

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 27, 2005

1:22 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson
Representative John Coghill
Representative Nancy Dahlstrom
Representative Pete Kott
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CONFIRMATION HEARING(S)

Board of Governors of the Alaska Bar [Continued from 4/18/05]

Joseph N. Faulhaber - Fairbanks

- CONFIRMATION(S) ADVANCED

CS FOR SENATE BILL NO. 140(JUD)

"An Act relating to spyware and unsolicited Internet advertising."

- MOVED CSSB 140(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 269

"An Act relating to contribution actions relating to the release of a hazardous substance; and providing for an effective date."

- MOVED HB 269 OUT OF COMMITTEE

HOUSE BILL NO. 268

"An Act relating to overtaking and passing certain stationary vehicles."

- MOVED CSHB 268(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 276

"An Act relating to business license endorsements for tobacco products, to holders of business license endorsements for tobacco products, and to the employees and agents of holders of business license endorsements for tobacco products."

- HEARD AND HELD

CS FOR SENATE BILL NO. 36(JUD)

"An Act relating to absentee ballots."

- MOVED HCS CSSB 36(JUD) OUT OF COMMITTEE

CS FOR SENATE JOINT RESOLUTION NO. 12(JUD)

Requesting the United States Senate to move quickly to a majority floor vote of the United States Senate on all nominations by President George W. Bush to the United States Supreme Court.

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: SB 140

SHORT TITLE: BAN INTERNET SPYWARE

SPONSOR(S): SENATOR(S) THERRIAULT

03/10/05	(S)	READ THE FIRST TIME - REFERRALS
03/10/05	(S)	L&C, JUD
03/22/05	(S)	L&C AT 1:30 PM BELTZ 211
03/22/05	(S)	Heard & Held
03/22/05	(S)	MINUTE(L&C)
03/24/05	(S)	L&C AT 2:00 PM BELTZ 211
03/24/05	(S)	Moved SB 140 Out of Committee
03/24/05	(S)	MINUTE(L&C)
03/29/05	(S)	L&C RPT 3DP
03/29/05	(S)	DP: BUNDE, DAVIS, STEVENS B
04/07/05	(S)	JUD AT 8:30 AM BUTROVICH 205
04/07/05	(S)	Scheduled But Not Heard
04/08/05	(H)	JUD AT 8:00 AM CAPITOL 120
04/08/05	(S)	Scheduled But Not Heard
04/13/05	(H)	JUD AT 8:30 AM BUTROVICH 205
04/13/05	(S)	Heard & Held
04/13/05	(S)	MINUTE(JUD)
04/14/05	(S)	JUD AT 8:00 AM BUTROVICH 205
04/14/05	(S)	Moved CSSB 140(JUD) Out of Committee
04/14/05	(S)	MINUTE(JUD)

04/14/05 (S) JUD RPT CS 3DP 2NR SAME TITLE
 04/14/05 (S) DP: SEEKINS, HUGGINS, THERRIAULT
 04/14/05 (S) NR: FRENCH, GUESS
 04/19/05 (S) TRANSMITTED TO (H)
 04/19/05 (S) VERSION: CSSB 140(JUD)
 04/20/05 (H) READ THE FIRST TIME - REFERRALS
 04/20/05 (H) L&C, JUD
 04/25/05 (H) L&C AT 3:15 PM CAPITOL 17
 04/25/05 (H) Moved Out of Committee
 04/25/05 (H) MINUTE(L&C)
 04/26/05 (H) L&C RPT 2DP 5NR
 04/26/05 (H) DP: LYNN, ANDERSON;
 04/26/05 (H) NR: CRAWFORD, KOTT, LEDOUX, ROKEBERG,
 GUTTENBERG
 04/27/05 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 269

SHORT TITLE: HAZARDOUS SUBSTANCE RELEASE LIABILITY
 SPONSOR(S): REPRESENTATIVE(S) RAMRAS

04/14/05 (H) READ THE FIRST TIME - REFERRALS
 04/14/05 (H) RES, JUD
 04/22/05 (H) RES AT 1:00 PM CAPITOL 124
 04/22/05 (H) Scheduled But Not Heard
 04/25/05 (H) RES AT 1:00 PM CAPITOL 124
 04/25/05 (H) Moved Out of Committee
 04/25/05 (H) MINUTE(RES)
 04/26/05 (H) RES RPT 4DP 2NR
 04/26/05 (H) DP: OLSON, LEDOUX, ELKINS, RAMRAS;
 04/26/05 (H) NR: GATTO, CRAWFORD
 04/27/05 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 268

