

## 2007 AK. HB 65

Enacted, June 13, 2008

### Reporter

2008 AK. ALS 92; 2008 AK. Sess. Laws 92; 2008 AK. Ch. 92; 2007 AK. HB 65

ALASKA ADVANCE LEGISLATIVE SERVICE > ALASKA 25TH LEGISLATURE -- SECOND SESSION >  
CHAPTER NO. 92 > HOUSE BILL 65

## Notice

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Added: Text highlighted in green

## Synopsis

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AN ACT Relating to breaches of security involving personal information, credit report and credit score security freezes, protection of social security numbers, care of records, disposal of records, identity theft, credit cards, and debit cards, disclosure of the names and addresses of permanent fund dividend applicants, 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.

## Text

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

### Section 1.

[AS 40.21.110](#) is amended to read:

#### Sec. 40.21.110.

Care of records. Except for public records lawfully in the possession of a person other than the state, public records of existing or defunct agencies of the state, territorial, and Russian governments in Alaska are the property of the state and shall be created, maintained, preserved, stored, transferred, destroyed or disposed of, and otherwise managed in accordance with the provisions of this chapter AND [AS 45.48.500 - 45.48.530](#) . Records shall be delivered by outgoing officials and employees to their successors, and may not be removed, destroyed , or disposed of, except as provided in this chapter AND [AS 45.48.500 - 45.48.530](#) .

### Sec. 2.

[AS 43.23.017](#) is amended by adding a new subsection to read:

- (b) Notwithstanding (a) of this section, the department may release the names and addresses of permanent fund dividend applicants to a legislator of this state and to the legislator's office staff for official legislative purposes.

### Sec. 3.

[AS 44.64.030\(a\)](#) is amended by adding a new paragraph to read:

(40) [AS 45.48.080\(c\)](#) (breach of security involving personal information).

**Sec. 4.**

AS 45 is amended by adding a new chapter to read:

Chapter 48. Personal Information Protection Act.

**Article 1.**

Breach of Security Involving Personal Information.

**Sec. 45.48.010. Disclosure of breach of security.**

- (a) If a covered person owns or licenses personal information in any form that includes personal information on a state resident, and a breach of the security of the information system that contains personal information occurs, the covered person shall, after discovering or being notified of the breach, disclose the breach to each state resident whose personal information was subject to the breach.
- (b) An information collector shall make the disclosure required by (a) of this section in the most expeditious time possible and without unreasonable delay, except as provided in [AS 45.48.020](#) and as necessary to determine the scope of the breach and restore the reasonable integrity of the information system.
- (c) Notwithstanding (a) of this section, disclosure is not required if, after an appropriate investigation and after written notification to the attorney general of this state, the covered person determines that there is not a reasonable likelihood that harm to the consumers whose personal information has been acquired has resulted or will result from the breach. The determination shall be documented in writing, and the documentation shall be maintained for five years. The notification required by this subsection may not be considered a public record open to inspection by the public.

**Sec. 45.48.020.**

Allowable delay in notification. An information collector may delay disclosing the breach under [AS 45.48.010](#) if an appropriate law enforcement agency determines that disclosing the breach will interfere with a criminal investigation. However, the information collector shall disclose the breach to the state resident in the most expeditious time possible and without unreasonable delay after the law enforcement agency informs the information collector in writing that disclosure of the breach will no longer interfere with the investigation.

**Sec. 45.48.030.**

Methods of notice. An information collector shall make the disclosure required by [AS 45.48.010](#)

- (1) by a written document sent to the most recent address the information collector has for the state resident;
- (2) by electronic means if the information collector's primary method of communication with the state resident is by electronic means or if making the disclosure by the electronic means is consistent with the provisions regarding electronic records and signatures required for notices legally required to be in writing under 15 U.S.C. 7001 et seq. (Electronic Signatures in Global and National Commerce Act); or
- (3) if the information collector demonstrates that the cost of providing notice would exceed \$ 150,000, that the affected class of state residents to be notified exceeds 300,000, or that the information collector does not have sufficient contact information to provide notice, by
  - (A) electronic mail if the information collector has an electronic mail address for the state resident;
  - (B) conspicuously posting the disclosure on the Internet website of the information collector if the information collector maintains an Internet website; and

(C) providing a notice to major statewide media.

**Sec. 45.48.040. Notification of certain other agencies.**

- (a) If an information collector is required by [AS 45.48.010](#) to notify more than 1,000 state residents of a breach, the information collector shall also notify without unreasonable delay all consumer credit reporting agencies that compile and maintain files on consumers on a nationwide basis and provide the agencies with the timing, distribution, and content of the notices to state residents.
- (b) This section may not be construed to require the information collector to provide the consumer reporting agencies identified under (a) of this section with the names or other personal information of the state residents whose personal information was subject to the breach.
- (c) This section does not apply to an information collector who is subject to the Gramm-Leach-Bliley Financial Modernization Act.
- (d) In this section, “consumer credit reporting agency that compiles and maintains files on consumers on a nationwide basis” has the meaning given to “consumer reporting agency that compiles and maintains files on consumers on a nationwide basis” in 15 U.S.C. 1681a(p).

**Sec. 45.48.050.**

Exception for employees and agents. In [AS 45.48.010](#) - [45.48.090](#), the good faith acquisition of personal information by an employee or agent of an information collector for a legitimate purpose of the information collector is not a breach of the security of the information system if the employee or agent does not use the personal information for a purpose unrelated to a legitimate purpose of the information collector and does not make further unauthorized disclosure of the personal information.

**Sec. 45.48.060.**

Waivers. A waiver of [AS 45.48.010](#) - [45.48.090](#) is void and unenforceable.

