

ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 SJUD 12577

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46

By: Luke Hopkins
Introduced: 04/12/07
Amended: 04/12/07
Adopted: 04/12/07

FAIRBANKS NORTH STAR BOROUGH

RESOLUTION NO. 2007 - 12

A RESOLUTION SUPPORTING HB 25 "AN ACT RELATING TO LANDOWNERS' IMMUNITY FOR ALLOWING USE OF LAND WITHOUT CHARGE FOR A RECREATIONAL ACTIVITY; RELATING TO LANDOWNERS' LIABILITY WHERE LANDOWNER CONDUCT INVOLVES GROSS NEGLIGENCE OR RECKLESS OR INTENTIONAL MISCONDUCT; RELATING TO CLAIMS OF ADVERSE POSSESSION AND PRESCRIPTIVE EASEMENTS, OR SIMILAR CLAIMS; AND PROVIDING FOR AN EFFECTIVE 05 DATE."

WHEREAS, HB 25 encourages recreational use of private lands by providing certain legal protections to landowners who allow free public access to their lands for recreational activity; and

WHEREAS, the extent to which these landowners receive legal protection under the current law is confusing and ambiguous, particularly when land has been altered slightly from its natural state; and

WHEREAS, HB 25 expands the immunity protection to private landowners allowing free recreational activity regardless of whether the property has been "improved"; and

WHEREAS, HB 25 stipulates that a private landowner does not owe to a person using his or her property for recreational purposes a duty to keep the land safe for use, a duty to warn of unsafe conditions, or a duty to curtail the use of their land for recreational purposes. A landowner receives no protection under the bill if they either charge for access or are guilty of intentional, reckless or grossly negligent conduct; and

WHEREAS, given ambiguities in current law, those interested in allowing public access of their lands are currently unable to properly assess their risks. HB 25 would eliminate these ambiguities by granting immunity for the recreational use of private lands in the same manner adopted by most other states.

NOW, THEREFORE, BE IT RESOLVED that the Assembly of the Fairbanks North Star Borough supports passage of HB25.

BE IT FURTHER RESOLVED that copies of this resolution shall be sent to the Alaska Interior Delegation.

PASSED AND APPROVED THIS 12th DAY OF APRIL 2007.

Valerie M. Therrien

**Valerie M. Therrien, Deputy
Presiding Officer**

ATTEST:

Mona Lisa Drexler, MMC

**Mona Lisa Drexler, MMC
Municipal Borough Clerk**

Ayes: Bartos, Beck, Frank, Foote, Musick, Therrien, Rex, Hopkins

Noes: None

Excused: Winters

February 15, 2008

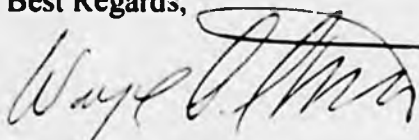
Senator Hollis French
State Capitol
Juneau, Alaska 99801

Senator French,

The Alaska State Chamber of Commerce supports House Bill 25. Private landowners often play a pivotal role in accessing Alaska's outdoors through leasing or granting permission to use their own private property. This role helps small businesses blossom while providing recreational access for Alaska's burgeoning tourist and adventure activities. Without legal protections, new tourist and adventure activities may be limited or threatened altogether. We believe HB 25 will increase business in Alaska by protecting private property owners from the potentiality of far-reaching lawsuits.

Jobs and economic opportunity are limited in many parts of Alaska. HB 25 may have additional benefits by creating opportunities in Alaska's remotest locations. The State Chamber encourages your constructive work with regards to HB 25 and we are hopeful that the bill will move through the legislative process.

Best Regards,



Wayne A. Stevens
President/CEO
Alaska State Chamber of Commerce

HB

33



Alaska State Legislature

Representative Anna Fairclough – House District 17

Sponsor Statement for HB 333 "An Act relating to the reporting of Child Pornography."

The distribution and possession of child pornography is arguably one of the most despicable crimes that exists in our society today. The exploitation of the most vulnerable members of our society is appalling and Alaskans should do all they can to protect our children and prevent the distribution and possession of child pornography.

HB 333 would strengthen Alaska's existing laws on the reporting of child pornography by expanding it to include not just those who are "processing or producing visual or printed matter," but also computer technicians, those who provide internet and cellular phone services and film and photo finishers. The penalty for failure to report such materials can result in a class A misdemeanor.

In June 2007, an Elmendorf soldier was arrested with 15,000 images of child pornography on his computer. In July, a Girdwood man with more than 7,000 images was arrested. In October, a Palmer man with more than 8,000 images. These statistics are from our state newspapers. Anyone who doesn't think that child pornography is a problem in this state needs to be very aware of these facts.

The National Center for Missing and Exploited Children's Child Pornography Fact Sheet states that during a one-year study 40% of those arrested for possession of child pornography were "dual offenders," meaning they also sexually victimized children. They went on to state that both crimes were discovered in the same investigation. That would certainly lead us to believe that the more people we arrest for possession of child pornography, the more children we can save from molestation and victimization.

The idea for this legislation was brought to me by a constituent who works in the field of technology who saw a need for this legislation. While most people in the vocations covered by this legislation would report such activity to the proper authorities, concerns about loss of business might deter some from making the right decision.

I urge your support of HB 333. The more people we have fighting to stop the possession and distribution of child pornography the better.



Alaska State Legislature

Representative Anna Fairclough – House District 17

Sec. 47.17.023. Reports regarding child pornography.

A person who, in the course of processing or producing visual or printed matter, either privately or commercially, has reasonable cause to suspect that the matter visually depicts a child engaged in conduct described in AS 11.41.455 (a) shall immediately report this to the nearest law enforcement agency, and provide the law enforcement agency with all information known about the nature and origin of the matter.

Relevant Statutes

AS 47.17.023 as it currently reads:

Sec. 47.17.023. Reports regarding child pornography.

A person who, in the course of processing or producing visual or printed matter, either privately or commercially, has reasonable cause to suspect that the matter visually depicts a child engaged in conduct described in AS 11.41.455 (a) shall immediately report this to the nearest law enforcement agency, and provide the law enforcement agency with all information known about the nature and origin of the matter.

AS 11.41.455 as referenced in the above statute:

Sec. 11.41.455. Unlawful exploitation of a minor.

(a) A person commits the crime of unlawful exploitation of a minor if, in the state and with the intent of producing a live performance, film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts the conduct listed in (1) - (7) of this subsection, the person knowingly induces or employs a child under 18 years of age to engage in, or photographs, films, records, or televises a child under 18 years of age engaged in, the following actual or simulated conduct:

- (1) sexual penetration;
- (2) the lewd touching of another person's genitals, anus, or breast;
- (3) the lewd touching by another person of the child's genitals, anus, or breast;
- (4) masturbation;
- (5) bestiality;
- (6) the lewd exhibition of the child's genitals; or
- (7) sexual masochism or sadism.

