

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 21, 2003

2:10 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson, Vice Chair
Representative John Coghill
Representative Jim Holm
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

Representative Ralph Samuels

COMMITTEE CALENDAR

OVERVIEW: DEPARTMENT OF LAW

- HEARD [See the 1:05 p.m. minutes for this date]

OVERVIEW: DEPARTMENT OF PUBLIC SAFETY

- HEARD [See the 1:05 p.m. minutes for this date]

HOUSE BILL NO. 23

"An Act relating to court-ordered restitution and compensation following a criminal conviction."

- MOVED CSHB 23(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 59

"An Act relating to the evaluation and cleanup of sites where certain controlled substances may have been manufactured or stored; and providing for an effective date."

- RESCINDED ACTION OF 2/19/03; MOVED NEW CSHB 59(JUD)
OUT OF COMMITTEE

HOUSE BILL NO. 82

"An Act making certain activities related to commercial electronic mail unlawful as unfair methods of competition or unfair or deceptive acts or practices under the Act enumerating unfair trade practices and consumer protections."

- MOVED CSHB 82(L&C) OUT OF COMMITTEE

PREVIOUS ACTION

BILL: HB 23

SHORT TITLE:RESTITUTION FOR CRIME VICTIMS

SPONSOR(S): REPRESENTATIVE(S)WEYHRAUCH

Jrn-Date	Jrn-Page		Action
01/21/03	0037	(H)	PREFILE RELEASED (1/10/03)
01/21/03	0037	(H)	READ THE FIRST TIME - REFERRALS
01/21/03	0037	(H)	JUD
01/21/03	0037	(H)	REFERRED TO JUDICIARY
02/14/03		(H)	JUD AT 1:00 PM CAPITOL 120
02/14/03		(H)	Heard & Held MINUTE(JUD)
02/18/03	0231	(H)	COSPONSOR(S): GARA
02/21/03		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 59

SHORT TITLE:CLEANUP OF ILLEGAL DRUG SITES

SPONSOR(S): REPRESENTATIVE(S)HOLM

Jrn-Date	Jrn-Page		Action
01/21/03	0047	(H)	READ THE FIRST TIME - REFERRALS
01/21/03	0047	(H)	JUD, FIN
02/19/03		(H)	JUD AT 1:00 PM CAPITOL 120
02/19/03		(H)	Moved CSHB 59(JUD) Out of Committee MINUTE(JUD)
02/21/03		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 82

SHORT TITLE:COMMERCIAL ELECTRONIC MAIL

SPONSOR(S): REPRESENTATIVE(S)MEYER

Jrn-Date	Jrn-Page		Action
02/07/03	0148	(H)	READ THE FIRST TIME - REFERRALS
02/07/03	0148	(H)	L&C, JUD
02/12/03	0203	(H)	COSPONSOR(S): ANDERSON, DAHLSTROM,
02/12/03	0203	(H)	CRAWFORD, GUTTENBERG, LYNN
02/12/03		(H)	L&C AT 3:15 PM CAPITOL 17

02/12/03		(H)	Moved CSHB 82(L&C) Out of Committee MINUTE(L&C)
02/14/03	0212	(H)	L&C RPT CS(L&C) NT 7DP
02/14/03	0212	(H)	DP: LYNN, GATTO, CRAWFORD, GUTTENBERG,
02/14/03	0212	(H)	DAHLSTROM, ROKEBERG, ANDERSON
02/14/03	0213	(H)	FN1: ZERO(LAW)
02/21/03		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

PAMELA LaBOLLE, President
Alaska State Chamber of Commerce (ASCC)
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 23.

REPRESENTATIVE BRUCE WEYHRAUCH
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of HB 23.

REPRESENTATIVE KEVIN MEYER
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of HB 82.

CLYDE (ED) SNIFFEN, JR., Assistant Attorney General
Fair Business Practices Section
Civil Division (Anchorage)
Department of Law (DOL)
Anchorage, Alaska
POSITION STATEMENT: Responded to questions during discussion of
HB 82.

ACTION NARRATIVE

TAPE 03-11, SIDE A
Number 0001

CHAIR LESIL MCGUIRE called the House Judiciary Standing
Committee meeting back to order at 2:10 p.m. Present at the
call back to order were Representatives McGuire, Anderson, Holm,
Coghill, Gara, and Gruenberg. [For the overviews by the
Department of Law and the Department of Public Safety, see the
1:05 p.m. minutes for this date.]

HB 23 - RESTITUTION FOR CRIME VICTIMS

Number 0036

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 23, "An Act relating to court-ordered restitution and compensation following a criminal conviction." [Before the committee was the proposed committee substitute (CS) for HB 23, Version 23-LS0134\D, Ford, 1/29/03, which was adopted as a work draft on 2/14/03.]

Number 0070

PAMELA LaBOLLE, President, Alaska State Chamber of Commerce (ASCC), testified in support of HB 23. She surmised that all chambers of commerce are nonprofit organizations, and that they have to rely on volunteers to help with all of their activities. She said that speaking from personal experience, the task of rebuilding a set of books in order to find evidence of embezzlement is very costly and time consuming. This task must be done, however, in order to even begin prosecuting an embezzlement case, because the amount of the loss must be determined first. She relayed that sometimes the cost of looking for evidence is more than the amount embezzled. She reiterated that the ASCC is in favor of HB 23.