SHORT TITLE: OVERTAKING/PASSING STATIONARY VEHICLES
 SPONSOR(S): REPRESENTATIVE(S) RAMRAS

04/14/05 (H) READ THE FIRST TIME - REFERRALS
 04/14/05 (H) TRA, JUD
 04/19/05 (H) TRA AT 1:30 PM CAPITOL 17
 04/19/05 (H) Moved Out of Committee
 04/19/05 (H) MINUTE(TRA)
 04/21/05 (H) TRA RPT 1DP 3NR
 04/21/05 (H) DP: GATTO;
 04/21/05 (H) NR: SALMON, THOMAS, ELKINS
 04/25/05 (H) JUD AT 1:00 PM CAPITOL 120
 04/25/05 (H) Scheduled But Not Heard
 04/26/05 (H) JUD AT 1:00 PM CAPITOL 120

04/26/05 (H) Scheduled But Not Heard
04/27/05 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 276

SHORT TITLE: BUSINESS LICENSE TOBACCO ENDORSEMENT

SPONSOR(S): REPRESENTATIVE(S) KOTT

04/19/05 (H) READ THE FIRST TIME - REFERRALS
04/19/05 (H) JUD, FIN
04/26/05 (H) JUD AT 1:00 PM CAPITOL 120
04/26/05 (H) Scheduled But Not Heard
04/27/05 (H) JUD AT 1:00 PM CAPITOL 120

BILL: SB 36

SHORT TITLE: ABSENTEE BALLOTS

SPONSOR(S): SENATOR(S) THERRIAULT

01/11/05 (S) PREFILE RELEASED 1/7/05
01/11/05 (S) READ THE FIRST TIME - REFERRALS
01/11/05 (S) STA, JUD
01/20/05 (S) STA AT 3:30 PM BELTZ 211
01/20/05 (S) Heard & Held
01/20/05 (S) MINUTE(STA)
02/01/05 (S) STA AT 3:30 PM BELTZ 211
02/01/05 (S) Moved CSSB 36(STA) Out of Committee
02/01/05 (S) MINUTE(STA)
02/02/05 (S) STA RPT CS 3DP 1NR NEW TITLE
02/02/05 (S) DP: THERRIAULT, WAGONER, HUGGINS
02/02/05 (S) NR: ELTON
02/08/05 (S) JUD AT 8:30 AM BUTROVICH 205
02/08/05 (S) Moved CSSB 36(JUD) Out of Committee
02/08/05 (S) MINUTE(JUD)
02/10/05 (S) JUD RPT CS 3DP 1NR NEW TITLE
02/10/05 (S) DP: SEEKINS, THERRIAULT, HUGGINS
02/10/05 (S) NR: FRENCH
03/02/05 (S) TRANSMITTED TO (H)
03/02/05 (S) VERSION: CSSB 36(JUD)
03/03/05 (H) READ THE FIRST TIME - REFERRALS
03/03/05 (H) STA, JUD
03/15/05 (H) STA AT 8:00 AM CAPITOL 106
03/15/05 (H) Heard & Held
03/15/05 (H) MINUTE(STA)
03/17/05 (H) STA AT 8:00 AM CAPITOL 106
03/17/05 (H) Moved HCS CSSB 36(STA) Out of Committee
03/17/05 (H) MINUTE(STA)
03/18/05 (H) STA RPT HCS(STA) 5DP 2NR

03/18/05 (H) DP: LYNN, GATTO, ELKINS, RAMRAS,
SEATON;
03/18/05 (H) NR: GARDNER, GRUENBERG
04/06/05 (H) JUD AT 1:00 PM CAPITOL 120
04/06/05 (H) <Bill Hearing Postponed>
04/22/05 (H) JUD AT 1:00 PM CAPITOL 120
04/22/05 (H) Scheduled But Not Heard
04/25/05 (H) JUD AT 1:00 PM CAPITOL 120
04/25/05 (H) Scheduled But Not Heard
04/27/05 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

JOSEPH N. FAULHABER, Appointee
to the Board of Governors of the Alaska Bar
Fairbanks, Alaska
POSITION STATEMENT: Testified as appointee to the Board of
Governors of the Alaska Bar.

