

HOUSE BILL NO. 328

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE CLAMAN

Introduced: 2/5/18

Referred:

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to biometric information and to the collection, use, storage, and**
2 **disclosure of geolocation information; and establishing an unfair trade practice under**
3 **the Alaska Unfair Trade Practices and Consumer Protection Act."**

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

5 * **Section 1.** AS 18.13 is amended by adding new sections to read:

6 **Article 2. Biometric Information.**

7 **Sec. 18.13.200. Biometric data collection.** (a) A person may not collect for
8 use in a biometric system the biometric data of an individual who is not the collector
9 unless the collector first

10 (1) notifies the individual in a clear manner

11 (A) that the biometric data is being collected for use in a
12 biometric system;

13 (B) of the specific purpose for which the biometric information
14 will be used; and

1 (C) of the length of time the biometric information will be kept;
 2 and
 3 (2) receives, in a written, electronic, or other form by which the
 4 consent can be documented, the individual's full consent to the
 5 (A) collection of the biometric data for use in a biometric
 6 system;
 7 (B) specific purpose for which the biometric information will
 8 be used; and
 9 (C) length of time the biometric information will be kept.

10 (b) An individual may revoke or amend the individual's consent provided
 11 under (a) of this section at any time after the original purpose for which the consent
 12 was given ceases to exist.

13 **Sec. 18.13.210. Disclosure of biometric information.** (a) A collector and a
 14 contractor may not disclose, transfer, or distribute the biometric information of another
 15 individual, except to the collector's contractor or to a person to authenticate the
 16 identity of the individual providing the biometric information.

17 (b) A disclosure, transfer, or distribution under (a) of this section may be made
 18 only for the original purpose for which the biometric information was to be used.

19 **Sec. 18.13.220. Sale of biometric information.** A person may not sell
 20 biometric information, except that a contractor may sell the contractor's business to
 21 another person and transfer the biometric information to the buyer.

22 **Sec. 18.13.230. Disposal.** (a) When a collector no longer needs an individual's
 23 biometric information for the original purpose for which the biometric information
 24 was to be used, the collector and the contractor, if any, shall, within 120 days and
 25 unless prohibited by other law, a regulation, or a court order, remove the individual's
 26 biometric information from all databases and storage systems and destroy the
 27 biometric information.

28 (b) Within 60 days after determining that the collector no longer needs an
 29 individual's biometric information for the original purpose for which the biometric
 30 information was to be used, the collector shall notify the contractor, if any, that the
 31 collector is to remove the individual's biometric information from all databases and

1 storage systems and destroy the biometric information.

2 **Sec. 18.13.240. Use of biometric information.** A collector may use biometric
3 information for a fraud prevention purpose in addition to the original purpose for
4 which the biometric information was to be used.

5 **Sec. 18.13.250. Storage of biometric information.** A collector and a
6 contractor shall store an individual's biometric information in a secure manner, which
7 may include encryption or another appropriate method, to ensure that the identity of
8 the individual who provided the biometric information is protected.

9 **Sec. 18.13.260. Right of action.** An individual may bring a civil action against
10 a person who intentionally violates AS 18.13.200 - 18.13.290. A person who
11 intentionally violates AS 18.13.200 - 18.13.290 is liable to the individual for a penalty
12 of \$1,000, except that, if the violation resulted in profit or monetary gain to the person,
13 the penalty is \$5,000. In this section, "intentionally" has the meaning given in
14 AS 11.81.900.

15 **Sec. 18.13.270. Exemptions.** AS 18.13.200 - 18.13.290 do not apply to the

16 (1) collection, retention, analysis, disclosure, or distribution of

17 (A) biometric information for a law enforcement purpose,
18 including the identification of perpetrators, the investigation of crimes, the
19 identification of missing or unidentified persons, or the identification of human
20 remains;

21 (B) biometric information when authorized by state or federal
22 law;

23 (C) facial images by the Department of Administration for
24 drivers' licenses issued under AS 28.15, for state identification cards issued
25 under AS 18.65.310, for administering AS 28.15, or for administering
26 AS 18.65.310; or

27 (D) a photograph, unless the photograph is collected for use in
28 a biometric system; or

29 (2) retention of voices recorded for quality assurance purposes.

30 **Sec. 18.13.290. Definitions.** In AS 18.13.200 - 18.13.290,

31 (1) "biometric data" means fingerprints, handprints, voices, iris

1 images, retinal images, vein scans, hand geometry, finger geometry, or other physical
2 characteristics of an individual;

3 (2) "biometric information" means biometric data used in a biometric
4 system;

5 (3) "biometric system" means an automated system that

6 (A) captures biometric data from an individual's biometric
7 information;

8 (B) extracts and processes the biometric data captured under
9 (A) of this paragraph;

10 (C) stores the biometric data extracted under (B) of this
11 paragraph;

12 (D) compares the biometric data extracted under (B) of this
13 paragraph with biometric data from the individual stored for use in future
14 recognition of the individual; and

15 (E) determines how well the extracted and stored biometric
16 data match when compared under (D) of this paragraph and indicates whether
17 an identification or verification of identity has been achieved;

18 (4) "collector" means a person who collects the biometric information
19 of another individual;

20 (5) "contractor" means a person

21 (A) who contracts with a collector to store the biometric
22 information collected by the collector; or

23 (B) to whom the contractor sells the contractor's business and
24 transfers the biometric information stored by the contractor;

25 (6) "original purpose" means the specific purpose stated for the use of
26 biometric information under AS 18.13.200(a)(1)(B);

27 (7) "person" includes

28 (A) a corporation, company, partnership, firm, association,
29 organization, business trust, or society;

30 (B) an individual;

31 (C) an agency of the executive, judicial, or legislative branch of

1 state government;

2 (D) a municipality or an agency of a municipality.