**Sec. 45.48.070. Treatment of certain breaches.**

- (a) If a breach of the security of the information system containing personal information on a state resident that is maintained by an information recipient occurs, the information recipient is not required to comply with [AS 45.48.010](#) - [45.48.030](#). However, immediately after the information recipient discovers the breach, the information recipient shall notify the information distributor who owns the personal information or who licensed the use of the personal information to the information recipient about the breach and cooperate with the information distributor as necessary to allow the information distributor to comply with (b) of this section. In this subsection, “cooperate” means sharing with the information distributor information relevant to the breach, except for confidential business information or trade secrets.
- (b) If an information recipient notifies an information distributor of a breach under (a) of this section, the information distributor shall comply with [AS 45.48.010](#) - [45.48.030](#) as if the breach occurred to the information system maintained by the information distributor.

**Sec. 45.48.080. Violations.**

- (a) If an information collector who is a governmental agency violates [AS 45.48.010](#) - [45.48.090](#) with regard to the personal information of a state resident, the information collector
  - (1) is liable to the state for a civil penalty of up to \$ 500 for each state resident who was not notified under [AS 45.48.010](#) - [45.48.090](#), but the total civil penalty may not exceed \$ 50,000; and
  - (2) may be enjoined from further violations.
- (b) If an information collector who is not a governmental agency violates [AS 45.48.010](#) - [45.48.090](#) with regard to the personal information of a state resident, the violation is an unfair or deceptive act or practice under [AS 45.50.471](#) - [45.50.561](#). However,

- (1) the information collector is not subject to the civil penalties imposed under [AS 45.50.551](#) but is liable to the state for a civil penalty of up to \$ 500 for each state resident who was not notified under [AS 45.48.010](#) - [45.48.090](#), except that the total civil penalty may not exceed \$ 50,000; and
- (2) damages that may be awarded against the information collector under
  - (A) [AS 45.50.531](#) are limited to actual economic damages that do not exceed \$ 500; and
  - (B) [AS 45.50.537](#) are limited to actual economic damages.
- (c) The Department of Administration may enforce (a) of this section against a governmental agency. The procedure for review of an order or action of the department under this subsection is the same as the procedure provided by [AS 44.62](#) (Administrative Procedure Act), except that the office of administrative hearings ([AS 44.64.010](#)) shall conduct the hearings in contested cases and the decision may be appealed under [AS 44.64.030\(c\)](#).

**Sec. 45.48.090.**

Definitions. In [AS 45.48.010](#) - [45.48.090](#),

- (1) "breach of the security" means unauthorized acquisition, or reasonable belief of unauthorized acquisition, of personal information that compromises the security, confidentiality, or integrity of the personal information maintained by the information collector; in this paragraph, "acquisition" includes acquisition by
  - (A) photocopying, facsimile, or other paper-based method;
  - (B) a device, including a computer, that can read, write, or store information that is represented in numerical form; or
  - (C) a method not identified by (A) or (B) of this paragraph;
- (2) "covered person" means a
  - (A) person doing business;
  - (B) governmental agency; or
  - (C) person with more than 10 employees;
- (3) "governmental agency" means a state or local governmental agency, except for an agency of the judicial branch;
- (4) "information collector" means a covered person who owns or licenses personal information in any form if the personal information includes personal information on a state resident;
- (5) "information distributor" means a person who is an information collector and who owns or licenses personal information to an information recipient;
- (6) "information recipient" means a person who is an information collector but who does not own or have the right to license to another information collector the personal information received by the person from an information distributor;
- (7) "personal information" means information in any form on an individual that is not encrypted or redacted, or is encrypted and the encryption key has been accessed or acquired, and that consists of a combination of
  - (A) an individual's name; in this subparagraph, "individual's name" means a combination of an individual's
    - (i) first name or first initial; and
    - (ii) last name; and

**(B)** one or more of the following information elements:

- (i)** the individual's social security number;
- (ii)** the individual's driver's license number or state identification card number;
- (iii)** except as provided in (iv) of this subparagraph, the individual's account number, credit card number, or debit card number;
- (iv)** if an account can only be accessed with a personal code, the number in (iii) of this subparagraph and the personal code; in this sub-subparagraph, "personal code" means a security code, an access code, a personal identification number, or a password;
- (v)** passwords, personal identification numbers, or other access codes for financial accounts.

**Article 2.**

Credit Report and Credit Score Security Freeze.

**Sec. 45.48.100.**

Security freeze authorized. A consumer may prohibit a consumer credit reporting agency from releasing the consumer's credit report or credit score without the express authorization of the consumer by placing a security freeze on the consumer's credit report.

**Sec. 45.48.110. Placement of security freeze.**

- (a)** To place a security freeze, a consumer shall make the request to the consumer credit reporting agency
  - (1)** by mail to the address designated by the consumer credit reporting agency to receive security freeze requests; or
  - (2)** as allowed by (b) of this section.
- (b)** A consumer may make a request under (a) of this section by telephone or by facsimile, the Internet, or other electronic media if the consumer credit reporting agency has developed procedures for using the telephone or an electronic medium to receive and process the request in an expedited manner.
- (c)** A consumer credit reporting agency shall place a security freeze within five business days after receiving a request under (a) or (b) of this section and proper identification from the consumer.

**Sec. 45.48.120. Confirmation of security freeze.**

- (a)** Within 10 business days after a consumer makes the request under [AS 45.48.110](#), a consumer credit reporting agency shall send a written confirmation of the placement of the security freeze to the consumer. The confirmation must also inform the consumer that the consumer credit reporting agency may charge, as allowed by [AS 45.48.160](#), a fee for third-party access during the security freeze.
- (b)** At the same time that the consumer credit reporting agency sends a confirmation under (a) of this section, the consumer credit reporting agency shall provide the consumer with a unique personal identification number, password, or similar device to be used by the consumer when the consumer authorizes the release of the consumer's credit report or credit score under [AS 45.48.130](#).