Alaska Statutes regarding penalty for failure to report:

Sec. 47.17.068. Penalty for failure to report.

A person who fails to comply with the provisions of AS 47.17.020 or 47.17.023 and who knew or should have known that the circumstances gave rise to the need for a report, is guilty of a class A misdemeanor.

Child Pornography Fact Sheet

National Center for Missing & Exploited Children

http://www.missingkids.com/missingkids/servlet/PageServlet?LanguageCountry=en_US&PageId=2451

What Is Child Pornography?

Under federal law, child pornography¹ is defined as a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, photograph, film, video, or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where it

- depicts a minor engaging in sexually explicit conduct and is obscene, or
- depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex, and such depiction lacks serious literary, artistic, political, or scientific value.²

Sexually explicit conduct includes various forms of sexual activity such as intercourse, bestiality, masturbation, sadistic or masochistic abuse, and lascivious exhibition of the genitals.³ It is illegal to possess, distribute, or manufacture these images.

These illegal images can be presented in various forms including print media; videotape; film; compact disc, read-only memory (CD-ROM); or digital versatile technology (DVD)⁴ and can be transmitted through computer bulletin-board systems (BBS), USENET Newsgroups, Internet Relay Chat, web-based groups, peer-to-peer technology, and an array of constantly changing world wide web sites.⁵

All states and the District of Columbia have laws concerning child pornography. As a result a person who violates federal laws concerning these images may also face additional state charges.

Who Is a Minor?

Federal statute defines "minor" as any person younger than 18.⁶ "While a majority of states follow the federal statute, some state laws define 'minor' or 'child' as a youth younger than 14, 16, or 17.⁷ Delaware law includes any person 18 years of age and younger in its definition of a 'child.'"⁸

Is Child Pornography a Crime?

Yes, the possession or distribution of child pornography is illegal under federal laws and laws in all 50 states; however, researchers and law-enforcement officials believe this crime is increasing and the increase is related to growing Internet use.⁹

In response to this growing crime, the U.S. Department of Justice (USDoJ) has responded in several ways including funding the National Center for Missing & Exploited Children's CyberTipline, www.cybertipline.com, acting as the national clearinghouse for reports of Internet-related child pornography and other Internet-related sex crimes committed against children. The USDoJ also created regional Internet Crimes Against Children (ICAC) Task Forces to assist state and local law enforcement in handling these crimes and funded specialized Internet child exploitation units in federal law-enforcement agencies.¹⁰

Where Is Child Pornography Predominantly Found?

The Internet has created an exciting new world of information and communication for anyone with access to online services. While this technology offers unparalleled opportunities for children and adults to learn about the universe we live in, it has also had an immeasurable impact on the sexual exploitation of children, specifically the distribution of sexually exploitive images of children.

Child Pornography Fact Sheet

National Center for Missing & Exploited Children

http://www.missingkids.com/missingkids/servlet/PageServlet?LanguageCountry=en_US&PageId=2451

The development, increasing accessibility, and use of home-computer technology has revolutionized the distribution of these images by increasing the ease and decreasing the cost of production and distribution especially across international borders. Computer technology is transforming the production of these images into a "sophisticated global cottage industry."¹¹

While the activities of most pornographers are rather covert, it is not unusual for adults and children to encounter illegal images while exploring legitimate areas of the Internet. A current study has estimated that "as much as 20 percent of all pornographic activity on the Internet may involve children";¹² however, accurate estimates are difficult to produce since a reliable methodology to measure the actual extent of these images online has yet to be devised.¹³ Nonetheless parents and guardians should closely monitor the online activities of their children and always maintain access to their children's online accounts.

What Motivates People Who Possess Child Pornography?

There is not much research about the motivations of people who possess child pornography. But, from the little information that exists, it suggests these people are a diverse group using this form of pornography for a variety of reasons.¹⁴ Those who possess child pornography include people who are

- sexually interested in prepubescent children (pedophiles) or young adolescents (hebephiles), who use child pornography for sexual fantasy and gratification
- sexually "indiscriminate," meaning they are constantly looking for new and different sexual stimuli
- sexually curious, downloading a few images to satisfy that curiosity
- interested in profiting financially by selling images or setting up web sites requiring payment for access¹⁵

Who Possesses Child Pornography?

The diversity of these possessors is exemplified by many factors including wide age ranges; incomes ranging from poverty to wealth; levels of education running the gamut from some not finishing high school to others having post college degrees; and those who come from cities, suburbs, small towns, and rural areas. Some are well known, well thought of in their communities, and/or have high-profile jobs. Others seem isolated, seem to be obsessed with the Internet, and/or have long criminal histories.¹⁶

Almost all child-pornography possessors (estimated 1,713) arrested between July 1, 2000, and June 30, 2001, were male, 91% were white, and 86% were older than 25. Only 3% were younger than 18. Most were unmarried at the time of their crime, either because they had never married (41%) or because they were separated, divorced, or widowed (21%). Thirty-eight (38%) percent were either married or living with partners.¹⁷

Of those estimated arrestees, most had pornographic images of prepubescent children (83%) and images graphically depicting sexual penetration (80%). Approximately 1 in 5 people arrested (21%) had images depicting sexual violence to children such as bondage, rape, and torture. More than 1 in 3 (39%) had child-pornography videos with motion and sound.¹⁸

Of those estimated arrestees, law enforcement found about half (48%) had more than 100 graphic still images, and 14% had 1,000 or more graphic images.¹⁹

Forty percent (40%) of those estimated arrestees were "dual offenders," who sexually

Child Pornography Fact Sheet

National Center for Missing & Exploited Children

http://www.missingkids.com/missingkids/servlet/PageServlet?LanguageCountry=en_US&PageId=2451

victimized children and possessed child pornography, with both crimes discovered in the same investigation. An additional 15% were dual offenders who attempted to sexually victimize children by soliciting undercover investigators who posed online as minors.²⁰

How Old Were the Children Found in These Images?

According to investigators who handled the cases of estimated arrestees, most had images of children who had not yet reached puberty. Specifically 83% had images of children between ages 6 and 12; 39% had images of 3- to 5-year-old children; and 19% had images of toddlers or infants younger than age 3.²¹

Are the Children in the Images Boys or Girls?

According to investigators who handled the cases of estimated arrestees, 62% had pictures of mostly girls. Fourteen percent (14%) had pictures of mostly boys. Fifteen percent (15%) had pictures showing boys and girls in about equal numbers.²²

How Graphic Are the Images?