DAVID STANCLIFF, Staff
to Senator Gene Therriault
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Began the presentation on SB 140 on behalf
of the sponsor, Senator Therriault, and responded to questions;
presented SB 36 on behalf of the sponsor, Senator Therriault,
and responded to questions.

BENJAMIN G. EDELMAN
(No address provided)
POSITION STATEMENT: Assisted with the presentation of SB 140
and responded to a question.

REPRESENTATIVE JAY RAMRAS
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Spoke as the sponsor of HB 269; spoke as
the sponsor of HB 268.

BENJAMIN BROWN, Legislative Liaison
Office of the Commissioner
Department of Environmental Conservation (DEC)
Juneau, Alaska
POSITION STATEMENT: Testified in support of HB 269.

GEORGE R. LYLE, Attorney at Law
Guess & Rudd, PC

Anchorage, Alaska

POSITION STATEMENT: On behalf of various clients, testified in support of HB 269.

BRECK TOSTEVIN, Assistant Attorney General

Environmental Section

Civil Division (Anchorage)

Department of Law (DOL)

Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 269 and responded to questions.

MICHAEL O'HARE, Staff

to Representative Pete Kott

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HB 276 on behalf of the sponsor, Representative Kott, and responded to a question.

CYNTHIA DRINKWATER, Assistant Attorney General

Commercial/Fair Business Section

Civil Division (Anchorage)

Department of Law (DOL)

Anchorage, Alaska

POSITION STATEMENT: Responded to a question during discussion of HB 276.

DIANE CASTO, Section Manager

Prevention and Early Intervention Section

Division of Behavioral Health

Department of Health and Social Services (DHSS)

Juneau, Alaska

POSITION STATEMENT: Testified in opposition to HB 276 and responded to questions.

CHRISTIE GARBE, Chief Executive Officer (CEO)

American Lung Association of Alaska

Anchorage, Alaska

POSITION STATEMENT: On behalf of the group, Alaskans for Tobacco-Free Kids, testified in opposition to HB 276 and responded to a question.

MIKE ELERDING

Northern Sales Company of Alaska, Inc.

(No address provided)

POSITION STATEMENT: Testified in support of HB 276 and asked that the bill be passed.

STEVE RUSH

Holiday Stationstores, Inc.

(No address provided)

POSITION STATEMENT: Testified in favor of HB 276 and asked that the bill be passed.

DAN RILEY, Vice President

Government Relations

Tesoro Refining and Marketing Company

(No address provided)

POSITION STATEMENT: Testified in support of HB 276.

LAURA A. GLAISER, Director

Central Office

Division Of Elections

Office of the Lieutenant Governor

Juneau, Alaska

POSITION STATEMENT: During discussion of proposed Amendment 3 to SB 36, provided comments and responded to questions.

ACTION NARRATIVE

CHAIR LESIL MCGUIRE called the House Judiciary Standing Committee meeting to order at [1:22:11 PM](#). Representatives McGuire, Coghill, Kott, Dahlstrom, and Gruenberg were present at the call to order. Representatives Anderson and Gara arrived as the meeting was in progress.

CONFIRMATION HEARING(S)

Board of Governors of the Alaska Bar

[1:22:39 PM](#)

CHAIR MCGUIRE announced that the committee would first consider the appointment of Joseph N. Faulhaber to the Board of Governors of the Alaska Bar. [Mr. Faulhaber had previously provided testimony on 4/18/05.]

CHAIR MCGUIRE asked Mr. Faulhaber to pursue research on the possibility of instituting a graduated licensing fee for those that want to maintain an active license but are not practicing in the private sector - those that donate their services to nonprofits, for example - and give some consideration to the fact that Alaska is number one with regard to the highest bar exam fees.