**Sec. 45.48.130. Access and actions during security freeze.**

- (a)** While a security freeze is in place, a consumer credit reporting agency shall allow a third party access to a consumer's credit report or credit score if the consumer requests that the consumer credit reporting agency allow the access.
- (b)** To make a request under (a) of this section, the consumer shall contact the consumer credit reporting agency by mail at the address designated by the consumer credit reporting agency to

receive security freeze requests or as allowed by (c) of this section, authorize the consumer credit reporting agency to allow the access, and provide the consumer credit reporting agency with

- (1)** proper identification to verify the consumer's identity;
  - (2)** the unique personal identification number, password, or similar device provided under [AS 45.48.120\(b\)](#); and
  - (3)** the proper information necessary to identify the third party to whom the consumer credit reporting agency may allow the access or the time period during which the consumer credit reporting agency may allow the access to third parties who request the access.
- (c)** In addition to making the request by mail, a consumer may make a request under (a) of this section by telephone or by facsimile, the Internet, or other electronic media if the consumer credit reporting agency has developed procedures for using the telephone or an electronic medium to receive and process the request in an expedited manner.
- (d)** Except as provided by (e) of this section, a consumer credit reporting agency that receives a request from a consumer under (b) or (c) of this section shall comply with the request within 15 minutes after receiving the request by telephone or by an electronic medium or within three business days after receiving the request by mail.
- (e)** A consumer credit reporting agency is not required to comply with a request under (a) of this section within the 15 minutes required by (d) of this section if
- (1)** the consumer fails to satisfy the requirements of (b) of this section;
  - (2)** one of the following events prevents the consumer credit reporting agency from removing the security freeze within 15 minutes:
    - (A)** an act of God, including a fire, earthquake, hurricane, storm, or similar natural disaster or phenomenon;
    - (B)** an unauthorized or illegal act by another person, including terrorism, sabotage, riot, vandalism, labor strike, labor dispute disrupting operations, or similar occurrence;
    - (C)** an operational interruption, including an electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failure inhibiting response time, or similar disruption;
    - (D)** governmental action, including an emergency order or regulation, a judicial law enforcement action, or a similar directive;
    - (E)** regularly scheduled maintenance during other than normal business hours of the consumer credit reporting agency's systems, or updates to the consumer credit reporting agency's systems;
    - (F)** commercially reasonable maintenance of, or repair to, the consumer credit reporting agency's systems that is unexpected or unscheduled; or
  - (3)** the request is received outside of normal business hours.
- (f)** If a security freeze is in place, a consumer credit reporting agency may not release the credit report or credit score to a third party without the prior express authorization of the consumer.
- (g)** If a security freeze is in place on a consumer's credit report and credit score and if a third party applies to a consumer credit reporting agency to provide the third party with access to the consumer's credit report or credit score, the consumer credit reporting agency and the third party may treat the third party's application as incomplete unless the consumer authorizes the access under (a) of this section.
- (h)** If a security freeze is in place, a consumer credit reporting agency may not change the consumer's official information in the consumer's credit report and credit score without sending a written

statement of the change to the consumer within 30 days after the change is made. A consumer credit reporting agency is not required to send a written statement if the consumer credit reporting agency makes a technical change in the consumer's official information. If a consumer credit reporting agency makes a change, other than a technical change, in a consumer's address, the consumer credit reporting agency shall send the written statement to the consumer at both the new address and the former address. In this subsection,

- (1) "official information" means name, date of birth, social security number, and address;
- (2) "technical change" means changing spelling, transposing numbers or letters, abbreviating a word, or spelling out an abbreviation.
- (i) This section is not intended to prevent a consumer credit reporting agency from advising a third party that requests access to a consumer's credit report or credit score that a security freeze is in effect.
- (j) The procedures used by a consumer credit reporting agency for implementing the provisions of this section may include the use of telephone, facsimile, or electronic means if making the disclosure by the electronic means is consistent with the provisions regarding electronic records and signatures required for notices legally required to be in writing under 15 U.S.C. 7001 et seq. (Electronic Signatures in Global and National Commerce Act).

**Sec. 45.48.140. Removal of security freeze.**

- (a) Except as provided by [AS 45.48.130](#), a consumer credit reporting agency may not remove a security freeze unless
  - (1) the consumer requests that the consumer credit reporting agency remove the security freeze under (b) of this section; or
  - (2) the consumer made a material misrepresentation of fact to the consumer credit reporting agency when the consumer requested the security freeze under [AS 45.48.110](#); if a consumer credit reporting agency intends to remove a security freeze on a consumer's credit report under this paragraph, the consumer credit reporting agency shall notify the consumer in writing before removing the security freeze.
- (b) A consumer credit reporting agency shall remove a security freeze within three business days after receiving a request for removal from the consumer who requested the security freeze.
- (c) To make a request under (b) of this section, the consumer shall contact the consumer credit reporting agency by mail or as allowed by (d) of this section, authorize the consumer credit reporting agency to remove the security freeze, and provide the consumer credit reporting agency with
  - (1) proper identification to verify the consumer's identity; and
  - (2) the unique personal identification number, password, or similar device provided under [AS 45.48.120\(b\)](#).
- (d) In addition to mail, a consumer may make a request under (b) of this section by telephone or by facsimile, the Internet, or other electronic media if the consumer credit reporting agency has developed procedures for using the telephone or an electronic medium to receive and process the request in an expedited manner.

**Sec. 45.48.150.**

Prohibition. When dealing with a third party, a consumer credit reporting agency may not suggest, state, or imply that a consumer's security freeze reflects a negative credit score, history, report, or rating.

**Sec. 45.48.160. Charges.**



- (a) Except as provided by (b), (c), or (d) of this section, a consumer credit reporting agency may not charge a consumer to place or remove a security freeze, to provide access under [AS 45.48.130](#), or to take any other action, including the issuance of a personal identification number, password, or similar device under [AS 45.48.120](#), that is related to the placement of, removal of, or allowing access to a credit report or credit score on which a security freeze has been placed.
- (b) A consumer credit reporting agency may charge a consumer \$ 5 for placing a security freeze.
- (c) A consumer credit reporting agency may charge the consumer \$ 2 for each access request made by the consumer. In this subsection, "access request" means a request made by the consumer under [AS 45.48.130](#) to allow third-party access to the consumer's credit report or credit score on which a security freeze has been placed.
- (d) If a consumer fails to retain a personal identification number, password, or similar device issued under [AS 45.48.120](#), a consumer credit reporting agency may charge the consumer up to \$ 5 for each time after the first time that the consumer credit reporting agency issues the consumer another personal identification number, password, or similar device because the consumer failed to retain the personal identification number, password, or similar device.
- (e) A consumer credit reporting agency may not charge a consumer a fee under (b) or (c) of this section if the consumer has been a victim of identity theft and provides the consumer credit reporting agency with a complaint filed by the consumer with a law enforcement agency.

