

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

February 12, 2003

3:17 p.m.

MEMBERS PRESENT

Representative Tom Anderson, Chair
Representative Bob Lynn, Vice Chair
Representative Nancy Dahlstrom
Representative Carl Gatto
Representative Norman Rokeberg
Representative Harry Crawford
Representative David Guttenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

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 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

WITNESS REGISTER

REPRESENTATIVE KEVIN MEYER

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As sponsor of HB 82, explained the requirement of the "ADV:ADLT" label in the subject line of unsolicited e-mails to help receivers identify sexually explicit material.

ED SNIFFEN, Assistant Attorney General
Fair Business Practices Section
Civil Division (Anchorage)
Department of Law
Anchorage, Alaska

POSITION STATEMENT: Testified that the department had no opposition to HB 82 and explained enforcement provisions under the state's consumer protection law.

SUZANNE CUNNINGHAM, Staff
to Representative Kevin Meyer
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: As staff to the sponsor of HB 82, answered questions.

ACTION NARRATIVE

TAPE 03-8, SIDE A

Number 0001

CHAIR TOM ANDERSON called the House Labor and Commerce Standing Committee meeting to order at 3:17 p.m. Representatives Anderson, Dahlstrom, Gatto, and Crawford were present at the call to order. Representatives Lynn, Rokeberg, and Guttenberg arrived as the meeting was in progress.

HB 82-COMMERCIAL ELECTRONIC MAIL

Number 0048

CHAIR ANDERSON announced a hearing on 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."

Number 0078

REPRESENTATIVE KEVIN MEYER, as sponsor of HB 82, explained that the bill prohibits individuals from sending unsolicited e-mails that contain explicit sexual materials without an identifying subject line. The heading "ADV" stands for "advertising," and "ADLT" stands for "adult." This label is taken from other states' laws. The proposed committee substitute (CS) for HB 82 removes Section 2(a) of the original bill [dealing with unsolicited commercial e-mails]. He explained that HB 82 does not ban commercial, sexually explicit e-mail; it requires unsolicited e-mails that contain age-sensitive or adult material to be so identified in the title. He described HB 82 as a consumer protection bill and a children's protection bill. The bill grows partly out of personal concern for his 11-year-old daughter who uses the family e-mail account.

REPRESENTATIVE MEYER said current law prohibits adult materials from being displayed or made available to children under age 18. On the Internet, there is no age restriction. Any kid can get pornography. The bill requires the labeling of explicit adult-content commercial e-mails so that children and parents have enough information to decide whether they want to open the e-mails. Many people would simply delete the e-mails without even opening them. Labeling the subject line would allow a computer to filter out these materials. This bill will allow kids and adults who enjoy and use e-mail to do so without being subject to unsolicited obscene material. Representative Meyer described himself as a firm believer in freedom of speech; he said he wants e-mail put at the same level as adult bookstores and adult entertainment places.

Number 0497

The committee took an at-ease from 3:20 to 3:23 p.m.

Number 0544

REPRESENTATIVE ROKEBERG moved to adopt the proposed CS for HB 82, Version 23-LS0109\Q, Bannister, 2/10/03, as the work draft. There being no objection, Version Q was before the committee.

Number 0641

ED SNIFFEN, Assistant Attorney General, Fair Business Practices Section, Civil Division (Anchorage), Department of Law, said the department had no opposition to HB 82. The department also had no problems with the section of the bill that was removed from the proposed CS version.

REPRESENTATIVE ROKEBERG inquired how this bill would be enforced. Would the ISP [Internet service provider] do screening or would the individual report violations to the department, he asked.

Number 0712

MR. SNIFFEN replied that legitimate Internet service providers will do in-house filtering to make sure that this kind of material is appropriately labeled. With businesses that don't comply with the law, his department will take complaints from consumers. The department would try to track down the originator of the e-mails. The department has succeeded in getting ISPs to stop people from sending certain kinds of deceptive information over the Internet.

REPRESENTATIVE ROKEBERG asked about the problems of pursuing e-mail senders who are out-of-state.

MR. SNIFFEN replied that if the person is in Alaska sending e-mails to Alaskans, his agency takes the position that it has the authority to control activities that occur within the state's borders. The department will also work with the regulators in the state from where the e-mail originated and hopefully get orders or injunctions against the perpetrators in that state as well.

Number 0833

REPRESENTATIVE GUTTENBERG asked if this bill controls e-mails within Alaska and between Alaska and another state.

