and a "consumer credit reporting agency." However, the actual definitional language used in Article 9, Section 45.48.990 for "credit report" and "consumer credit reporting agency" is overly broad. The result is the bill would capture non-credit information and databases that are used for fraud prevention and public safety purposes.

The current definitional language for the terms "credit report" and "consumer credit reporting agency" are identical to the definitions for a "consumer report" and a "consumer reporting agency" as defined in the federal Fair Credit Reporting Act. The two terms are not synonymous. The definitions for "consumer report" and "consumer reporting agency" in the federal FCRA are umbrella terms used to define all "consumer reports" regulated by the Federal Trade Commission, including data other than credit. In short, a credit report is a consumer report under the federal Fair Credit Reporting Act, but not all consumer reports involve credit data.

As you are undoubtedly aware, the public policy and legislative intent of "credit security freeze" legislation, dating back to its first passage in California, is to allow a consumer to "freeze" access to their credit report by third parties for credit transactions as an identity theft prevention tool.

Page Two, May 2, 2007

The early laws – California, Vermont, Louisiana - all reflect this public policy and legislative intent, providing for a “freeze” on a consumer’s credit report, as do subsequent laws passed in states such as Washington, Pennsylvania, Connecticut, New York, and Illinois.

While this distinction may appear insignificant or technical in nature, the use of the definition of “consumer reporting agency” and “consumer report” as found in the federal FCRA would legislate requirements on consumer reports which have no credit data and are not used for credit-granting purposes, and on companies who are not credit reporting agencies and who do not maintain, collect, or house consumer credit data.

ChoicePoint provides employment, residential, and volunteer background screening services, which includes criminal and other non-credit information, that are regulated as consumer reports. In Alaska alone, numerous nonprofits benefit from background screening from ChoicePoint through our VolunteerSelect program. The organizations we serve in Alaska include numerous churches and other religious organizations; Boys & Girls Clubs of Alaska, Big Brothers Big Sisters, and related youth support organizations; the Alaska State Hockey Association, Pop Warner Football, and other youth sports organizations.

Additionally, ChoicePoint provides various underwriting tools and information to insurers that are also regulated as “consumer reports” by the federal Fair Credit Reporting Act. Most notable is our C.L.U.E. report, a claims loss history report. A C.L.U.E. report does not contain consumer credit information nor is it used for credit-granting purposes.

However, ChoicePoint is not a “credit reporting agency.” ChoicePoint does not maintain or house credit files or credit data on individual consumers. Further, ChoicePoint does not sell or produce credit reports that are utilized by third parties in consumer applications for credit cards, loans, or any retail consumer credit purchase.

For ChoicePoint and other consumer reporting agencies who are not credit reporting agencies, using the definitions for “consumer reporting agency” and “consumer report” would extend the “freeze” to reports which have no credit data, are not used for credit-granting purposes, and many of which are used for fraud prevention and public safety purposes. Thus, to legislate a freeze capability would allow the fraud prevention tool to become a fraud enabling tool.

The only reason a consumer would want or need to “freeze” a C.L.U.E. report or their criminal history is to commit insurance fraud, or to hide nefarious information. Otherwise, these reports have no value to identity thieves for credit or financial information.

Other states have reconciled the “consumer report” versus “credit report” issue with appropriate definitional and other language clarifying the scope and purpose of a “security freeze.” I am including relevant examples of those definitions and provisions for your review and consideration.



Page Three, May 2, 2007

Suggested Definitions

Article 2, Section 45.48.290

(4) "Security freeze" means a restriction placed on a consumer credit report at the request of the consumer that prohibits a consumer credit reporting agency from releasing all or any part of the consumer's credit report or any information derived from the consumer's credit report relating to the extension of credit without the express authorization of the consumer.

(Texas, South Dakota, Utah, Wisconsin, Kansas, Kentucky, Hawaii, Illinois, Minnesota, Oklahoma, Rhode Island, Wyoming, Arkansas, West Virginia, Mississippi laws; AZ, GA, OR, WA, NE, NM, MI bills)

Article 2, Sec. 45.48.200

(.2) Any person or entity for use in setting or adjusting a rate, adjusting a claim, or underwriting for insurance purposes.