**Sec. 45.48.170.**

Notice of rights. When a consumer credit reporting agency is required to give a consumer a summary of rights under 15 U.S.C. 1681g (Fair Credit Reporting Act), a consumer credit reporting agency shall also give the consumer the following notice:

Consumers Have the Right to Obtain a Security Freeze

You may obtain a security freeze on your credit report and credit score for \$ 5 to protect your privacy and ensure that credit is not granted in your name without your knowledge. You may not have to pay the \$ 5 charge if you are a victim of identity theft. You have a right to place a security freeze on your credit report and credit score under state law ([AS 45.48.100](#) - [45.48.290](#)).

The security freeze will prohibit a consumer credit reporting agency from releasing your credit score and any information in your credit report without your express authorization or approval.

The security freeze is designed to prevent credit, loans, and other services from being approved in your name without your consent. However, you should be aware that using a security freeze to take control over who gets access to the personal and financial information in your credit report and credit score may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding a new loan, credit, a mortgage, a governmental service, a governmental payment, a cellular telephone, a utility, an Internet credit card application, an extension of credit at point of sale, and other items and services.

When you place a security freeze on your credit report and credit score, within 10 business days, you will be provided a personal identification number, password, or similar device to use if you choose to remove the freeze on your credit report and credit score or to temporarily authorize the release of your credit report and credit score to a specific third party or specific third parties or for a specific period of time after the freeze is in place. To provide that authorization, you must contact the consumer credit reporting agency and provide all of the following:

- (1) proper identification to verify your identity;
- (2) the personal identification number, password, or similar device provided by the consumer credit reporting agency;



**(3)**

proper information necessary to identify the third party or third parties who are authorized to receive the credit report and credit score or the specific period of time for which the credit report and credit score are to be available to third parties.

A consumer credit reporting agency that receives your request to temporarily lift a freeze on a credit report and credit score is required to comply with the request within 15 minutes, except after normal business hours and under certain other conditions, after receiving your request if you make the request by telephone, or an electronic method if the agency provides an electronic method, or within three business days after receiving your request if you make the request by mail. The consumer credit reporting agency may charge you \$ 2 to temporarily lift the freeze.

A security freeze does not apply to circumstances where you have an existing account relationship and a copy of your credit report and credit score are requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control, or similar activities.

If you are actively seeking credit, you should understand that the procedures involved in lifting a security freeze may slow your own applications for credit. You should plan ahead and lift a freeze, either completely if you are shopping around, or specifically for a certain creditor, days before applying for new credit.

You have a right to bring a civil action against someone who violates your rights under these laws on security freezes. The action can be brought against a consumer credit reporting agency.

**Sec. 45.48.180.**

Notification after violation. If a consumer credit reporting agency violates a security freeze by releasing a consumer's credit report or credit score, the consumer credit reporting agency shall notify the consumer within five business days after discovering or being notified of the release, and the information in the notice must include an identification of the information released and of the third party who received the information.

**Sec. 45.48.190.**

Resellers. A consumer credit reporting agency that acts as a reseller of consumer information shall honor a security freeze placed on a consumer's credit report and credit score by another consumer credit reporting agency.

**Sec. 45.48.200. Violations and penalties.**

**(a)** A consumer who suffers damages as a result of a person's violation of [AS 45.48.100](#) - [45.48.290](#) may bring an action in court against the person and recover, in the case of a violation where the person acted

**(1)** negligently, actual economic damages, court costs allowed by the rules of court, and full reasonable attorney fees;

**(2)** knowingly,

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

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

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

- (b) A consumer may bring an action in court against a person for a violation or threatened violation of [AS 45.48.100](#) - [45.48.290](#) for injunctive relief, whether or not the consumer seeks another remedy under this section.
- (c) Notwithstanding (a)(2) of this section, a person who knowingly violates [AS 45.48.100](#) - [45.48.290](#) is liable in a class action for an amount that the court allows. When determining the amount of an award in a class action under this subsection, the court shall consider, among the relevant factors, the amount of any actual damages awarded, the frequency of the violations, the resources of the violator, and the number of consumers adversely affected.
- (d) In this section, "knowingly" has the meaning given in [AS 11.81.900](#).

**Sec. 45.48.210. Exemptions.**

- (a) The provisions of [AS 45.48.100](#) - [45.48.290](#) do not apply to the use of a credit report by
  - (1) a person, the person's subsidiary, affiliate, or agent, or the person's assignee with whom a consumer has or, before the assignment, had an account, contract, or debtor-creditor relationship if the purpose of the use is to review the consumer's account or to collect a financial obligation owing on the account, contract, or debt;
  - (2) a subsidiary, an affiliate, an agent, an assignee, or a prospective assignee of a person to whom access has been granted under [AS 45.48.130](#) if the purpose of the use is to facilitate the extension of credit or another permissible use;
  - (3) a person acting under a court order, warrant, or subpoena;
  - (4) an agency of a state or municipality that administers a program for establishing and enforcing child support obligations;
  - (5) the Department of Health and Social Services, its agents, or its assigns when investigating fraud;
  - (6) the Department of Revenue, its agents, or its assigns when investigating or collecting delinquent taxes or unpaid court orders or when implementing its other statutory responsibilities;
  - (7) a person if the purpose of the use is prescreening allowed under 15 U.S.C. 1681b(c) (Fair Credit Reporting Act);
  - (8) a person administering a credit file monitoring subscription service to which the consumer has subscribed;
  - (9) a person providing a consumer with a copy of the consumer's credit report or credit score at the consumer's request;
  - (10) a person if the database or file of the consumer credit reporting agency consists entirely of information concerning and used solely for one or more of the following purposes:
    - (A) criminal record information;
    - (B) personal loss history information;
    - (C) fraud prevention or detection;
    - (D) tenant screening; or
    - (E) employment screening; or
  - (11) a person for use for insurance purposes in setting a rate, adjusting a rate, adjusting a claim, or underwriting, except that this paragraph may not be interpreted to authorize an insurance practice that is prohibited by other law; this paragraph may not be interpreted to affect [AS 21.36.460](#) or [AS 21.39.035](#).