According to investigators who handled the cases of estimated arrestees, most had graphic images explicitly showing sexual acts by or on children. Specifically 92% had images of minors focusing on genitals or showing explicit sexual activity; 80% had pictures showing the sexual penetration of a child, including oral sex; 71% possessed images showing sexual contact between an adult and a minor, defined as an adult touching the genitals or breasts of a minor or vice-versa; 21% had child pornography depicting violence such as bondage, rape, or torture and most of those involved images of children who were gagged, bound, blindfolded, or otherwise enduring sadistic sex; and 79% also had what might be termed "softcore" images of nude or semi-nude minors, but only 1% possessed such images alone.²³

What Are the Effects of Child Pornography?

It is important to realize these images can have a devastating and lasting effect on children. In addition to any physical injuries they might suffer in the course of their molestation, such as genital bruising, lacerations, or exposure to sexually transmitted diseases, child victims may also experience depression, withdrawal, anger, and other psychological disorders.²⁴ Such effects may continue into adulthood. For instance women abused as children have statistically significant higher rates of nightmares, back pain, headaches, pelvic pain, eating binges, and other similar symptoms.²⁵ Child victims also frequently experience feelings of guilt and responsibility for the abuse and betrayal, a sense of powerlessness, and feelings of worthlessness and low self-esteem.²⁶ These feelings are often expressed through increased fearfulness and changes in sleep patterns including re-occurring memories, flashbacks, dreams, and nightmares associated with posttraumatic stress.²⁷ Younger children tend to externalize stress by re-enacting sexual activities through play, while adolescents may experience negative effects on their growing sexuality as a result of inappropriate early sexual experiences.²⁸

The lives of children featured in these illegal images are forever altered, not only by the molestation but by the permanent record of the exploitation. Once sexual exploitation takes place, the molester may document these encounters on film or video. This documentation can then become the "ammunition" needed to blackmail the child into further submission, which is necessary to continue the relationship and maintain its secrecy. In addition these documented images allow molesters to "relive" their sexual fantasies with children long after the exploitation has stopped.

A greater number of child molesters are now using computer technology to organize and maintain their collections of these illegal images. In addition they are also using

Child Pornography Fact Sheet

National Center for Missing & Exploited Children

http://www.missingkids.com/missingkids/servlet/PageServlet?LanguageCountry=en_US&PageId=2451

the Internet to increase the size of these collections. Personally manufactured illegal images of children are especially valuable on the Internet, which provide the molester with a respected status among fellow exploiters and traders of this material. Once this status is achieved, molesters will often begin to trade images of their own sexual exploits with children among themselves.

When these images reach cyberspace, they are irretrievable and can continue to circulate forever. Thus the child is revictimized as the images are viewed again and again.

How Do Online Exploiters Find Children?

Individuals looking for potential child victims online have no difficulty finding them. It is quite common for these individuals to frequent "kids only" chatrooms and communicate with children who unwittingly divulge personal information about themselves. A more recent phenomenon is the solicitation of sex over the Internet.

After this initial meeting, these individuals will often continue to communicate with the child electronically or through other means. Some of these individuals may then attempt to lower the child's inhibitions by gradually introducing sexual content into their online conversations and even send pornographic images to the child. When children are shown images of peers engaged in sexual activities, they are led to believe this behavior is acceptable. This lowers their inhibitions and makes it easier for the molester to take advantage of the child sexually.

Parents and guardians are strongly encouraged to speak openly with their children about online dangers and monitor their online activities.

End Notes

¹As stated by Janis Wolak, Kimberly Mitchell, and David Finkelhor in *Internet Sex Crimes Against Minors: The Response of Law Enforcement* (Alexandria, Virginia: National Center for Missing & Exploited Children, November 2003, page vii), "The term 'child pornography,' because it implies simply conventional pornography with child subjects, is an inappropriate term to describe the true nature and extent of sexually exploitive images of child victims. Use of this term should not be taken to imply that children 'consented' to the sexual acts depicted in these photographs; however, it is the term most readily recognized by the public, at this point in time, to describe this form of child sexual exploitation. It is used in this [document] to refer to illegal pictorial material involving children under the standards developed by statute, case law, and law-enforcement-agency protocols. It is hoped a more accurate term will be recognized, understood, and accepted for use in the near future."

²18 U.S.C. § 1466A and 18 U.S.C. § 2256.

³Id.

⁴Eva J. Klain, Heather J. Davies, Molly A. Hicks. *Child Pornography: The Criminal-Justice-System Response* (Alexandria, Virginia: National Center for Missing & Exploited Children, March 2001, page 1) [hereinafter *Response*], citing Daniel S. Armagh, Nick L. Battaglia, and Kenneth V. Lanning, *Use of Computers in the Sexual Exploitation of Children*, Office of Juvenile Justice and Delinquency Prevention, *Portable Guides to Investigating Child Abuse*. Washington, D.C.: U.S. Department of Justice, 1999, page 6.

⁵*Response*, supra note 4, page 1.

⁶Janis Wolak, David Finkelhor, and Kimberly Mitchell. *Child-Pornography Possessors Arrested in Internet-Related Crimes: Findings From the National Juvenile Online Victimization Study* (Alexandria, Virginia: National Center for Missing & Exploited Children, 2005, page ix) [hereinafter *Possessors*] citing 18 U.S.C. § 2256(1).

⁷*Possessors*, pages ix-x citing research conducted by the National Center for Missing & Exploited Children in December 2004 which found, in regard to state statutes criminalizing possession of child pornography, 37 states define "minor" or "child" as a youth younger than the age of 18 (Alaska, ALASKA STAT. § 11.61.127(a); Arizona, ARIZ. REV. STAT. § 13-3551(5); California, CAL. PENAL CODE § 311.11(a); Colorado, COLO. REV. STAT. § 18-6-403(2)(a); Connecticut, CONN. GEN. STAT. § 1-1d; Florida, FLA. STAT. ch. 827.01(2); Georgia, GA. CODE ANN. § 16-12-100(a)(1); Hawaii, HAW. REV. STAT. § 707-752(2); Idaho, IDAHO CODE § 8-1507(2)(b); Illinois, 720 ILL. COMP. STAT. 5/11-20.1(6); Iowa, IOWA CODE § 728.1(4); Kansas, KAN. STAT. ANN. § 21-3516(a)(2); Kentucky, KY. REV. STAT. ANN. §§ 2.015, 500.080(9); Massachusetts, MASS. GEN. LAWS ch. 272, § 29C; Michigan, MICH. COMP. LAWS § 750.145c(b); Minnesota, MINN. STAT. § 617.246(1)(b); Mississippi, MISS. CODE ANN. § 97-5-

Child Pornography Fact Sheet

National Center for Missing & Exploited Children

http://www.missingkids.com/missingkids/servlet/PageServlet?LanguageCountry=en_US&PageId=2451