(Colorado, North Carolina, South Dakota, North Dakota, Wisconsin, Kansas, Kentucky, Vermont, Illinois, Florida, New Hampshire, Hawaii, Oklahoma, District of Columbia, Pennsylvania, Delaware, Mississippi, West Virginia, Arkansas laws; AZ, GA, MD, MI, MT, NE, VA bills)

Article 9, Sec. 45.48.990

(2) "consumer credit reporting agency" means any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of maintaining consumers' credit information for the purpose of furnishing credit reports to third parties."

(3) "Credit report" means any written, oral or other communication of any credit information by a credit reporting agency which operates or maintains a database of consumer credit information bearing on a consumer's credit worthiness, credit standing, or credit capacity."



Office of Government Affairs

Page Four, May 2, 2007

Article 4. Protection of Social Security Numbers

ChoicePoint supports efforts to regulate the public display of a Social Security number to the general public by a business or commercial user. In addition, we support strong penalties for those who use SSNs to misappropriate the identities of others for fraud or to harm the individual.

However, Sections **45.48.410**, **45.48.420**, and **45.48.430** all establish over-reaching restrictions on beneficial and necessary law enforcement, government, business, and commercial use of SSN data, notwithstanding the limited exemptions provided.

Notwithstanding the current exemptions, the regulated uses that would currently be negatively impacted include those that occur under the federal Fair Credit Reporting Act, federal Gramm-Leach-Bliley Act, the federal Driver's Privacy Protection Act, verification, and administration purposes, national and homeland security purposes, and fraud prevention.

Article 7. Consumer Credit Header Information

ChoicePoint opposes **Article 7** in its entirety. However, ChoicePoint does not oppose regulation of this data, which all ready occurs under existing stringent federal regulatory structure.

ChoicePoint provides information and verification products and services that rely on identifying information from credit headers. These products and services are used by law enforcement, government, private and charitable organizations, and business entities to detect and prevent fraud, and to locate, verify or authenticate a person's identity. Prohibiting or restricting access to header information would be a significant blow to the many important business and societal needs, including law enforcement, child support enforcement, homeland security, and more.

No state has a law regulating credit header information, and there are ample federal protections. Information commonly referred to as credit header information is strictly regulated by two federal laws: the federal Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681 et seq. and the federal Gramm-Leach-Bliley Act (GLBA), 15 U.S.C. 6801 et seq.

Page Five, May 2, 2007

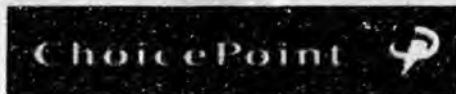
When the information is attached to a credit report, the information is governed by the FCRA. The permissible purposes sections of these laws are very narrowly tailored and designed to specifically limit who can obtain access to credit reports, including the "credit header" information in those reports, and under what circumstances.

When the information is not attached to a credit report, the information is regulated by GLBA. The GLBA limits the ability to transmit "credit header" information and allows for certain specific and societal beneficial uses. 15 U.S.C. 6802(e). This information can only be shared with known entities for specific uses permitted under the exemptions. Typically these uses are authentication and verification of identities, the prevention and detection of fraud, assessing institutional risk, and law enforcement investigations.

By restricting the access and use of this data, Alaska would be uniquely positioned as an outpost for fraudsters, criminals, and terrorists to avoid detection and location.

Alaska government, domestic Alaska businesses, and national and international companies that do business in Alaska utilize this data daily to combat fraud and crime:

- Law enforcement. Credit header information provides the most current contact information enabling law enforcement to locate witnesses and suspects, make arrests, thwart unlawful activities, and collect criminal fines.
- Homeland Security. The federal government relies heavily on credit header information to verify identity, thwart terrorist activity, and locate witnesses and suspects in connection with threats against our homeland.
- Child Support Enforcement. Credit header information is widely used by state government law enforcement agencies to locate deadbeat parents and enforce outstanding child support debts.
- Financial Institutions. Financial institutions use credit header information to comply with the US Patriot Act. This provision requires financial institutions to verify the identity of customers opening up new accounts.



Office of Government Affairs

Page Six, May 2, 2007

- Retailer fraud. Credit header is used in the on-line and off-line environment to validate and authenticate a consumer's identity, so that fraudsters and criminals cannot impersonate legitimate buyers.
- Insurance fraud. Credit header data is critical in helping insurance companies prevent fraudulent insurance claims and are used widely to verify identity to ensure that insurance claims are not paid to undeserving individuals.