- (b) Except as provided by [AS 45.48.190](#), the provisions of [AS 45.48.100](#) - [45.48.290](#) do not apply to a person when acting only as a reseller of consumer information.

**Sec. 45.48.290.**

Definitions. In [AS 45.48.100](#) - [45.48.290](#),

- (1) "account review" means activities related to account maintenance, account monitoring, credit line increases, and account upgrades and enhancements;
- (2) "consumer" means an individual who is the subject of a credit report or credit score;
- (3) "consumer credit reporting agency" has the meaning given in [AS 45.48.990](#), but does not include a person who issues reports
  - (A) on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payments; or
  - (B) regarding account closures because of fraud, substantial overdrafts, automated teller machine abuse, or similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing consumer requests for deposit accounts at the inquiring banks or financial institutions;
- (4) "reseller of consumer information" means a person who assembles and merges information contained in the databases of consumer credit reporting agencies and does not maintain a permanent database of consumer information from which new consumer credit reports are produced;
- (5) "security freeze" means a prohibition against a consumer credit reporting agency's releasing a consumer's credit report or credit score without the express authorization of the consumer;
- (6) "third party" means a person who is not
  - (A) the consumer who is the subject of the consumer's credit report or credit score; or
  - (B)  
the consumer credit reporting agency that is holding the consumer's credit report or credit score.

Article 3. Protection of Social Security Number.

**Sec. 45.48.400. Use of social security number.**

- (a) A person may not
- (1) intentionally communicate or otherwise make available to the general public an individual's social security number;
  - (2) print an individual's social security number on a card required for the individual to access products or services provided by the person;
  - (3) require an individual to transmit the individual's social security number over the Internet unless the Internet connection is secure or the social security number is encrypted;
  - (4) require an individual to use the individual's social security number to access an Internet website unless a password, a unique personal identification number, or another authentication device is also required to access the website; or
  - (5) print an individual's social security number on material that is mailed to the individual unless
    - (A) local, state, or federal law, including a regulation adopted under [AS 45.48.470](#), expressly authorizes placement of the social security number on the material; or
    - (B) the social security number is included on an application or other form, including a document sent as a part of an application process or an enrollment process, sent by mail to establish,

amend, or terminate an account, a contract, or a policy, or to confirm the accuracy of the social security number; however, a social security number allowed to be mailed under this subparagraph may not be printed, in whole or in part, on a postcard or other mailer that does not require an envelope, or in a manner that makes the social security number visible on the envelope or without the envelope's being opened.

- (b) The prohibitions in (a) of this section do not apply if the person is engaging in the business of government and
  - (1) is authorized by law to communicate or otherwise make available to the general public the individual's social security number; or
  - (2) the communicating or otherwise making available of the individual's social security number is required for the performance of the person's duties or responsibilities as provided by law.

**Sec. 45.48.410. Request and collection.**

- (a) A person who does business in the state, including the business of government, may not request or collect from an individual the individual's social security number. This subsection does not prohibit a person from asking for another form of identification from the individual.
- (b) The prohibition in (a) of this section does not apply
  - (1) if the person is authorized by local, state, or federal law, including a regulation adopted under [AS 45.48.470](#), to demand proof of the individual's social security number, to request or collect the individual's social security number, or to submit the individual's social security number to the local, state, or federal government;
  - (2) if the person is engaging in the business of government and
    - (A) is authorized by law to request or collect the individual's social security number; or
    - (B) the request or collection of the individual's social security number is required for the performance of the person's duties or responsibilities as provided by law;
  - (3) to a person subject to or a transaction regulated by the Gramm- Leach-Bliley Financial Modernization Act for a purpose authorized by the Gramm-Leach-Bliley Financial Modernization Act;
  - (4) to a person subject to or a transaction regulated by the Fair Credit Reporting Act for a purpose authorized by the Fair Credit Reporting Act;
  - (5) if the request or collection is for a background check on the individual, for fraud prevention, for medical treatment, for law enforcement or other government purposes, for the individual's employment, including employment benefits, or for verification of the individual's age;
  - (6) if the request or collection does not have independent economic value, is incidental to a larger transaction or a larger anticipated transaction, and is necessary to verify the identity of the individual;
  - (7) to an insurer regulated by AS 21; in this paragraph, "insurer" has the meaning given in [AS 21.90.900](#); or
  - (8) to a hospital service corporation or a medical service corporation regulated under [AS 21.87](#); in this paragraph, "hospital service corporation" and "medical service corporation" have the meanings given in [AS 21.87.330](#).

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

- (a) A person may not sell, lease, loan, trade, or rent an individual's social security number to a third party.
- (b) The prohibition in (a) of this section does not apply if the sale, lease, loan, trade, or rental is

- (1) authorized by local, state, or federal law, including a regulation adopted under [AS 45.48.470](#);
  - (2) by a person subject to or for a transaction regulated by the Gramm- Leach-Bliley Financial Modernization Act for a purpose authorized by the Gramm-Leach-Bliley Financial Modernization Act;
  - (3) by a person subject to or for a transaction regulated by the Fair Credit Reporting Act for a purpose authorized by the Fair Credit Reporting Act; or
  - (4) part of a report prepared by a consumer credit reporting agency in response to a request by a person and the person submits the social security number as part of the request to the consumer credit reporting agency for the preparation of the report.
- (c) Nothing in this section prevents a business from transferring social security numbers to another person if the transfer is part of the sale or other transfer of the business to the other person.
- (d) A transfer of an individual's social security number for the sole purpose of identifying a person about whom a report or database check is ordered, received, or provided is not a sale, lease, loan, trade, or rental of a social security number under this section.
- (e) A person who knowingly violates (a) of this section is guilty of a class A misdemeanor. In this subsection, "knowingly" has the meaning given in [AS 11.81.900](#).