31(a); Missouri, MO. REV. STAT. § 573.010(2); Montana, MONT. CODE ANN. §§ 45-5-625, 45-8-205; New Mexico, N.M. STAT. ANN. § 30-6A-3(A); North Carolina, N.C. GEN. STAT. § 14-190.13(3); North Dakota, N.D. CENT. CODE § 12.1-27.2-05(1); Ohio, OHIO REV. CODE ANN. § 2907.01(M); Oklahoma, OKLA. STAT. tit. 21, § 1024.1(A); Oregon, OR. REV. STAT. § 163.665(1); Pennsylvania, 18 PA. CONS. STAT. § 6312(d)(1); Rhode Island, R.I. GEN. LAWS § 11-9-1.3(c)(3); South Carolina, S.C. CODE ANN. § 16-15-375(3); South Dakota, S.D. CODIFIED LAWS § 22-22-24.1(3); Tennessee, TENN. CODE ANN. § 39-17-1002(3); Texas, TEX. PENAL CODE ANN. § 43.26(a); Utah, UTAH CODE ANN. § 76-5a-2(5); Virginia, VA. CODE ANN. § 18.2-374.1:1(A); Washington, WASH. REV. CODE § 9.68A.011(4); West Virginia, W. VA. CODE § 61-8C-1(a); Wisconsin, WIS. STAT. § 948.01(1); Wyoming, WYO. STAT. ANN. § 6-4-303(a)(i)); 3 define "minor" or "child" as a youth younger than the age of 17 (Alabama, ALA. CODE § 13A-12-192; Arkansas, ARK. CODE ANN. § 5-27-302(1); and Louisiana, LA. REV. STAT. ANN. § 14:81.1(A)(3)); 7 define "minor" or "child" as a youth younger than the age of 16 (Indiana, IND. CODE § 35-42-4-4(c); Maryland, MD. CODE ANN., Crim. Law § 11-208(a); Nevada, NEV. REV. STAT. 200.730; New Hampshire, N.H. REV. STAT. ANN. § 649-A:2(I); New Jersey, N.J. STAT. ANN. § 2C: 24-4(b)(1); New York, N.Y. PENAL LAW § 263.16; and Vermont, VT. STAT. ANN. tit. 13, § 2821(1)); and 1 defines "minor" or "child" as a youth younger than the age of 14 (Maine, ME. REV. STAT. ANN. tit. 17, § 2924(2-A)).

The age of a "child" in Nebraska depends on whether the child is: a participant (younger than 18 years of age) or a portrayed observer (younger than 16 years of age). NEB. REV. STAT. § 28-1463.02(1).

In the District of Columbia, possession of child pornography with the intent to disseminate may be prosecuted under the general obscenity statute; however, mere possession is not mentioned. D.C. CODE ANN. § 22-2201(a)(1)(E). There are two criminal offenses that address "sexual performances using minors": "using a minor in a sexual performance" and "promoting a sexual performance by a minor." D.C. CODE ANN. § 22-3102. For these offenses, "minor" is defined as any person younger than 16 years of age. D.C. CODE ANN. §§ 22-3101(2), 22-3102.

⁸Possessors, supra note 6, page x citing DEL. CODE ANN. tit. 11, § 1103(e).

⁹Possessors, supra note 6, page ix.

¹⁰Id.

¹¹Response, supra note 4, page 3, citing Child Pornography: An International Perspective, World Congress Against the Commercial Sexual Exploitation of Children, Stockholm, Sweden, August 27-31, 1996, page 9.

¹²Response, supra note 4, page 3, citing Allotted Day on Child Pornography, 36th Parliament, 1st Session, Edited Hansard 1, No. 172, February 2, 1999, page 12.

¹³Response, supra note 4, page 3.

¹⁴Possessors, supra note 6, page x citing Response, supra note 4 and M. Taylor and E. Quayle. Child pornography: An Internet crime. Hove: Brunner-Routledge, 2003.

¹⁵Possessors, supra note 6, page x.

¹⁶Id., pages 2-3.

¹⁷Id., pages 1-2.

¹⁸Id., page vii.

¹⁹Id., page 7.

²⁰Id., page viii.

²¹Id., page 4.

²²Id., page 5.

²³Id.

²⁴Response, supra note 4, page 10, citing Bentovim and Bentovim, "The Effects on Children and Their Families" in Organized Abuse: The Current Debate, pages 60-62 [hereinafter Effects on Children].

²⁵Response, supra note 4, page 10, citing Jeanne McCauley, David E. Kern, Ken Kolodner, et al., Clinical Characteristics of Women with a History of Childhood Abuse: Unhealed Wounds, 277 JAMA 1197, page 1362.

²⁶Response, supra note 4, page 10, citing Heather Y. Swanston, Jennifer S. Tebbutt, Brian I. O'Toole, and R. Kim Oates, Sexually Abused Children 5 Years After Presentation: A Case-Control Study, 100 Pediatrics, 1997, page 600, 603.

²⁷Response, supra note 4, page 10, citing Effects on Children, supra note 24, pages 60-62.

²⁸Id.

HB

50

ALASKA STATE HOUSE OF REPRESENTATIVES

**Contact:**

Interim Address:

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

Session

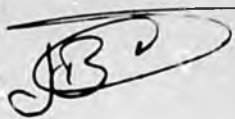
**(907)-465-3719
FAX# (907)-465-3258
State Capitol
Room 204**

REPRESENTATIVE JOHN COGHILL

MEMORANDUM

Date: April 1, 2008

To: Senator Hollis French, Chair
Senate Judiciary Committee

From: Representative John Coghill 

Re: HB 50 Pending Referral

I am requesting a hearing for HB 50, "An Act relating to the Interstate Compact for the Placement of Children; establishing an interstate commission for the placement of children; amending Rules 4 and 24, Alaska Rules of Civil Procedure; and providing for an effective date." Attached is the legislation and backup for committee members.

Thank you for your consideration.

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

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. 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.

The current ICPC was drafted in 1959 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.

HB 50 gives state child placement agencies and courts the tools to make faster interstate placements and hold all parties accountable for providing a safe, reliable home for children in out-of-state placement.

HB 50 Interstate Compact for the Placement of Children

Sectional Analysis for Version "K" Judiciary 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 interstate 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 tot 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 lest 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(b), Alaska Rules of Civil Procedure is amended by entitling the Commission to have permissive intervention 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.