Thank you for your consideration of these issues. I would be happy to meet or speak with you at your convenience. I can be reached at 770-752-3383 during the day, and by email at Jon.Burton@ChoicePoint.com.

Sincerely,

Jon Burton, Vice President
State Government Relations

Consumers Union

136

To: Senator Gene Therriault, c/o Heather Brakes
From: Gail Hillebrand
Date: March 22, 2007
Re: Responses to ChoicePoint letter of March 14, 2007

Ms. Brakes asked me to provide information in response to the issues raised by ChoicePoint about SB 21 in their letter of March 14, focusing on Consumers Union's views on the implications of the changes sought by ChoicePoint, what other states have done, and any recommended compromise language.

Summary of recommendations:

- The definitional changes to consumer report, credit report, and security freeze sought by ChoicePoint would have adverse effects. SB 21 already uses an approach adopted elsewhere of exempting consumer reports that are of a specialty, non-account opening nature. SB 21 already exempts the types of screening reports that ChoicePoint offers as the reason for seeking definitional changes. No change in these definitions is recommended.
- The insurance exemption is found in some states and not others, but in some states it is narrower than what ChoicePoint has proposed. We offer language below.
- The restrictions related to sale, posting, and mailing of the Social Security numbers are similar to what many other states have done. Some states also restrict the collection of SSNs. We recommend no change in Article 4.
- In the spirit of compromise, the complex provisions of Article 7 could be deleted without undermining the remainder of the measure.
- Two technical changes in Article 2 on the security freeze would be valuable. The first is to delete the certified mail requirement for lifting the freeze, which is not commonly required in other states. The second is to require that resellers be obligated to honor a freeze already found on a consumer report which they purchase, so that the reseller exemption does not become a loophole. Other states take this approach.

1. ChoicePoint's proposals to change three basic definitions would create problems. SB 21 already contains an exemption to exclude screening for employees, tenants, criminal records, fraud prevention, and personal loss history. No other change is needed or desirable.

ChoicePoint's proposed narrowing of the definitions of consumer reporting agency, consumer report, and security freeze would reduce the security freeze solely to credit purposes. However, to be most effective in preventing the new account form of identity theft, the freeze should cover not only credit reports for credit purposes, but also any consumer report consulted for the purpose of opening a new account for the provision of goods or services for later payment. When an identity thief opens a new account for utilities or a phone and runs up an unpaid bill, this will reflect poorly on the consumer's credit record whether or not the account is technically a credit account. According to the Federal Trade Commission's January 2007 ID theft complaint

West Coast Office

1535 Mission Street • San Francisco, CA 94103
415.431.6747 Tel • 415.431.0906 Fax

report, more consumers complained in 2006 about the identity thieves opening fraudulent new accounts for cell phone, regular phone, and utility accounts than the number of consumers who complained about the opening of false new credit card accounts. In 2006, complaints about opening false new accounts for cell phone, regular phone, and utility accounts totaled 17.4% of ID theft complaints, while complaints about new credit card accounts comprised 15.2% of the total.

The issue raised by ChoicePoint about criminal, tenant, and employment screening plus fraud prevention has already been fully addressed in SB 21. Section 45.48.200(10) already exempts:

(10) a consumer reporting agency if the data base or file consists entirely of information concerning and used solely for one or more of the following purposes:

1. criminal record information;
2. personal loss history information;
3. fraud prevention or detection;
4. tenant screening; or
5. employment screening; or [Section 11 follows].

SB 21's approach is the same as Florida law. The Florida law, HB 37, section 501.005(12)(j), uses the same exempting language, for databases which are composed "entirely" of screening information and are used "solely" for one or more of the stated screening purposes. It also includes the same list of exempt purposes.

Florida's law states in relevant part:

(12) The provisions of this section do not apply to the use of a consumer report by the following persons or for the following reasons:

(i) A consumer reporting agency's database or file which consists entirely of information concerning, and is used solely for, one or more of the following:

1. criminal record information.
2. personal loss history information.
3. fraud prevention or detection.
4. tenant screening.
5. employment screening.

The full text of the Florida law can be found at:

<http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h0037er.doc&DocumentType=Bill&BillNumber=0037&Session=2006>

The Montana security freeze bill, which has cleared policy committees in both houses, uses the exact language as the Florida law, but with the exempted categories listed in a different order. The New Mexico legislature recently adopted similar language in a bill which has passed both houses and awaits the Governor's signature. The New Mexico bill applies to releases "from a consumer reporting agency's database or file that consists only of and is used solely for one or more of the following:" and then includes a similar list to the Florida list, although the New Mexico list omits "personal loss history."