**Sec. 45.48.430. Disclosure.**

- (a) A person doing business, including the business of government, may not disclose an individual's social security number to a third party.
- (b) The prohibition in (a) of this section does not apply if
- (1) the disclosure is authorized by local, state, or federal law, including a regulation adopted under [AS 45.48.470](#);
  - (2) the person is engaging in the business of government and
    - (A) is authorized by law to disclose the individual's social security number; or
    - (B) the disclosure of the individual's social security number is required for the performance of the person's duties or responsibilities as provided by law;
  - (3) the disclosure is to a person subject to or for a transaction regulated by the Gramm-Leach-Bliley Financial Modernization Act, and the disclosure is for a purpose authorized by the Gramm-Leach-Bliley Financial Modernization Act or to facilitate a transaction of the individual;
  - (4) the disclosure is to a person subject to or for a transaction regulated by the Fair Credit Reporting Act, and the disclosure is for a purpose authorized by the Fair Credit Reporting Act;
  - (5) the disclosure is part of a report prepared by a consumer credit reporting agency in response to a request by a person and the person submits the social security number as part of the request to the consumer credit reporting agency for the preparation of the report; or
  - (6) the disclosure is for a background check on the individual, identity verification, fraud prevention, medical treatment, law enforcement or other government purposes, or the individual's employment, including employment benefits.

**Sec. 45.48.440.**

Interagency disclosure. Notwithstanding the other provisions of [AS 45.48.400](#) - [45.48.480](#), a state or local governmental agency may disclose an individual's social security number to another state or local governmental agency or to an agency of the federal government if the disclosure is required in order for the agency to carry out the agency's duties and responsibilities.

**Sec. 45.48.450. Exception for employees, agents, and independent contractors.**

- (a) Notwithstanding the other provisions of [AS 45.48.400](#) - [45.48.480](#), a person may disclose an individual's social security number to an employee or agent of the person for a legitimate purpose established by and as directed by the person, but the employee or agent may not use the social security number for another purpose or make an unauthorized disclosure of the individual's personal information.
- (b) Notwithstanding the other provisions of [AS 45.48.400](#) - [45.48.480](#), and except as provided for an agent under (a) of this section, a person may disclose an individual's social security number to an independent contractor of the person to facilitate the purpose or transaction for which the individual initially provided the social security number to the person, but the independent contractor may not use the social security number for another purpose or make an unauthorized disclosure of the individual's personal information. In this subsection, "independent contractor" includes a debt collector.

**Sec. 45.48.460.**

Employment-related exception. The provisions of [AS 45.48.400](#) - [45.48.480](#) may not be construed to restrict a person's use or exchange of an individual's social security number

- (1) in the course of the administration of a claim, benefit, or procedure related to the individual's employment by the person, including the individual's termination from employment, retirement from employment, and injury suffered during the course of employment; or
- (2) to check on an unemployment insurance claim of the individual.

**Sec. 45.48.470.**

Agency regulations. If regulations are necessary in order for a state agency to carry out the state agency's duties and responsibilities, a state agency may adopt regulations under [AS 44.62](#) (Administrative Procedure Act) to establish when the state agency or a person regulated by the state agency may

- (1) print an individual's social security number on material that is mailed to the individual;
- (2) demand proof from an individual of the individual's social security number, collect from an individual the individual's social security number, or submit an individual's social security number to a local, state, or federal agency;
- (3) ask an individual to provide the state agency with the individual's social security number;
- (4) disclose an individual's social security number to a third party;
- (5) sell, lease, loan, trade, or rent an individual's social security number to a third party.

**Sec. 45.48.480. Penalties.**

- (a) A person who knowingly violates [AS 45.48.400](#) - [45.48.430](#) is liable to the state for a civil penalty not to exceed \$ 3,000.
- (b) An individual may bring a civil action in court against a person who knowingly violates [AS 45.48.400](#) - [45.48.430](#) and may recover actual economic damages, court costs allowed by the rules of court, and full reasonable attorney fees.
- (c)

In this section, "knowingly" has the meaning given in [AS 11.81.900](#).

Article 4. Disposal of Records.

**Sec. 45.48.500. Disposal of records.**

- (a) When disposing of records that contain personal information, a business and a governmental agency shall take all reasonable measures necessary to protect against unauthorized access to or use of the records.

- (b) Notwithstanding (a) of this section, if a business or governmental agency has otherwise complied with the provisions of [AS 45.48.500](#) - [45.48.590](#) in the selection of a third party engaged in the business of record destruction, the business or governmental agency is not liable for the disposal of records under [AS 45.48.500](#) - [45.48.590](#) after the business or governmental agency has relinquished control of the records to the third party for the destruction of the records.
- (c) A business or governmental agency is not liable for the disposal of records under [AS 45.48.500](#) - [45.48.590](#) after the business or governmental agency has relinquished control of the records to the individual to whom the records pertain.

**Sec. 45.48.510.**

Measures to protect access. The measures that may be taken to comply with [AS 45.48.500](#) include

- (1) implementing and monitoring compliance with policies and procedures that require the burning, pulverizing, or shredding of paper documents containing personal information so that the personal information cannot practicably be read or reconstructed;
- (2) implementing and monitoring compliance with policies and procedures that require the destruction or erasure of electronic media and other nonpaper media containing personal information so that the personal information cannot practicably be read or reconstructed;
- (3) after due diligence, entering into a written contract with a third party engaged in the business of record destruction to dispose of records containing personal information in a manner consistent with [AS 45.48.500](#) - [45.48.590](#).