REPRESENTATIVE
JOHN COGHILL
HOUSE RULES
COMMITTEE CHAIRMAN

During Intersession: (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) 485-3719
Fax (907) 485-3258
1-877-485-3719

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

BOARD OF TRUSTEES (2007-08)

PRESIDENT: HERBERT A. BRAIL, MI
PRESIDENT-ELECT: KAREN K. GREENBERG, MA
VICE PRESIDENT: KATHLEEN HOGAN MORRISON, IL
SECRETARY: DEMISE M. BIERLY, PA
TREASURER: STEVEN M. KIRSH, IN

LYNN J. BODI, WI
DAVID P. BROOME, AL
LISA L. COLLINS, TN
MARK DEMARAY, WA
JOHN R. GREENE, MD
SETH A. GROS, CO
ALBERT G. LIRHUS, WA
PHILIP "JAY" MCCARTHY, JR., AZ
COLLEEN MAREA QUINN, VA
MARGARET E. SWAIN, MD

PAST PRESIDENTS

KAREN R. LANE (1990-91)
MARK T. MCDERMOTT (1991-92)
STEVEN M. KIRSH (1992-93)
DALE R. JOHNSON (1993-94)
RITA A. MESSER (1994-95)
THOMAS P. LOWMDES (1995-96)
SAMUEL C. TOTARO, JR (1996-97)
DIANE G. MICHELSEN (1997-98)
JANE A. GORMAN (1998-99)
RODNEY M. POOLE (1999-00)
ALLAN A. HAZLETT (2000-01)
JUDITH SPERLING-NEWTON (2001-02)
ROBERT D. TUBE (2002-03)
DOUGLAS H. REDDGER (2003-04)
WRIGHT S. WALLING (2004-05)
MARTIN W. BAUER (2005-06)
ELLEN A. YARBELL (2006-07)

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:**

Mailing Address:

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

Session

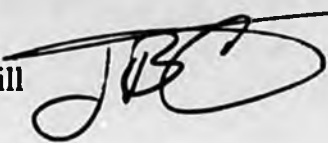
(907)-465-3719
FAX# (907)-465-3258
State Capitol
Room 204

REPRESENTATIVE JOHN COGHILL

MEMORANDUM

Date: March 31, 2008

To: Senator Bettye Davis, Chairwoman
Senate HESS Committee

From: Representative John Coghill 

Re: HB 50

I am requesting a hearing for HB 50, "An Act relating to the Interstate Compact for the Placement of Children; establishing an interstate commission for the placement of children; amending Rules 4 and 24, Alaska Rules of Civil Procedure; and providing for an effective date." Attached is the legislation and backup for committee members.

Thank you for your consideration.

HB

65

Cindy Smith

From: Sen. Hollis French
Sent: Wednesday, March 26, 2008 12:34 PM
To: Cindy Smith
Subject: FW: Amendment to SCS CSHB 65(L&C)
Importance: High

Please place this in the bill file

From: Jack McRae [mailto:Jack.McRae@premera.com]
Sent: Wednesday, March 26, 2008 12:28 PM
To: Sen. Hollis French
Cc: Jerry Reinwand
Subject: Amendment to SCS CSHB 65(L&C)
Importance: High

Dear Senator French,

I am writing on behalf of Premera Blue Cross Blue Shield of Alaska to express concern about a provision in SCS CSHB 65(L&C), "an act relating to breaches of security involving personal information . . ."

Proposed new section AS 45.48.410, subsection (a) (page 17, lines 28-31), prohibits businesses from requesting or collecting an individual's social security number. Subsection (b) (page 18, lines 1-24) sets forth exemptions to the prohibition contained in subsection (a). There is no exemption for health insurers, hospital and medical services corporations or disability insurers. It is imperative that such exemptions be added to the bill.

Insuring entities currently use enrollees' social security numbers for purposes of coordinating benefits available under health insurance policies and accurately paying disability insurance benefits. The need to coordinate benefits arises when families are covered by more than one health insurance plan, typically one provided through each parent's employment. In such cases, each company will enroll the family using its own unique methodology of assigning identification numbers. When a claim is submitted for coverage by one of the plans, the insurer must coordinate with the other company to determine appropriate payment for covered benefits. The two companies need a common identifier to assure accuracy and timeliness of payment, and the social security number fills that need in current practice. Obtaining social security numbers is also imperative for coordinating benefits for individuals covered by both Medicare and a commercial insurance plan, as Medicare's health insurance claim number is typically a derivative of the beneficiary's social security number. Likewise, the social security number is indispensable for accurate administration of income replacement disability benefits. Such payments may be taxable to the insured and must be reported to the IRS under the proper social security number.

Insuring entities currently request and maintain social security numbers for these purposes. This practice serves consumers by facilitating administration of their claims and assuring payment accuracy. In Alaska, the practice is allowed and protected under federal Gramm-Leach-Bliley and HIPAA privacy laws and by administrative rules adopted by the Alaska Division of Insurance effective in 2005 (3 AAC 26 sections 605-749). Amending SCS CSHB 65(L&C) to allow current practice to continue will do nothing to undermine the consumer protections that are in place.

Therefore, we request that the following language be added to SCS CSHB 65(L&C) to section 45.48.410(b) on page 18 after line 24:

"(7) to an insurer or hospital and medical service corporation regulated under AS Title 21."

3/26/2008

Without the amendment, Premera Blue Cross Blue Shield of Alaska cannot support the bill.

Thank you for your consideration of this request. Please let me know if you have questions or would like to discuss this matter further.

Jack

Jack C. McRae
Senior Vice President
425/918-5757
jack.mcrae@premera.com

LEGAL SERVICES

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

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

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

MEMORANDUM

April 1, 2008

SUBJECT: SCS CSHB 65(JUD) relating to personal information
(Work Order No. 25-LS0311\W)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy Smith

FROM: ^{JB} Theresa Bannister
Legislative Counsel

This memo accompanies the bill described above.

1. Federal preemption. As you are probably aware, because the bill deals with an area that is heavily, and, in some areas exclusively, regulated by the Federal Credit Reporting Act¹ (FCRA), there is an issue whether the FCRA preempts any of the new provisions. Please be aware that while it appears that most of the general areas in the bill have not been directly regulated by FCRA, a few provisions of the bill have preemption issues. The FCRA's provisions regarding what it preempts are not clear.
2. Interstate commerce. Because this bill could apply to out-of-state businesses that operate in the state 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. AS 45.48.400(a)(5)(A). Please be aware this provision contains "expressly" in conjunction with "local, state, or federal law." You have removed the other occurrences of "expressly."

If I may be of further assistance, please advise.

TLB:med
08-241.med

Enclosure

¹ 15 U.S.C. 1681 et seq.

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

SPONSOR STATEMENT

SENATE CS FOR CS FOR HB 65 (L&C) (25-LS0311NT)

"An Act relating to the breaches of security involving personal information, credit report and credit score security freezes, protection of social security numbers, care of records, disposal of records, identify theft, credit cards, and debit cards, and to the jurisdiction of the office of administrative hearings; amending Rules 60, and 82 Alaska Rules of Civil Procedure; 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 specific areas designed to secure a consumer's private information and ensure affordable access to their credit information.