Recommendation One: SB 21, Section 45.48.200 already exempts the use of identified types of specialty databases. The proposed changes to the definitions of consumer reporting agency, credit report, and security freeze should be rejected.

2. Adding an insurance exclusion raises two policy choices: should any exclusion be limited to underwriting rather than also covering claims adjusting, and should any exclusion expressly leave to other law questions of the appropriateness of using consumer credit information in making insurance decisions?

ChoicePoint also proposes exempting insurance uses from the freeze. States are going both ways on this issue, some are exempting some or all insurance uses, while others are including insurance uses consistent with the goal of giving consumers more ability to require consent before information from their consumer reporting files is made available to others.

ChoicePoint offers language that would exempt not only underwriting (pricing) but also "adjusting a claim." There are policy questions, quite apart from the freeze issues, about the appropriateness of using some types of consumer reporting information, such as bill payment patterns and credit usage patterns, to price insurance and to decide whether or how much to pay on insurance claims (claims adjusting).

Of the 28 security freeze laws enacted to date (27 states plus DC), ChoicePoint cites 15 as having an insurance exclusion. However, some of the states it cites have worded the exclusion more narrowly than the language ChoicePoint offers for Alaska.

ChoicePoint cites Oklahoma and Illinois, among other state laws, in support of its proposed language, but both of those states have a narrower exemption, reaching only: "Any person using the information in connection with the underwriting of insurance." (Omitting the "adjusting a claim" language.) North Carolina narrows the language in a different way with its exemption limited to property and casualty insurers.

ChoicePoint also cites a freeze bill in West Virginia. That bill contains an important addition to the exemption not included in the language proposed by ChoicePoint's March 14 letter. The West Virginia bill, SB 428, p. 8, section (j)(10) as enrolled, exempts insurance purposes "to the extent not otherwise prohibited by law." This clarifies that the freeze exemption is not independently authorizing these uses. The posted version of North Dakota's HB 1417 uses similar language, adding to its insurance exemption a statement that: "This exemption does not determine or affect whether these uses are permitted under other law."

The value of adding this type of language is that it makes it clear that any exclusion from the freeze does not decide the controversial issue of whether credit information is a proper source of information to use in setting insurance pricing.

Recommendation Two: If a decision is made to exclude insurance, the narrower way to do so is the Wyoming/Illinois approach which is limited to underwriting and not to claims. There should also be language to clarify that the exemption doesn't endorse this use of consumer report information. To do this, Article 2, Sec. 45.48.200 would be amended to add:

(12) a person using the information in connection with the underwriting of insurance. This exemption does not determine or affect whether such use is permitted under other law.

3. The Social Security number restrictions are important and should be retained in the bill

A number of states have provided their consumers with protection for their Social Security numbers which are similar to most of the protections found in SB 21.

Collection of SSNs restricted: Section 45.48.400 restricts the request and collection of individual SSNs. Other forms of identification may be sought. The closest state law is New Mexico, which prohibits businesses from requiring an SSN unless it will be used in a manner consistent with state or federal law or as part of an application for credit or in connection with an annuity or insurance. N.M. Stat. Ann. § 57-12-3. For obligations on government agencies not to collect SSNs, see North Carolina law, which says that no government agency shall "collect social security number from an individual unless authorized by law to do so or unless the collection of the social security number is otherwise imperative for the performance of that agency's duties and responsibilities as prescribed by law. Social security numbers collected an agency must be relevant to the purpose for which collected and shall not be collected until and unless the need for social security numbers has been clearly documented." N.C. Gen. Stats. Sec. 132-1.8(b)(1).

Posting, display, use on cards, and mailing of SSNs restricted: Section 45.48.400 restricts making available to the public an SSN, printing the SSN on a card required for access to products or services, requiring internet transmission of non-encrypted SSNs, requiring the user to access an Internet site unless another PIN or password is also used, and printing an SSN on certain mailed materials, with exceptions for some types of mailings. This is a very standard list of restrictions, found in many other state laws. Some states adopt the full list, such as Colorado, North Carolina, Rhode Island, Illinois, Pennsylvania, Arizona, New Mexico, Minnesota and California, in statutes similar to Section 45.48.400 with some variations in the wording of the mailing section. New Jersey and Hawaii also prohibit all of these uses, with slight variations in the statutory wording. Additional states such as Connecticut and Virginia have a similar list but omit the restriction on the mailing of SSNs.