**Sec. 45.48.520.**

Due diligence. In [AS 45.48.510\(3\)](#), due diligence ordinarily includes performing one or more of the following:

- (1) reviewing an independent audit of the third party's operations and its compliance with [AS 45.48.500](#) - [45.48.590](#);
- (2) obtaining information about the third party from several references or other reliable sources and requiring that the third party be certified by a recognized trade association or similar organization with a reputation for high standards of quality review; or
- (3) reviewing and evaluating the third party's information security policies and procedures, or taking other appropriate measures to determine the competency and integrity of the third party.

**Sec. 45.48.530.**

Policy and procedures. A business or governmental agency shall adopt written policies and procedures that relate to the adequate destruction and proper disposal of records containing personal information and that are consistent with [AS 45.48.500](#) - [45.48.590](#).

**Sec. 45.48.540. Exemptions.**

- (a) A business or a governmental agency is not required to comply with [AS 45.48.500](#) - [45.48.530](#) if federal law requires that the business or governmental agency act in a way that does not comply with [AS 45.48.500](#) - [45.48.530](#).
- (b) A business is not required to comply with [AS 45.48.500](#) - [45.48.530](#) if
  - (1) the business is subject to and in compliance with the Gramm-Leach-Bliley Financial Modernization Act; or
  - (2) the manner of the disposal of the records of the business is subject to 15 U.S.C. 1681w (Fair Credit Reporting Act) and the business is complying with 15 U.S.C. 1861w.

**Sec. 45.48.550. Civil penalty.**



(a) An individual, a business, or a governmental agency that knowingly violates [AS 45.48.500](#) - [45.48.590](#) is liable to the state for a civil penalty not to exceed \$ 3,000.

(b) In this section, "knowingly" has the meaning given in [AS 11.81.900](#).

**Sec. 45.48.560.**

Court action. An individual who is damaged by a violation of [AS 45.48.500](#) - [45.48.590](#) may bring a civil action in court to enjoin further violations and to recover for the violation actual economic damages, court costs allowed by the rules of court, and full reasonable attorney fees.

**Sec. 45.48.590.**

Definitions. In [AS 45.48.500](#) - [45.48.590](#),

- (1) "business" means a person who conducts business in the state or a person who conducts business and maintains or otherwise possesses personal information on state residents; in this paragraph,
  - (A) "conducts business" includes engaging in activities as a financial institution organized, chartered, or holding a license or authorization certificate under the laws of this state, another state, the United States, or another country;
  - (B) "possesses" includes possession for the purpose of destruction;
- (2) "dispose" means
  - (A) the discarding or abandonment of records containing personal information;
  - (B) the sale, donation, discarding, or transfer of
    - (i) any medium, including computer equipment or computer media, that contains records of personal information;
    - (ii) nonpaper media, other than that identified under (i) of this subparagraph, on which records of personal information are stored; and
    - (iii) equipment for nonpaper storage of information;
- (3) "governmental agency" means a state or local governmental agency, except for an agency of the judicial branch;
- (4) "personal information" means
  - (A) an individual's passport number, driver's license number, state identification number, bank account number, credit card number, debit card number, other payment card number, financial account information, or information from a financial application; or
  - (B) a combination of an individual's
    - (i) name; and
    - (ii) medical information, insurance policy number, employment information, or employment history;
- (5) "records" means material on which information that is written, drawn, spoken, visual, or electromagnetic is recorded or preserved, regardless of physical form or characteristics, but does not include publicly available information containing names, addresses, telephone numbers, or other information an individual has voluntarily consented to have publicly disseminated or listed.

**Article 5.**

Factual Declaration of Innocence after Identity Theft; Right to File Police Report Regarding Identity Theft.

**Sec. 45.48.600. Factual declaration of innocence after identity theft.**

- (a) A victim of identity theft may petition the superior court for a determination that the victim is factually innocent of a crime if
- (1) the perpetrator of the identity theft was arrested for, cited for, or convicted of the crime using the victim's identity;
  - (2) a criminal complaint was filed against the perpetrator of the identity theft; and
  - (3) the victim's identity was mistakenly associated with a record of a conviction for a crime.
- (b) In addition to a petition by a victim under (a) of this section, the department may petition the superior court for a determination under (a) of this section, or the superior court may, on its own motion, make a determination under (a) of this section.

**Sec. 45.48.610.**

Basis for determination. A determination of factual innocence under [AS 45.48.600](#) may be heard and made on declarations, affidavits, police reports, or other material, relevant, and reliable information submitted by the parties or ordered to be made a part of the record by the court.

**Sec. 45.48.620. Criteria for determination; court order.**

- (a) A court may determine that a petitioner under [AS 45.48.600](#) is factually innocent of a crime if the court finds beyond a reasonable doubt that
- (1) the petitioner is a victim of identity theft;
  - (2) the petitioner did not commit the offense for which the perpetrator of the identity theft was arrested, cited, or convicted;
  - (3) the petitioner filed a criminal complaint against the perpetrator of the identity theft; and
  - (4) the petitioner's identity was mistakenly associated with a record of conviction for the crime.
- (b) If a court finds under this section that the victim is factually innocent of a crime, the court shall issue an order indicating this determination of factual innocence and shall provide the victim with a copy of the order.

**Sec. 45.48.630.**

Orders regarding records. After a court issues an order under [AS 45.48.620](#), the court may order the name and associated personal information of the victim of identity theft that is contained in the files, indexes, and other records of the court that are accessible by the public labeled to show that the name and personal information of the victim of identity theft is incorrect.

**Sec. 45.48.640.**

Vacation of determination. A court that has issued an order under [AS 45.48.620](#) may, at any time, vacate the order if the petition, or any information submitted in support of the petition, is found to contain a material misrepresentation, an omission, or false information.

**Sec. 45.48.650.**

Court form. The supreme court of the state may develop a form to be used for the order under [AS 45.48.620](#).

**Sec. 45.48.660.**

Database. The department may establish and maintain a database of individuals who have been victims of identity theft and who have received an order under [AS 45.48.620](#). The department shall provide a victim or the victim's authorized representative access to a database established under this section to establish that the individual has been a victim of identity theft. Access to the database established under this section is limited to criminal justice agencies, victims of identity theft, and individuals and agencies authorized by the victims.