MR. SNIFFEN said he thinks the bill was intended to curb e-mails generated inside or outside the state.

CHAIR ANDERSON asked if a violation of HB 82 would interfere with federal interstate commerce laws.

MR. SNIFFEN said he did not think so. The department researched this issue, particularly Section 2(a) [removed from this proposed CS]. Court decisions in other states on similar language indicate that such language does not violate First Amendment rights or interstate commerce issues because it goes to a legitimate state interest. The burden on the sender is minimal. The bill tells the e-mail senders that if they're going to send this material, they have to do it in such a way

that a reasonable consumer might be able to identify what it is and choose not to receive it. In this case, Mr. Sniffen said, the language is clearly acceptable.

Number 0963

REPRESENTATIVE GUTTENBERG asked Mr. Sniffen to define the word "aurally" on page 2, line 5.

MR. SNIFFEN replied that it falls under the definition of explicit sexual material in AS 11.41.455(a).

Number 1031

REPRESENTATIVE GATTO added that aural refers to auditory senses; the law refers to sounds that depict sexual activities.

Number 1067

SUZANNE CUNNINGHAM, Staff to Representative Kevin Meyer, Alaska State Legislature, clarified that "oral" means spoken, and "aurally" refers to a representation of what a person would hear in explicit sexual material.

REPRESENTATIVE ROKEBERG asked Mr. Sniffen how this bill is enforced under AS 45.50.471, unlawful acts and practices.

MR. SNIFFEN replied that enforcement under the consumer protection Act is fairly limited. The department can ask people to voluntarily stop illegal conduct with a "warning: cease and desist" letter. The department must file an action in state or federal court to stop the conduct of people who ignore such warnings. The department doesn't have any administrative enforcement authority to hold hearings, issue citations, or ask for penalties. The department essentially says, "Do this or we'll sue you," and the department would do the same thing under this bill.

Number 1228

CHAIR ANDERSON asked Representative Meyer to comment on why his bill is limited to pornographic e-mails.

REPRESENTATIVE MEYER explained that other bills look at the broader issue of unsolicited commercial e-mails. In this bill, he said he wanted to treat e-mail the same as U.S. mail. He said he doesn't like having his kids exposed to unsolicited

pornography. Rather than having his bill stalled over the regulation of all unsolicited commercial e-mails, he focused on pornography. He said that keeping the bill simple and not setting a stricter level for adult material than already exists should make the bill easier to get through the legislature. He said there's still the chance that children will open an e-mail with the ADV:ADLT heading, but that's a problem the parent needs to handle.

Number 1368

REPRESENTATIVE GUTTENBERG asked whether the definition of "explicit sexual material" under AS 11.41.455(a) must meet a community standard or the recipient's definition of what is offensive.

MR. SNIFFEN replied that the general test for determining what is sexually explicit is a community standard. He said he didn't think that would be a problem in HB 82. Most reasonable people agree on what is explicit sexual material, he suggested.

REPRESENTATIVE ROKEBERG reminded committee members that the language of AS 11.41.455, unlawful exploitation of a minor, is included in their bill materials.

REPRESENTATIVE GATTO said he supports this bill because it could succeed in filtering out a great deal of junk e-mails.

Number 1595

REPRESENTATIVE MEYER reminded members that HB 82 uses headings that are in use in other states, so there will be some consistency from state to state.

REPRESENTATIVE GUTTENBERG asked whether this bill relates only to child pornography because AS 11.41.455 defines child pornography.

REPRESENTATIVE MEYER said that HB 82 covers all pornography, not just child pornography, with the words on page 2, lines 6-7, "but is not limited to conduct engaged in by a child under 18 years of age".

Number 1595

REPRESENTATIVE DAHLSTROM read the specific conduct prohibited under HB 82 and current law, AS 11.41.455(a).

REPRESENTATIVE MEYER, in conclusion, said he regretted removing all commercial e-mails from HB 82, but he predicted such a section would have trouble in the House Judiciary Standing Committee. Other bills deal with these broader commercial issues.

Number 1685

REPRESENTATIVE DAHLSTROM moved to report the proposed CS for HB 82, Version 23-LS0109\Q, Bannister, 2/10/03, out of committee with individual recommendations and the accompanying fiscal note. There being no objections, CSHB 82(L&C) was reported out of House Labor and Commerce Standing Committee.

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 3:48 p.m.