Sale of SSNs: Section 45.48.420 restricts sale, lease, loan and rental of SSNs, with exceptions for express authorization by law and for requests to consumer reporting agencies for reports. This section is stronger than that found in the current laws of other states. North Carolina law does require an individual's written consent before the intentional sale, lease, loan, rent or trade of an SSN, but only where the party making the disclosure "knows or in the exercise of reasonable diligence would have reason to believe that the third party lacks a legitimate purpose for obtaining the individual's social security number." N.C. Gen. Stats. § 75-62(a)(6).

Other disclosure: Section 45.48.430 prevents the disclosure of SSNs, with exceptions. There are exceptions where authorized by law, the disclosure is to a financial institution to facilitate a transaction of the individual, the disclosure is part of a request to a consumer reporting agency for a report or the disclosure is for a background check or law enforcement purposes. In general, the SSN should not be needed outside of the contexts of credit, employment, taxes, and investment. All of those uses should fall under one of the exemptions already found in section 45.48.430.

Recommendation Three: Consumers Union recommends that no change be made in the Social Security number sections of the bill.

4. Article 7 on consumer credit header information addresses a real issue but could be eliminated without damage to the rest of the bill.

The restriction on the provision of credit header information was included in the Consumers Union/US PIRG model anti-ID theft law at the request of our partner in the effort, US PIRG. The section addresses a real problem – that consumer reporting agencies offer access to individual's Social Security numbers which they maintain in databases containing Social Security numbers that were pulled from credit reports before the federal Gramm Leach Bliley Act went into effect, or which have been added later after a consent from the consumer to the sharing of personal information. The information in the credit header database then can be sold free of the restrictions which apply to the sale of consumer reports. Article 7 is designed to change that result.

Recommendation Four: While we believe that the sale of SSNs pulled from credit headers is an important issue, it is one that Alaska might choose not to be the pioneering state in addressing. If you are looking for areas in which to respond to the ChoicePoint proposals in a spirit of compromise, Article 7 could be removed from the bill without doing damage to the remainder of the measure.

5. Two technical changes in the security freeze section are needed.

HB 65 Page 7 line 15

SB 21, page 9, line 30, requires the use of certified mail to lift or remove a security freeze when mail is the method by which removal is requested. While many states require certified mail to place the freeze, they do not require it to lift the freeze, but instead permit regular mail as the form of mail to be used, along with the unique PIN, to lift or remove the freeze.

Consumers Union believes that certified mail is an unnecessary hurdle to the use of a freeze even with respect to placement of the freeze. Whatever choice is made about requiring certified mail for placing the freeze, consumers should be able to lift and remove the freeze using regular mail.

Recommendation Five: Delete "certified" in SB 21 at page 9, line 30.

The other technical change is to add a requirement commonly found in other state freeze laws that exempt resellers must honor a freeze already in place on a consumer reporting file. SB 21 exempts resellers from an obligation to place, lift or remove a security freeze. However, it omits the commonly found requirement that a reseller honor a freeze placed at the CRA from whom the reseller acquires the report. Other state laws generally require that resellers honor a security freeze. For example, California law exempts resellers but adds: "However, a consumer credit reporting agency acting pursuant to [the reseller section] shall honor any security freeze placed on a consumer credit report by another consumer credit reporting agency. Cal Civil Code §1785.11.4. Minnesota law is similar. It exempts resellers and then states: However, a consumer reporting agency must honor any security freeze placed on a consumer report by another consumer reporting agency." Minn. Stats 13C.018.

Recommendation Six: In SB 21, page 14, line 21, add: "However, a consumer reporting agency must honor any security freeze placed on a consumer report by another consumer reporting agency."

Thank you for soliciting comments from Consumers Union. If we can provide any further information, please contact Gail Hillebrand or Michelle Jun at (415) 431-6747, or hillqa@consumer.org and junmich@consumer.org.