This bill has 7 articles that deal with all areas of personal information and the rights and protections the consumer has and can expect from individuals that handle their personal information. The 7 articles are:

- (1) **Breach of Security Involving 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) **Protection of Social Security Number** - by restricting sale and distribution.
- (4) **Disposal of Records** - requires complete destruction of electronic and paper records that contain personal information.
- (5) **Factual Declaration of Innocence after Identity Theft; Right to File Police Report Regarding Identity Theft** - allows a person that is a victim of identify theft to make a factual declaration of innocence.
- (6) **Truncation of Card Information** - setting up guidelines for use of card numbers on receipts.
- (7) **General Provisions** - provides definitions for terms within the chapter, cites the short title of this bill as the *Alaska Personal Information Protection Act*, and establishes effective dates.

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

SECTIONAL

SENATE CS FOR CS FOR HB 65 (L&C) 25-LS0311VT

"An Act relating to the disclosure of permanent fund dividend applicant records, breaches of security involving personal information, credit report and credit score security freezes, protection of social security numbers, care of records, disposal of records, identify theft, credit cards, and debit cards, and to the jurisdiction of the office of administrative hearings; amending Rules 60, and 82 Alaska Rules of Civil Procedure; and providing for an effective date."

Section 1 AS 40.21.110 Care of records – this sets out the ownership of public records and how they are to be managed from creation to disposal.

Section 2 AS 44.64.030(a) adds a new paragraph (40) AS 45.48.080(c) which is part of the new Chapter 48 Personal Information Protection Act.

Section 3 AS 45 is amended by adding a new chapter Personal Information Protection Act. This new chapter contains a total of seven (7) Articles with individual sections.

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 for 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.

Sec. 45.48.090 Definitions.

Defines the following terms: breach of the security; covered person, governmental agency, 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 placing and lifting 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).

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, and third party.

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.

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

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

Sec. 45.48.430 Disclosure.

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

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 and what damages and attorney fees may be recovered.

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.

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.

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.

Sec. 45.48.640 Vacation of determination.

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

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, perpetrator, and victim.

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. Provides definitions and an effective date.

Article 7.
General Provisions

Sec. 45.48.990 Definitions.

Provides definitions of consumer, consumer credit reporting agency, credit report, Fair Credit Reporting Act, Gramm-Leach-Bliley Financial Modernization Act, identity theft, information system, person, and state resident.

Sec. 45.48.995 Short Title.

Alaska Personal Information Protection Act.

Section 4 AS 45.50.471(b) is amended by adding a new paragraph (53) (A) and (B).

Section 5 The uncodified law of the State of Alaska is amended by adding a new section to read: INDIRECT COURT RULE AMENDMENTS and lists out those amendments to Rule 60(b) and 82.

Section 6 The uncodified law is amended by adding a new section TRANSITION; REGULATIONS that will take effect under AS 44.62.

Section 7 Provides an effective date for AS 45.48.470 enacted by Sec. 3.

Section 8 Provides an effective date for AS 01.10.070(c) Sec. 6.

Section 9 Provides for an effective date with exceptions in Secs. 7 and 8.



LII / Legal Information Institute

U.S. Code collection

TITLE 15 > CHAPTER 94 > SUBCHAPTER I > § 6802

§ 6802. Obligations with respect to disclosures of personal information

(a) Notice requirements

Except as otherwise

provided in this subchapter, a financial institution may not, directly or through any affiliate, disclose to a nonaffiliated third party any nonpublic personal information, unless such financial institution provides or has provided to the consumer a notice that complies with section 6803 of this title.

(b) Opt out

(1) In general

A financial institution may not disclose nonpublic personal information to a nonaffiliated third party unless—

(A) such financial institution clearly and conspicuously discloses to the consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 6804 of this title, that such information may be disclosed to such third party;

(B) the consumer is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and

(C) the consumer is given an explanation of how the consumer can exercise that nondisclosure option.

(2) Exception

This subsection shall not prevent a financial institution from providing nonpublic personal information to a nonaffiliated third party to perform services for or functions on behalf of the financial institution, including marketing of the financial institution's own products or services, or financial products or services offered pursuant to joint agreements between two or more financial institutions that comply with the requirements imposed by the regulations prescribed under section 6804 of this title, if the financial institution fully discloses the providing of such information and enters into a contractual agreement with the third party that requires the third party to maintain the confidentiality of such information.

(c) Limits on reuse of information

Except as otherwise provided in this subchapter, a nonaffiliated third party that receives from a financial institution nonpublic personal information under this section shall not, directly or through an affiliate of such receiving third party, disclose such

information to any other person that is a nonaffiliated third party of both the financial institution and such receiving third party, unless such disclosure would be lawful if made directly to such other person by the financial institution.

(d) Limitations on the sharing of account number information for marketing purposes

A financial institution shall not disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a credit card account, deposit account, or transaction account of a consumer to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

(e) General exceptions

Subsections (a) and (b) of this section shall not prohibit the disclosure of nonpublic personal information—

(1) as necessary to effect, administer, or enforce a transaction requested or authorized by the consumer, or in connection with—

(A) servicing or processing a financial product or service requested or authorized by the consumer;

(B) maintaining or servicing the consumer's account with the financial institution, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(C) a proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer;

(2) with the consent or at the direction of the consumer;

(3)

(A) to protect the confidentiality or security of the financial institution's records pertaining to the consumer, the service or product, or the transaction therein;

(B) to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability;

(C) for required institutional risk control, or for resolving customer disputes or inquiries;

(D) to persons holding a legal or beneficial interest relating to the consumer; or

(E) to persons acting in a fiduciary or representative capacity on behalf of the consumer;

(4) to provide information to insurance rate advisory organizations, guaranty funds or agencies, applicable rating agencies of the financial institution, persons assessing the institution's compliance with industry standards, and the institution's attorneys, accountants, and auditors;

(5) to the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.], to law enforcement agencies (including a Federal functional regulator, the Secretary of the Treasury with respect to subchapter II of chapter 53 of title



LII / Legal Information Institute

U.S. Code collection

TITLE 15 > CHAPTER 94 > SUBCHAPTER I > § 6801

§ 6801. Protection of nonpublic personal information

(a) Privacy obligation policy

It is the policy of the

Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information.

(b) Financial institutions safeguards

In furtherance of the policy in subsection (a) of this section, each agency or authority described in section 6805 (a) of this title shall establish appropriate standards for the financial institutions subject to their jurisdiction relating to administrative, technical, and physical safeguards—

- (1) to insure the security and confidentiality of customer records and information;
- (2) to protect against any anticipated threats or hazards to the security or integrity of such records; and
- (3) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.