3 * **Sec. 2.** AS 45.48 is amended by adding new sections to read:

4 **Article 6A. Geolocation Information Protection.**

5 **Sec. 45.48.800. Collection, use, storage, and disclosure of geolocation**
 6 **information.** Except as provided in AS 45.48.820, a private person may not collect,
 7 use, store, or disclose an individual's geolocation information that the private person
 8 obtained from a location-based application on the individual's mobile electronic
 9 device, unless the private person first provides the individual with written notice under
 10 AS 45.48.810 and the individual expressly consents to the disclosure. In this section,
 11 "location-based application" means a computer software program that collects, uses,
 12 or stores geolocation information.

13 **Sec. 45.48.810. Notice requirements.** The notice required by AS 45.48.800
 14 must

15 (1) be clear, prominent, and accurate;

16 (2) inform the individual that the private person will collect, use, store,
 17 or disclose the individual's geolocation information;

18 (3) inform the individual of the specific purposes for which the private
 19 person will collect, use, store, or disclose the individual's geolocation information; and

20 (4) provide the individual with a hyperlink or comparable easily
 21 accessible means on the Internet to access the individual's geolocation information that
 22 the private person collects, uses, stores, or discloses; in this paragraph, "hyperlink"
 23 means a highlighted word or picture on an Internet document or page that the
 24 individual can click to access the geolocation information.

25 **Sec. 45.48.820. Exemptions.** (a) A private person may collect, use, store, or
 26 disclose an individual's geolocation information without providing the notice required
 27 by AS 45.48.800 or receiving the express consent of the individual

28 (1) if the private person is collecting, using, storing, or disclosing the
 29 private person's own geolocation information;

30 (2) to allow a parent or other lawful custodian of a minor child to
 31 locate the minor child; in this paragraph,

1 (A) "lawful custodian" has the meaning given in AS 11.41.370;

2 (B) "minor child" means a child who is under 18 years of age
3 and whose disabilities of minority have not been removed under AS 09.55.590;

4 (3) to allow a court-appointed guardian to locate an incapacitated
5 person; in this paragraph, "incapacitated person" has the meaning given in
6 AS 13.26.005; or

7 (4) to allow a person to provide fire, medical, public safety, or other
8 emergency services.

9 (b) AS 45.48.800 - 45.48.880 do not apply to utilities that furnish
10 telecommunications services regulated under AS 42.05. In this subsection,
11 "telecommunications" has the meaning given in AS 42.05.990.

12 **Sec. 45.48.830. Effect on contracts.** A contract that violates AS 45.48.800 -
13 45.48.880 is void and unenforceable.

14 **Sec. 45.48.840. Waivers.** A person may not waive the provisions of
15 AS 45.48.800 - 45.48.880. A waiver of the provisions of AS 45.48.800 - 45.48.880 is
16 void and unenforceable.

17 **Sec. 45.48.850. Violations.** If a private person violates AS 45.48.800 -
18 45.48.880, the violation is an unfair or deceptive act or practice under AS 45.50.471 -
19 45.50.561, except that AS 45.50.531 does not apply to the violation; however, the
20 individual whose geolocation information was the subject of the violation may bring a
21 civil action in court to

22 (1) recover liquidated damages of \$1,000 or actual damages,
23 whichever amount is greater; and

24 (2) obtain other relief that the court determines is appropriate.

25 **Sec. 45.48.860. Relationship to federal law.** AS 45.48.800 - 45.48.880 do not
26 apply to a

27 (1) health care provider or other person that is subject to P.L. 104-191
28 (Health Insurance Portability and Accountability Act of 1996) and the regulations
29 adopted under that law;

30 (2) financial institution or an affiliate of a financial institution that is
31 subject to 15 U.S.C. 6801 - 6809 of the Gramm-Leach-Bliley Financial Modernization

1 Act and the regulations adopted under that law.

2 **Sec. 45.48.870. Definitions.** In AS 45.48.800 - 45.48.880,

3 (1) "geolocation information" means information identifying the
4 geographical location of a person or device by using digital information processed
5 through the Internet; "geolocation information" does not include Internet protocol
6 addresses or the contents of an electronic communication;

7 (2) "Internet" means the combination of computer systems or networks
8 that make up the international network for interactive communications services,
9 including remote logins, file transfers, electronic mail, and newsgroups;

10 (3) "private person" means a person that is not a governmental agency.

11 **Sec. 45.48.880. Short title.** AS 45.48.800 - 45.48.880 may be cited as the
12 Geolocation Information Protection Act.

13 * **Sec. 3.** AS 45.50.471(b) is amended by adding a new paragraph to read:

14 (58) violating AS 45.48.800 - 45.48.880 (geolocation information
15 protection).

16 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 **APPLICABILITY.** AS 45.48.830, added by sec. 2 of this Act, applies to contracts that
19 are entered into on or after the effective date of this Act.

20 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
21 read:

22 **REVISOR'S INSTRUCTION.** Wherever "this chapter" appears in AS 18.13.010 -
23 18.13.100, the revisor of statutes shall substitute "AS 18.13.010 - 18.13.100."