415-431-0906 FAX



May 1, 2007

The Honorable Jay Ramras, Chair
House Judiciary Committee
Alaska State Capitol, Room 118
Juneau, Alaska 99801-1182

HB 65 (Coghill and Gara)—Support

Dear Chair Ramras:

On behalf of the members of AARP in Alaska, we urge you and your colleagues on the House Judiciary Committee to support HB 65, authored by your Committee colleague Representative John Coghill and Representative Les Gara and co-sponsored by you and your Committee members Representatives Bob Lynn and Ralph Samuels as well as Representatives Fairclough, Kawasaki, Kerttula, Gatto, Neuman and Olson. This bill builds on much of the excellent work done last year by Senators Gene Therriault and Gretchen Guess.

As you can see, addressing the issue of identity theft has always been and still is a bipartisan issue.

AARP believes HB 65 will be one of the most comprehensive identity theft bills in the United States. It should be. The Legislature should provide our citizens with effective protections against the unauthorized dissemination of information about their use of financial, credit, retail, and communications services. HB 65 will accomplish this.

Obviously, an issue that has attracted much attention is the unauthorized acquisition of, or access to, records containing the sensitive personal information of an individual as the result of a security break.

In 2006, AARP analyzed 244 publicly disclosed security breaches and found that, between January 1, 2005 and May 26, 2006, the names of 89.8 million people were potentially exposed to identity theft as a result of security breaches.

We also found that older users of the Internet were much less likely to participate in on-line commercial activities. Forty-three percent of our younger members, aged 50 to 64

do "not at all" trust companies providing information or services on the Internet; only nineteen percent indicated they "mostly" or "completely" trust such companies.

The widespread use of Social Security numbers in both the public and private sectors has raised important concerns about the ability of identity thieves to gain access to people's Social Security numbers. Many public records that contain SSNs are available on the Internet. A 2004 federal Government Accountability Office report estimates that up to 48 percent of our nation's population lives in a county that makes SSNs contained in public records accessible via the Internet.

You have all heard the horror stories of identity theft victims. How long it takes to clear their records, how much they have to spend in the process, the credit problems they often face for years. I'll give you another one that I hope will convince you to support HB 65: older identity theft victims have higher mortality rates than non-victims.

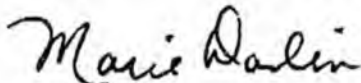
Will HB 65 solve all identity theft problems? No. Will it help? Yes. Should you support it? If you care to join in the fight against identity thieves, if you care about protecting yourselves, your families, and your constituents, we certainly hope so.

AARP strongly recommends an "AYE" vote on HB 65.

Should you have any questions about our position, please feel free to contact me (586-3637) or Patrick Luby, AARP Advocacy Director (907-762-3314).

Thank you for your consideration.

Sincerely,



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CC: Vice-Chair Nancy Dahlstrom
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Representative Ralph Samuels
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Representative Lindsey Holmes
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Representative Les Gara
Senator Gene Theriault

Sec. 28.10.505. Disclosure of personal information contained in motor vehicle records.

- (a) Notwithstanding AS 40.25.300 and except as provided in this section, the department may not disclose personal information contained in motor vehicle records maintained by the department under this chapter.
- (b) Personal information shall be disclosed for use in connection with matters of motor vehicle or driver safety or theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles and dealers by motor vehicle manufacturers; and removal of nonowner records from the original owner records of motor vehicle manufacturers as required by federal law.
- (c) Personal information may be disclosed if the requesting person demonstrates, in a form and manner the department prescribes, that the requesting person has obtained the written consent of the person who is the subject of the information.
- (d) Personal information may be disclosed by the department upon proof of the identity of the person requesting a record and representation by the requesting person that the use of the personal information is strictly limited to one or more of the following uses:
- (1) for use by a government agency, including a court or law enforcement agency, in carrying out its functions, or a private person or entity acting on behalf of a government agency in carrying out its functions;
 - (2) for use in the normal course of business by a legitimate business or an agent, employee, or contractor of the business, but only
 - (A) to verify the accuracy of personal information submitted by an individual to the business or an agent, employee, or contractor of the business; and
 - (B) if the information submitted is not correct, to obtain the correct information, but only for the purposes of preventing fraud by pursuing legal remedies against, or recovering on a debt or security interest against, an individual;
 - (3) for use in connection with a civil, criminal, administrative, or arbitration proceeding in a court or government agency or before a self-regulatory body, including service of process and the execution or enforcement of a judgment or court order;
 - (4) for use in research activities, or in producing statistical reports, if the personal information is not published, redisclosed, or used to contact an individual;
 - (5) for use by an insurer or insurance support organization, or by a self-insured entity, or an agent, employee, or contractor of an insurer, in connection with claims investigation activities, anti-fraud activities, rating, or underwriting;
 - (6) for use in providing notice to the owners of towed or impounded vehicles;