**Sec. 45.48.670.**

Toll-free telephone number. The department may establish and maintain a toll-free telephone number to provide access to information in a database established under [AS 45.48.660](#).

**Sec. 45.48.680. Right to file police report regarding identity theft.**

- (a) Even if the local law enforcement agency does not have jurisdiction over the theft of an individual's identity, if an individual who has learned or reasonably suspects the individual has been the victim of identity theft contacts, for the purpose of filing a complaint, a local law enforcement agency that has jurisdiction over the individual's actual place of residence, the local law enforcement agency shall make a report of the matter and provide the individual with a copy of the report. The local law enforcement agency may refer the matter to a law enforcement agency in a different jurisdiction.
- (b) This section is not intended to interfere with the discretion of a local law enforcement agency to allocate its resources to the investigation of crime. A local law enforcement agency is not required to count a complaint filed under (a) of this section as an open case for purposes that include compiling statistics on its open cases.

**Sec. 45.48.690.**

Definitions. In [AS 45.48.600](#) - [45.48.690](#),

- (1) "crime" has the meaning given in [AS 11.81.900](#);
- (2) "department" means the Department of Law;
- (3) "perpetrator" means the person who perpetrated the theft of an individual's identity;
- (4)

"victim" means an individual who is the victim of identity theft.

Article 6. Truncation of Card Information.

**Sec. 45.48.750. Truncation of card information.**

- (a) A person who accepts credit cards or debit cards for the transaction of business may not print more than the last four digits of the card number or the expiration date on any receipt or other physical record of the transaction provided at the point of the sale or transaction.
- (b) This section applies only to receipts that are electronically printed and does not apply to transactions in which the sole means of recording a credit card or debit card account number is by handwriting or by an imprint or copy of the card.
- (c) A person may not sell a device that electronically prints more than the last four digits of a credit card or debit card number or expiration date on a consumer receipt for a business transaction or on a copy retained by a business person for a business transaction.
- (d) An individual may bring a civil action in court against a person who knowingly violates (a) of this section and may recover actual economic damages, court costs allowed by the rules of court, and full reasonable attorney fees.
- (e) A person who knowingly violates this section is liable to the state for a civil penalty not to exceed \$ 3,000.
- (f) In this section,
  - (1) "credit" means the right granted by a creditor to a debtor to defer payment of debt, to incur debts and defer payment of the debt, or to purchase property or services and defer payment of the purchase; in this paragraph, "creditor" means a person who regularly extends, renews, or continues credit, a person who regularly arranges for the extension, renewal, or continuation of credit, or an assignee of an original creditor who participates in the decision to extend, renew, or continue credit;

- (2) "credit card" means a card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit;
- (3) "debit card" means a card issued by a financial institution to a consumer for use in initiating an electronic fund transfer from the account of the consumer at the financial institution for the purpose of transferring money between accounts or obtaining money, property, labor, or services;

(4)

"knowingly" has the meaning given in [AS 11.81.900](#).

Article 7. General Provisions.

**Sec. 45.48.990.**

Definitions. In this chapter, unless the context indicates otherwise,

- (1) "consumer" means an individual;
- (2) "consumer credit reporting agency" means a person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages, in whole or in part, in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing credit reports to third parties;
- (3) "credit report" means a consumer report that a consumer credit reporting agency furnishes to a person that the consumer credit reporting agency has reason to believe intends to use the consumer report as a factor in establishing the consumer's eligibility for credit to be used primarily for personal, family, or household purposes; in this paragraph, "consumer report" has the meaning given to "consumer report" in 15 U.S.C. 1681a(d) (Fair Credit Reporting Act), except that "consumer reporting agency" in 15 U.S.C. 1681a(d) is to be read as "consumer credit reporting agency";
- (4) "Fair Credit Reporting Act" means 15 U.S.C. 1681 - 1681x;
- (5) "Gramm-Leach-Bliley Financial Modernization Act" means 15 U.S.C. 6801 - 6827;
- (6) "identity theft" means the theft of the identity of an individual;
- (7) "information system" means any information system, including a system consisting of digital databases and a system consisting of pieces of paper;
- (8) "person" has the meaning given in [AS 01.10.060](#) and includes a state or local governmental agency, except for an agency of the judicial branch;
- (9) "state resident" means an individual who satisfies the residency requirements under [AS 01.10.055](#).

**Sec. 45.48.995.**

Short title. This chapter may be cited as the Alaska Personal Information Protection Act.

**Sec. 5.**

[AS 45.50.471\(b\)](#) is amended by adding a new paragraph to read:

- (53) an information collector, other than a governmental agency, violating [AS 45.48.010](#) - [45.48.090](#) (breach of security involving personal information); in this paragraph,
  - (A) "governmental agency" has the meaning given in [AS 45.48.090](#);
  - (B) "information collector" has the meaning given in [AS 45.48.090](#).

**Sec. 6.**

The uncodified law of the State of Alaska is amended by adding a new section to read:

- (b) [AS 45.48.200\(a\)](#), [45.48.480\(b\)](#), [45.48.560](#), and [45.48.750\(d\)](#), enacted by sec. 4 of this Act, have the effect of changing Rule 82, Alaska Rules of Civil Procedure, by changing the criteria for determining the amount of attorney fees to be awarded to a party in an action under [AS 45.48.200\(a\)](#), [45.48.480\(b\)](#), [45.48.560](#), or [45.48.750\(d\)](#).

**Sec. 7.**

The uncodified law of the State of Alaska is amended by adding a new section to read:

**Sec. 8.**

[AS 45.48.470](#), enacted by sec. 4 of this Act, takes effect immediately under [AS 01.10.070\(c\)](#).

**Sec. 9.**

Section 7 of this Act takes effect immediately under [AS 01.10.070\(c\)](#).

**Sec. 10.**

Except as provided by secs. 8 and 9 of this Act, this Act takes effect July 1, 2009.

## History

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Approved by the Governor June 13, 2008

Effective date: June 13, 2008

## Sponsor

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Coghill

ALASKA ADVANCE LEGISLATIVE SERVICE