LII has no control over and does not endorse any external Internet site that contains links to or references LII.

IS on SSN

"non public personal inf."
under fed law?

31, and chapter 2 of title I of Public Law 91-508 (12 U.S.C. 1951-1959), a State insurance authority, or the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;

(6)

(A) to a consumer reporting agency in accordance with the Fair Credit Reporting Act [15 U.S.C. 1681 et seq.], or

(B) from a consumer report reported by a consumer reporting agency;

(7) in connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(8) to comply with Federal, State, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by Federal, State, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law.

LII has no control over and does not endorse any external Internet site that contains links to or references LII.



LII / Legal Information Institute

U.S. Code collection

TITLE 15 > CHAPTER 94 > SUBCHAPTER I > § 6803

§ 6803. Disclosure of institution privacy policy (a) Disclosure required

At the time of

establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship, a financial institution shall provide a clear and conspicuous disclosure to such consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 6804 of this title, of such financial institution's policies and practices with respect to—

- (1) disclosing nonpublic personal information to affiliates and nonaffiliated third parties, consistent with section 6802 of this title, including the categories of information that may be disclosed;
- (2) disclosing nonpublic personal information of persons who have ceased to be customers of the financial institution; and
- (3) protecting the nonpublic personal information of consumers.

Such disclosures shall be made in accordance with the regulations prescribed under section 6804 of this title.

(b) Information to be included

The disclosure required by subsection (a) of this section shall include—

- (1) the policies and practices of the institution with respect to disclosing nonpublic personal information to nonaffiliated third parties, other than agents of the institution, consistent with section 6802 of this title, and including—
 - (A) the categories of persons to whom the information is or may be disclosed, other than the persons to whom the information may be provided pursuant to section 6802 (e) of this title; and
 - (B) the policies and practices of the institution with respect to disclosing of nonpublic personal information of persons who have ceased to be customers of the financial institution;
- (2) the categories of nonpublic personal information that are collected by the financial institution;
- (3) the policies that the institution maintains to protect the confidentiality and security of nonpublic personal information in accordance with section 6801 of this title; and
- (4) the disclosures required, if any, under section 1681a (d)(2)(A)(iii) of this

title.

LII has no control over and does not endorse any external Internet site that contains links to or references LII.

Gramm-Leach-Bliley Act

From Wikipedia, the free encyclopedia
(Redirected from Gramm-leach-bliley)

The *Gramm-Leach-Bliley Act*, also known as the *Gramm-Leach-Bliley Financial Services Modernization Act*, Pub. L. No. 106-102, 113 Stat. 1338 (November 12, 1999), is an Act of the United States Congress which repealed the Glass-Steagall Act, opening up competition among banks, securities companies and insurance companies. The *Glass-Steagall Act* prohibited a bank from offering investment, commercial banking, and insurance services.

The *Gramm-Leach-Bliley Act (GLBA)* allowed commercial and investment banks to consolidate. For example, Citibank merged with Travelers Group, an insurance company, and in 1997 formed the conglomerate Citigroup, a corporation combining banking and insurance underwriting services. Other major mergers in the financial sector had already taken place such as the Smith-Barney, Shearson, Primerica and Travelers Insurance Corporation combination in the mid-1990's. This combination, announced in 1993 and finalized in 1994, would have violated the Glass-Steagall Act and the Bank Holding Acts by combining insurance and securities companies, if not for a temporary waiver process [[1]]. The law was passed to legalize these mergers on a permanent basis. Historically, the combined industry has been known as the financial services industry.

Contents

- 1 Changes caused by the Act
- 2 Remaining Restrictions
- 3 Privacy
- 4 Financial Privacy Rule
- 5 Safeguards Rule
- 6 Pretexting Protection
- 7 Financial Institutions Defined
- 8 Consumer vs. Customer Defined
- 9 Consumer/Client Privacy Rights
- 10 GLBA Enforced
- 11 Critics
- 12 External links
 - 12.1 FYI: Websites for Compliance Information
 - 12.2 FYI: Websites for Consumer/Client Rights Information
 - 12.3 FYI: History of the GLBA
- 13 References
- 14 See also

Changes caused by the Act

Many of the largest banks, brokerages, and insurance companies desired the Act at the time. The justification was that individuals usually put more money in investments when economy is good, but they put their money into savings accounts when it turns bad. With the new Act, they would do both with the same company, so it would be doing well in all economic times.

Prior to the Act, most financial services companies were doing this anyway. On the retail/consumer side, a bank called Norwest led the charge in offering all types of financial services products in 1986. American Express attempted to own almost every field of financial business (although there was little synergy between them). Things culminated in 1997 when Travelers, a financial services company with everything but a retail/commercial bank, bought out Citibank, creating the largest and the most profitable company in the world. The move was technically illegal and provided impetus for the passage of the *Gramm-Leach-Bliley Act*.

Also prior to the passage of the Act, there were many relaxations to the *Glass-Steagall Act*. For example, a few years earlier, commercial Banks were allowed to get into investment banking, and before that banks were also allowed to get into stock and insurance brokerage. Insurance underwriting was the only main operation they weren't allowed to do, something rarely done by banks even after the passage of the Act.

Much consolidation occurred in the financial services industry since, but not at the scale some had expected. Retail banks, for example, do not tend to buy insurance underwriters, as they seek to engage in a more profitable business of insurance brokerage by selling products of other insurance companies. Other retail banks were slow to market investments and insurance products and package those products in a convincing way. Brokerage companies had a hard time getting into banking, because they do not have a large branch and backshop footprint. Banks have recently tended to buy other banks, such as the recent Bank of America and Fleet Boston merger, yet they have had less success integrating with investment and insurance companies. Many banks have expanded into investment banking, but have found it hard to package it with their banking services, without resorting to questionable tie-ins which caused scandals at Smith Barney.

Senator Phil Gramm led the Senate Banking Committee which sponsored the Act; he later joined UBS Warburg, at the time the investment banking arm of the largest Swiss bank.

Remaining Restrictions

GLBA did not remove the restrictions on banks placed by the Bank Holding Company Act of 1940 which prevented financial institutions from owning non-financial corporations. This is significant because this restriction prevents an ownership structure similar to Japan or Germany in which banks own the majority of large industrial enterprises.

Some restrictions remain to provide some amount of separation between the investment and commercial banking operations of a company. For example, licensed bankers must have separate business cards, eg. "Personal Banker, Wells Fargo Bank" and "Investment Consultant, Wells Fargo Private Client Services". Much of the debate about financial privacy is specifically centered around allowing or preventing the banking, brokerage, and insurances divisions of a company from working together.