(7) for use by an employer or an agent or insurer of an employer to obtain or verify information relating to a holder of a commercial driver's license that is required under 49 U.S.C. 31101 - 31162 (Commercial Motor Vehicle Safety Act);

(8) for use in connection with the operation of private toll transportation facilities;

(9) for use in connection with a legitimate business operating under a contract with the department;

(10) for bulk distribution for surveys, marketing, or solicitations if the person who is the subject of the information has provided written consent to the release; and

(11) for any other purpose specifically authorized by law that is related to the operation of a motor vehicle or related to public safety.

(e) Personal information contained in an individual record may be disclosed, without regard to the intended use of the personal information, if the person who is the subject of the information has provided written consent to the release.

(f) In this section,

(1) "disclose" means to engage in a practice or conduct that makes available or makes known personal information contained in records of the department about a person to another person, organization, or entity by any means of communication;

(2) "individual record" means a record containing personal information about a designated person who is the subject of the record, as identified in a request for information;

(3) "personal information" means information that identifies a person, including a name, address, telephone number, and medical or disability information, but does not include information on vehicular accidents, driving- or equipment-related violations, driver's license or registration status, or a zip code.

Sec. 28.10.510. - 28.10.5401 Liens; nonresident owners. [Repealed, Sec. 7 ch 178 SLA 1978].

Repealed or Renumbered

Article 2

Disclosure Requirements

Section

- 200. Public information principles.
- 210. Access to records; rights; requirements; format.
- 220. Requestor's justification or need for records.
- 230. Nondiscrimination.
- 240. Reasonable fees required.

2 AAC 96.200. Public information principles

Statute text

(a) It is the policy of the executive branch of government to disclose public records and to provide copies of those records in an expeditious manner. Disclosing public records and making copies of them upon payment of the required fees, if any, is a public agency obligation.

(b) It is the policy of the executive branch of government to limit the collection of personal information only to that data necessary for the efficient administration of a public agency.

(c) To ensure that public information is widely available to the public, public agencies are to comply with AS 40.25.115(e) regarding submission of information to the Alaska State Library about

(1) public information that a public agency collects, compiles, or publishes, including information regarding databases used by the agency to maintain public records; and

(2) information about the electronic services and products routinely provided to the public, the public agency shall provide information to the Alaska State Library when electronic services and products are made available to the public and when electronic services or products of that public agency are substantially modified.

2 AAC 96.210. Access to records; rights; requirements; format

Statute text

(a) Subject to the provisions of AS 40.25.110 - 40.25.220, a public record maintained by a public agency is available for inspection and copying in the format in which that agency maintains or disseminates the record. A public agency shall duplicate and provide copies

of a public record upon request and upon payment of the applicable fee as described by this chapter.

(b) A public agency is not required to compile or summarize its public records in response to a request for public records.

(c) A public agency is not required to manipulate its data to create new records in response to a request for public records. A public agency may manipulate its data to create electronic services and products if

(1) the public agency can do so without impairing its functioning;

(2) the data is protected from intentional or accidental modification or destruction; and

(3) the requestor pays for the cost of developing the requested electronic service or product, based on fees established by the public agency under 2 AAC 96.460.

(d) When providing public records or electronic services or products, a public agency shall ensure that access to confidential information and proprietary software is protected. Except as provided by law, if the request is for a public record that contains confidential information, the public agency shall delete or mask the nondisclosable confidential information and provide the requested public records upon payment of the applicable fee as described in 2 AAC 96.360.

2 AAC 96.220. Requestor's justification or need for records

Statute text

All disclosable public records must be made available upon request and upon compliance with the requirements of AS 40.25.110 - AS 40.25.125 and this chapter. A public agency may not request a justification or explanation of need or intended use, but a public agency may inquire whether the person making the request is a party, or represents a party, involved in litigation with the state or a public agency to which the requested record is relevant. If so, the requestor shall be informed to make the request in accordance with applicable court rules.

2 AAC 96.230. Nondiscrimination

Statute text