Resolution in Favor of Non-Bank Consumer Anti-Profiling Protection

WHEREAS, approximately 25 million Americans obtain loans at more than 15,000 pawnshops across the United States to meet their emergency financial needs; and

WHEREAS, state legislatures have enacted statutes requiring pawnbrokers to make and keep transaction records that include personal information about each customer and a description of the property pledged to secure payment of the pawn loaned or sold to the pawnbroker; and

WHEREAS, the percentage of property that law enforcement claims to be stolen has been reduced to less than one-tenth of one percent of items pledged or sold to pawnbrokers nationwide; and

WHEREAS, the focus of law enforcement has now shifted from identification and recovery of stolen property to identification and profiling of consumers; and

WHEREAS, law enforcement increasingly uses technology to profile pawn customers based on their gender, name, age, residence zip code, and frequency of pawn transactions; and

WHEREAS, law enforcement data-mining and profiling practices afford pawn customers less protection against unreasonable searches and warrant-less property seizures than they are guaranteed under the United States Constitution, federal privacy laws, and state constitutions; and

WHEREAS, unless curtailed by appropriate legislation, data-mining and profiling is likely to increase dramatically, further eroding constitutional and statutory privacy protections.

THEREFORE, BE IT RESOLVED

that the ALEC Criminal Justice Task Force should draft, sponsor, and work toward passage of model legislation designed to limit the receipt of personal information obtained during the course of financial or commercial information to (1) circumstances covered by the federal Right to Financial Privacy Act of 1978, the federal Bank Secrecy Act, or the USA PATRIOT Act; (2) circumstances when an enforcement agency establishes a nexus between a property crime and the individual consumer by opening a formal investigation; or (3) cases in which law enforcement obtains a properly authorized subpoena or the pawnbroker responds to a court order or grand jury subpoena.

Adopted by the Criminal Justice Task Force at the States and Nation Policy Summit December 9, 2006. Approved by the ALEC Board of Directors January 8, 2007.