1:25:28 PM

REPRESENTATIVE GRUENBERG raised the issue of continuing legal education.

JOSEPH N. FAULHABER, Appointee to the Board of Governors of the Alaska Bar, acknowledged members' comments.

REPRESENTATIVE GARA also remarked on the issue of possibly instituting a graduated licensing fee for those that wish to donate their services.

1:28:14 PM

MR. FAULHABER said that the Board of Governors of the Alaska Bar has addressed that situation to some extent. He relayed that he is championing the concept of a balanced budget. There are three kinds of attorneys that could be forced to pay the costs of a bar association: yesterday's attorneys, today's attorneys, and tomorrow's attorneys. He said that in a mandatory bar association, he would like to see the bar dues change every year according to the budget - in other words, take the amount of the budget and divide it by the number of attorneys who hold bar membership to determine what bar dues for each member would be. He opined that such a system would be fair and would keep the general membership more in the loop.

[Chair McGuire turned the gavel over to Representative Anderson.]

1:31:07 PM

REPRESENTATIVE GARA indicated he would give that concept consideration.

MR. FAULHABER remarked, though, that such a concept would conflict with the concept of providing a graduated licensing fee for certain members and with the concept of possibly lowering bar exam fees.

REPRESENTATIVE GARA acknowledged that the Alaska Bar Association does need to balance its budget.

MR. FAULHABER said he would research the issues raised at this hearing and provide feedback to the committee.

1:32:45 PM

REPRESENTATIVE KOTT made a motion to advance from committee the nomination of Joseph N. Faulhaber as appointee to the Board of Governors of the Alaska Bar. There being no objection, the confirmation was advanced from the House Judiciary Standing Committee.

SB 140 - BAN INTERNET SPYWARE

1:33:17 PM

REPRESENTATIVE ANDERSON announced that the next order of business would be CS FOR SENATE BILL NO. 140(JUD), "An Act relating to spyware and unsolicited Internet advertising."

DAVID STANCLIFF, Staff to Senator Gene Therriault, Alaska State Legislature, sponsor, said on behalf of Senator Therriault that SB 140 proposes to allow individuals and businesses recourse to take action against those who are "putting things on and in their computers" without permission and those items cause damage. He relayed that the next speaker - Ben Edelman - is considered an expert in the field [of computers] and has testified as such before the courts.

1:34:40 PM

BENJAMIN G. EDELMAN explained that spyware has become quite a serious problem. He elaborated:

There's a lot of software on a typical [personal computer (PC)], maybe even on some of your PCs, that isn't there because you want it or because you asked for it, but rather it's there because some spyware company found a way to sneak it on and to make money from keeping it there. Some of these programs really do bona fide spying - they track your name, your e-mail address, your credit card number, your purchases, and so forth. Others have a commercial purpose that might at first glance seem less nefarious but that has actually proven to be quite a bit more profitable. They track what you do, and then ... show you extra pop-up ads, often for competitors of the sites you ask for.

It's this kind of spyware that today's bill seeks to focus on. Why focus here? Well, the outright spying

- stealing credit card numbers and so forth - is largely illegal under existing law. If you're trafficking in someone's credit card numbers, you better believe that eventually the law is going to catch up with you and you're not going to like it. Surely there's a need for ... more enforcement effort, but I don't get the sense that new legislation is really what's needed, here. On the other hand, as to the advertising software, well, these programs are in an odd, intermediate position. Some courts have said that what they do is illegal, but others have actually found it to be okay, [that] it's a kind of competition [that] somehow the web naturally creates.

So there's a natural role for the legislature in stepping up and giving an answer, preventing the slow and costly litigation that has been present to date, and beginning to give consumers some relief from this unwanted software that at present has such overpowering economic incentives to sneak onto users' PCs. Just to be very concrete about what it is that we're talking about, ... there's software that for example might notice you're going to an Internet car rental site ... [and will then] show you a pop-up ad for a different car rental site. ... Well, maybe that's the kind of competition that might be thought to be fair or legitimate in the abstract, but the fact is, you can make so much money by getting new [car rental] customers that way that it seems like 100 different companies want to be in this business of showing that kind of pop-up ad.