In terms of compliance, the key rules under the Act include *The Financial Privacy Rule* which governs the collection and disclosure of customers' personal financial information by financial institutions. It also applies to companies, regardless of whether they are financial institutions, who receive such information. *The Safeguards Rule* requires all financial institutions to design, implement and maintain safeguards to protect customer information. The Safeguards Rule applies not only to financial institutions that collect information from their own customers, but also to financial institutions – such as

credit reporting agencies – that receive customer information from other financial institutions.

Privacy

- GLBA compliance is mandatory; whether a financial institution discloses nonpublic information or not, there must be a policy in place to protect the information from foreseeable threats in security and data integrity
- Major Components put into place to govern the collection, disclosure, and protection of consumers' nonpublic personal information; or personally identifiable information:
 - Financial Privacy Rule
 - Safeguards Rule
 - Pretexting Protection

Financial Privacy Rule

(Subtitle A: Disclosure of Nonpublic Personal Information, codified at 15 U.S.C. § 6801–6809)

The Financial Privacy Rule requires financial institutions to provide each consumer with a privacy notice at the time the consumer relationship is established and annually thereafter. The privacy notice must explain the information collected about the consumer, where that information is shared, how that information is used, and how that information is protected. The notice must also identify the consumer's right to opt-out of the information being shared with unaffiliated parties per the Fair Credit Reporting Act. Should the privacy policy change at any point in time, the consumer must be notified again for acceptance. Each time the privacy notice is reestablished, the consumer has the right to opt-out again. The unaffiliated parties receiving the nonpublic information are held to the acceptance terms of the consumer under the original relationship agreement. In summary, the financial privacy rule provides for a privacy policy agreement between the company and the consumer pertaining to the protection of the consumer's personal nonpublic information.

Safeguards Rule

(Subtitle A: Disclosure of Nonpublic Personal Information, codified at 15 U.S.C. § 6801–6809)

The Safeguards Rule requires financial institutions to develop a written information security plan that describes how the company is prepared for, and plans to continue to protect clients' nonpublic personal information. (The Safeguards Rule also applies to information of those no longer consumers of the financial institution.) This plan must include:

- Denoting at least one employee to manage the safeguards,
- Constructing a thorough [risk management] on each department handling the nonpublic information,
- Develop, monitor, and test a program to secure the information, and
- Change the safeguards as needed with the changes in how information is collected, stored, and used.

This rule is intended to do what most businesses should already be doing: *protect their clients*. The Safeguards Rule forces financial institutions to take a closer look at how they manage private data and to do a risk analysis on their current processes. No process is perfect, so this has meant that every financial

institution has had to make some effort to comply with the GLBA.

Pretexting Protection

(Subtitle B: Fraudulent Access to Financial Information, codified at 15 U.S.C. § 6821–6827)

Pretexting (sometimes referred to as "social engineering") occurs when someone tries to gain access to personal nonpublic information without proper authority to do so. This may entail requesting private information while impersonating the account holder, by phone, by mail, by email, or even by "phishing" (i.e., using a "phony" website or email to collect data). The GLBA encourages the organizations covered by the GLBA to implement safeguards against pretexting. For example, a well-written plan written to meet GLBA's Safeguards Rule ("develop, monitor, and test a program to secure the information") ought to include a section on training employees to recognize and deflect inquiries made under pretext. In the United States, pretexting by individuals is punishable as a common law crime of False Pretenses.

Financial Institutions Defined

The GLBA defines "financial institutions" as: "...companies that offer financial products or services to individuals, like loans, financial or investment advice, or insurance. The Federal Trade Commission (FTC) has jurisdiction over financial institutions similar to, and including, these:

- non-bank mortgage lenders,
- loan brokers,
- some financial or investment advisers,
- debt collectors,
- tax return preparers,
- banks, and
- real estate settlement service providers.

These companies must also be considered significantly engaged in the financial service or production that defines them as a "financial institution".

Insurance has jurisdiction first by the state, provided the state law at minimum complies with the GLBA. State law can require greater compliance, but not less than what is otherwise required by the GLBA.

Consumer vs. Customer Defined

The *Gramm-Leach-Bliley Act* defines a 'consumer' as

"an individual who obtains, from a financial institution, financial products or services which are to be used primarily for personal, family, or household purposes, and also means the legal representative of such an individual." (See 15 U.S.C. § 6809(9).)

A 'customer' is a consumer that has developed a relationship with privacy rights protected under the *GLBA*. A 'customer' is not someone using an automated teller machine (ATM) or having a check cashed at a cash advance business. These are not ongoing relationships like a 'customer' might have: i.e. a

mortgage loan, tax advising, or credit financing. A business is not an individual with personal nonpublic information, so a business cannot be a customer under the *GLBA*. A business, however, may be liable for compliance to the *GLBA* depending upon the type of business and the activities utilizing individual's personal nonpublic information.

Consumer/Client Privacy Rights

Under the *GLBA*, financial institutions must provide their clients a privacy notice that explains what information the company gathers about the client, where this information is shared, and how the company safeguards that information. This privacy notice must be given to the client prior to entering into an agreement to do business. There are exceptions to this when the client accepts a delayed receipt of the notice in order to complete a transaction on a timely basis. This has been somewhat mitigated due to online acknowledgement agreements requiring the client to read or scroll through the notice and check a box to accept terms.

The privacy notice must also explain to the customer the opportunity to 'opt-out'. Opting out means that the client can say "no" to allowing their information to be shared with affiliated parties. The *Fair Credit Reporting Act* is responsible for the 'opt-out' opportunity, but the privacy notice must inform the customer of this right under the *GLBA*. The client cannot opt-out of:

- information shared with those providing priority service to the financial institution
- marketing of products or services for the financial institution
- when the information is deemed legally required.

GLBA Enforced

Violation of the *GLBA* may result in a civil action brought by the United States Attorney General. The penalties, as amended under the *Financial Institution Privacy Protection Act* of 2003 (108th CONGRESS - 1st Session - S. 1458; To amend the *Gramm-Leach-Bliley Act* to provide for enhanced protection of nonpublic personal information, including health information, and for other purposes.. In The Senate of the United States, July 25 (legislative day, JULY 21), 2003)include,

- "the financial institution shall be subject to a civil penalty of not more than \$100,000 for each such violation"
- "the officers and directors of the financial institution shall be subject to, and shall be personally liable for, a civil penalty of not more than \$10,000 for each such violation".

Critics

Economist Robert Kuttner has criticized the repeal of the Glass-Steagall Act as contributing to the 2007 subprime mortgage financial crisis [2]. Paul Krugman of the New York Times has suggested that Sen. Gramm's advocacy of financial services deregulation is a substantial cause of the current economic downturn. [3]

External links