CHAIR McGUIRE closed the public hearing on HB 23.

Number 0305

REPRESENTATIVE BRUCE WEYHRAUCH, Alaska State Legislature, sponsor, relayed that since the last hearing on HB 23, he has had a chance to work with committee members, members of the public, and representatives from the judicial branch and executive branch in creating some amendments. He noted that he has reviewed those amendments and has no objection to them.

Number 0429

REPRESENTATIVE ANDERSON made a motion to adopt Amendment 1, which read [original punctuation provided but formatting changed]:

Section 1. AS 12.55.045(a)

Page 1, Line 10, after "of" insert
identifiable and measurable

Page 2, Line 11, after "of" insert
identifiable and measurable

REPRESENTATIVE WEYHRAUCH indicated that although he'd originally provided the committee with that amendment, he no longer wished to offer it.

Number 0491

REPRESENTATIVE ANDERSON withdrew Amendment 1.

Number 0581

REPRESENTATIVE GRUENBERG, after seeking and receiving verification that they were speaking to Version D of HB 23, made a motion to adopt a new Amendment 1, which read [original punctuation provided but formatting changed]:

Section 1. AS 12.55.045(a)

- 1 Page 1, line 10, delete
volunteer
- 2 Page 1, line 10, after "value of" insert
voluntarily provided goods or

CHAIR McGUIRE asked whether there were any objections to new Amendment 1. There being no objection, Amendment 1 was adopted.

Number 0599

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 2, which read [original punctuation provided but formatting changed]:

Section 1. AS 12.55.045(a)

- 1 Page 1, line 10, after "victim" insert
if the victim is a nonprofit organization

CHAIR McGUIRE asked whether there were any objections to Amendment 2. There being no objection, Amendment 2 was adopted.

Number 0608

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 3, which read [original punctuation provided but formatting changed]:

Section 1. AS 12.55.045(a)

- 1 Page 1, line 10, after "incurred" insert that was necessary
- 2 Page 2, line 11, after "incurred" insert that was necessary

CHAIR MCGUIRE asked whether there were any objections to Amendment 3. There being no objection, Amendment 3 was adopted.

Number 0661

REPRESENTATIVE GARA made a motion to adopt Amendment 4, which would, on page 1, line 10, after "value of", insert the words "a victim's, or agent of a victim's" He opined that Amendment 4 would ensure, as the sponsor intends, that the value of an organization's volunteer labor is compensated.

CHAIR MCGUIRE asked whether there were any objections to Amendment 4. There being no objection, Amendment 4 was adopted.

Number 0697

REPRESENTATIVE ANDERSON moved to report the proposed committee substitute (CS) for HB 23, Version 23-LS0134\D, Ford, 1/29/03, as amended, out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSHB 23(JUD) was reported from the House Judiciary Standing Committee.

HB 59 - CLEANUP OF ILLEGAL DRUG SITES

Number 0765

CHAIR MCGUIRE announced that the next order of business would be HOUSE BILL NO. 59, "An Act relating to the evaluation and cleanup of sites where certain controlled substances may have been manufactured or stored; and providing for an effective date." [In committee packets was a new proposed committee substitute (CS) for HB 59, Version 23-LS0341\H, Lauterbach, 2/20/03.]

CHAIR McGUIRE explained that in drafting CSHB 59(JUD) [following the hearing on 2/19/03], difficulties arose in conforming one of the amendments offered by Representative Gruenberg to statute. She relayed that the new CS in members packets, along with an accompanying amendment, will correct that problem.

Number 0824

REPRESENTATIVE ANDERSON made a motion to rescind the committee's action on [2/19/03] in reporting CSHB 59(JUD) [the proposed CS, Version 23-LS0341\D, Lauterbach, 2/18/03, as amended on 2/19/03] from committee. There being no objection, it was so ordered.

Number 0855

REPRESENTATIVE ANDERSON moved to adopt the new proposed CS for HB 59, Version 23-LS0341\H, Lauterbach, 2/20/03, as the work draft. There being no objection, Version H was before the committee.

The committee took an at-ease from 2:25 p.m. to 2:26 p.m.

Number 0946

REPRESENTATIVE GRUENBERG, including as part of his motion that he be added as a co-sponsor of Amendment 1, made a motion to adopt Amendment 1, labeled [23-LS0341\H.1, Lauterbach, 2/21/03], which contained handwritten changes and which originally read:

Page 5, line 1:

Delete "specified in"

Insert "covered in regulations adopted under"

Page 5, line 22, before "listed":

Insert "specifically"

Page 5, line 23, following "use.":

Insert "The department shall also determine whether there are other substances associated with illegal drug manufacturing sites that may pose a substantial risk of harm to persons who occupy the site or to public health and shall adopt regulations that set limits for those substances for the purposes of determining whether the property for which notice was received under AS 46.03.500 is fit for use."