MR. EDELMAN continued:

It's the race to get on to your computer, to trick you into clicking "yes" here or "yes" there or "okay" somewhere else, that causes users' computers to get truly overwhelmed and clogged up with all the different programs and their respective pop-up ads. Now, this bill comes in a very particular context, with some legislation perhaps in the pipeline in [Washington D.C.] and that in principle could preempt your state legislation, so you shouldn't be under any false illusions as to how long this will last. [The] fact is, Congress might act and it would block your legislation altogether; on the other hand, they might remain paralyzed as they have been for ... the past

two years that they've been talking about this in various modes.

Similarly there have been some bills passed in other states, though I think there's a lot we can learn from those bills and, as I see it at least, their shortcomings. For example, a bill passed in California last year has a regular laundry list of different tactics that California says are impermissible: you shouldn't take over someone's computer and use it to send junk e-mail, you shouldn't use someone's computer to install software and tell them that it's been removed when it hasn't - no lying. Well, so California gives a dozen-odd different things that you shouldn't do, but oddly they omit the methods used by the most prevalent programs; they omit the sneaky installations, for example, and, most importantly, they omit these pop-up ads that are the core of the profit motive of these programs.

There may, nonetheless, be some objections to this bill. Last year, when there was surprisingly similar legislation in Utah, I was really just shocked by how many technology companies actively spread disinformation about what the bill would do. They said it would ban anti-virus software and porn filters. ... Of course, there was no legitimate basis for any of their allegations. My sense ended up being that software companies don't like the idea of governments, especially state governments, telling them how they can do business. Maybe we can see where they're coming from - after all, for the past 20 years, no one's really regulated software companies, they've gotten to do whatever they want - but we certainly have [a] great history of consumer protection legislation in this country and that's entirely appropriate ... [for] the Internet too.

The Internet isn't free of laws just because it's implemented in software. Another possible objection to the bill is that it somehow grants excessive or undue protections to trademark holders and that that creates some kind of constitutional problem, trademark being largely a federal concern. But as I read the bill, I don't think that's actually right; what the bill does is regulate unfair competition - not trademark. And it's fully within a state's rights to

say that it is unfair competition to show ads in particular ways. That's just the kind of thing all kinds of unfair competition laws have been doing for decades.

MR. EDELMAN concluded:

Finally, some folks will say that enforcement of the bill is impossible, they'll say it's hard to find these "adware" and spyware folks and when you find them you can't do anything to them; I emphatically disagree with that one. The folks making these pop-up ads are big companies; they have offices in New York and California - some of them may be in Alaska, though I don't have any specifically in mind - they're easy to find and there won't be any difficulty with enforcement or even with collection in due course. So I'll leave it at that, and I really am pleased to answer any question that the committee may have.

[1:40:51 PM](#)

REPRESENTATIVE GARA noted that the interstate commerce clause says that the state can regulate Alaskan companies and those who know they're dealing with Alaskans, but cannot regulate those who don't know they're dealing with Alaskans. He offered his understanding that most companies responsible for infecting computers with pop-up ads don't know what state those computers are in, and asked whether the courts would consider that a sufficient reason for prohibiting the regulation of those companies.

MR. EDELMAN pointed out that regulation of spyware is quite different because spyware does know where computers are located, since it provides specific marketing to specific populations and locations via Internet protocol (IP) addresses. Furthermore, [Section 1 of CSSB 140(JUD), specifically proposed AS 45.45.792(b)(1)-(3)] speaks to this issue directly, essentially saying that one can use spyware as long as it asks or otherwise determines where the user is located and then doesn't display the pop-up ad if that location is Alaska. Another point to consider is that the advertising company is actually sending a program that is going to stay on one's computer indefinitely and thus the State of Alaska has a large nexus over that program because it is then physically present in Alaska. In conclusion, he suggested that the committee ought to get advice from Legislative Legal and Research Services regarding possible

constitutional issues raised by SB 140 and then follow that advice.

REPRESENTATIVE ANDERSON relayed that SB 140 would be set aside until later in the meeting.