Page 6, line 6, following "in":

Insert "regulations adopted under"

Page 7, line 3:

Delete "AS 46.03.530"

Insert "the list of substances specifically named
in AS 46.03.530(a)"

Page 7, line 5:

Following "of":

Insert "specific"

Delete "AS 46.03.530"

Insert "AS 46.03.530(a)"

[The handwritten changes in Amendment 1 involved replacing "shall" with "may" in the section of the amendment pertaining to page 5, line 23.]

Number 0965

CHAIR McGUIRE asked whether there were any objections to Amendment 1. There being no objection, Amendment 1 was adopted.

Number 969

REPRESENTATIVE ANDERSON moved to report Version 23-LS0341\H, Lauterbach, 2/20/03, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, the new CSHB 59(JUD) was reported from the House Judiciary Standing Committee.

HB 82 - COMMERCIAL ELECTRONIC MAIL

[Contains brief mention of HB 56.]

Number 0992

CHAIR McGUIRE announced that the final order of business would be HOUSE BILL NO. 82, "An Act making certain activities related to commercial electronic mail unlawful as unfair methods of competition or unfair or deceptive acts or practices under the Act enumerating unfair trade practices and consumer protections." [Before the committee was CSHB 82(L&C).]

Number 1024

REPRESENTATIVE KEVIN MEYER, Alaska State Legislature, sponsor, explained that the L&C version differs from the original in that

it focuses only on unsolicited commercial electronic mail that contains explicit sexual material, which, he opined, is probably the most of annoying, offensive, and harmful type of unsolicited commercial e-mail. HB 82 does not prohibit such e-mail; instead, it merely requires that the subject line of the e-mail contain "ADV:ADLT". He relayed that this specific subject title is currently required by nine other states, and posited that it could perhaps become a standard title for all states that institute such a requirement.

REPRESENTATIVE MEYER mentioned that although others refer to HB 82 as a consumer protection bill, he himself refers to it as a children's protection bill. By requiring such a title, it will become easier for parents to ensure that their children are not exposed to sexually explicit material, either by teaching their children not to open e-mails that contain that title, or by having their computer systems automatically filter such e-mails out. He pointed out that the standards being proposed for unsolicited commercial e-mail are no higher than for any other method of delivering sexually explicit material, whether mailed through the United States Postal Service, or made available through stores. He made the suggestion that if enough states address "this issue," the federal government will be forced to do so as well with regard to what comes into the U.S. from other countries.

CHAIR McGUIRE closed the public hearing on HB 82.

REPRESENTATIVE COGHILL asked how this is policed, and what the penalties are for violating this proposed statute.

REPRESENTATIVE MEYER relayed that the attorney general's office would oversee "the policing of this," and so parents could bring instances of violations to that office. He mentioned that it would be possible to track this type of e-mail back to its source. He also noted that an individual could take private action to recover \$500.

REPRESENTATIVE COGHILL asked whether the burden of proof for a private action would be different from what would be required in an action brought by the state.

Number 1377

CLYDE (ED) SNIFFEN, JR., Assistant Attorney General, Fair Business Practices Section, Civil Division (Anchorage), Department of Law (DOL), said that the burden of proof would be

the same, whether for a private action or for an action brought by the attorney general. With regard to penalties, he explained that if the attorney general's office pursues someone, it has authorization to seek penalties of up to \$5,000 for every violation of the statute, and every transaction would be considered a separate violation. Thus, if there were 100 e-mails, for example, that could total up to \$500,000 if the court so determined. If, on the other hand, a private individual brings forth an action, he/she could get [the greater of] either \$500 or treble actual damages. He surmised, however, that it could be very difficult to prove that actual damages occurred from an e-mail, unless a virus or something of that nature were attached.

MR. SNIFFEN also noted that with regard to consumer protection issues, private litigants could recover full attorney fees. This, however, is not true for the state; if a similar action is brought by the state, it can only recover a portion of its attorney fees, as stipulated by [Civil Rule 82 of the Alaska Rules of Civil Procedure]. In response to further questions, he indicated that having that stipulation changed via legislation would be helpful to the department, both the purpose of raising revenue, and for the purpose of protecting consumers.

REPRESENTATIVE GRUENBERG suggested making such a change to HB 82.

REPRESENTATIVE MEYER stated his preference that such a change not be included HB 82. He surmised that \$5,000 per violation would be sufficient to cover most of the state's expenses in such actions.

REPRESENTATIVE GARA relayed that one of his bills [HB 56] makes just such a statutory change to [Civil Rule 82 of the Alaska Rules of Civil Procedure]. He recommended that the committee simply wait for that bill, which will allow the attorney general's office to recover its full, reasonable attorney fees in consumer protection cases. He then commended Representative Meyer for his work on HB 82.

REPRESENTATIVE ANDERSON relayed that as chair of the House Labor and Commerce Standing Committee, he did not see any problems with HB 82.

REPRESENTATIVE MEYER noted that Representative Gara also has "a very good bill" pending that will focus on other types of unsolicited commercial electronic mail.

Number 1747

REPRESENTATIVE COGHILL moved to report CSHB 82(L&C) out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, CSHB 82(L&C) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

Number 1776

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:44 p.m.