HB 269 - HAZARDOUS SUBSTANCE RELEASE LIABILITY

[1:45:57 PM](#)

REPRESENTATIVE ANDERSON announced that the next order of business would be HOUSE BILL NO. 269, "An Act relating to contribution actions relating to the release of a hazardous substance; and providing for an effective date."

[1:46:22 PM](#)

REPRESENTATIVE JAY RAMRAS, Alaska State Legislature, sponsor, said that HB 269 deals with fixing the uncertainty caused by the U.S. Supreme Court's 2004 decision in the Cooper Industries, Inc. v. Aviall Services, Inc. case. He went on to paraphrase from his written opening remarks, which read in part [original punctuation provided along with some formatting changes]:

The US Supreme Court found in the Aviall decision that a responsible party who cleans up contaminated property cannot bring a contribution action against another potentially responsible party until such time as the he or she has been sued by the state or federal government, or has entered into a formal administrative settlement of liability.

Alaska's hazardous substance remediation statutes are modeled after the Federal Comprehensive Environmental Response Compensation & Liability Act of 1980 (CERCLA) and the Superfund Amendments and Reauthorization Act of 1986 (SARA). Alaska's environmental cleanup statutes are modeled after these federal laws.

The Aviall decision puts into question the rights of Alaskan's who conduct voluntary cleanups on properties contaminated by hazardous substances to undergo contribution actions against other potentially responsible parties.

Voluntary cleanups of contaminated sites form the vast majority of environmental cleanups conducted in the State of Alaska.

These voluntary cleanups allow the state to focus its limited resources on monitoring responsible party cleanup actions, instead of undertaking costly administrative or judicial enforcement actions to force cleanups, or undertaking cleanups at public expense.

The right to contribution actions against other potentially responsible parties creates an important incentive for voluntary remediations, by allowing responsible parties to undertake effective cleanups themselves, and then being able to recover some of those costs from other potentially responsible parties, who fail to voluntarily undertake or assist with the remediation.

The purpose of HB 269 is in response to the Aviall decision. HB269 will clarify language in AS 46.03.822(j), thereby ensuring that responsible parties who conduct voluntary cleanups may bring contribution actions against other potentially responsible parties.

HB 269 has the support of both the Department of Environmental Conservation and the Governor's office.

This is an area of law where Alaska cannot afford to have the common law decisions of the court out pace our codified laws.

REPRESENTATIVE RAMRAS concluded by urging the committee to support adopting HB 269 for the aforementioned reasons.

[1:49:40 PM](#)

BENJAMIN BROWN, Legislative Liaison, Office of the Commissioner, Department of Environmental Conservation (DEC), relayed that the DEC supports HB 269. He remarked that although there is not a problem currently, there could be one in the future should the Alaska Supreme Court interpret Alaska's version of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) the way the federal statute was interpreted. He emphasized that the worst-case scenario would

result in having to bring all individuals that were suspected of being the responsible party for environmental situations into court, in order for those parties to seek contribution from other potentially responsible parties. He opined that this could result in needlessly spending scarce resources, particularly given that currently most responsible parties are willing to start the cleanup process as early as possible. He reiterated that the Department of Environmental Conservation supports this legislation.

[1:51:09 PM](#)

GEORGE R. LYLE, Attorney at Law, Guess & Rudd, PC, stated that he represents a number of private property owners who own contaminated property, contaminated by previous owners, and are now dealing with the [cleanup process]. He said that he and his clients support this legislation. Mr. Lyle relayed that notwithstanding Mr. Brown's view of this being a hypothetical problem in the future, he has one client that has had a significant settlement offer withdrawn as a result of the Aviall decision because the party that withdrew the offer believed that Mr. Lyle's client no longer had the right to bring a contribution action, since the client had already been cleaning up the site for a number of years. He added, "So this is a real issue with real consequences to ... my clients, the current property owners, who are the most easily targeted party for the clean ups.

[1:52:41 PM](#)

BRECK TOSTEVIN, Assistant Attorney General, Environmental Section, Civil Division (Anchorage), Department of Law (DOL), said that he has represented the State of Alaska in connection with oil and hazardous substance cleanups for the past 15 years. He relayed that the Department of Law (DOL) supports HB 269, and pointed out that the bill ensures that Alaska's system for conducting environmental cleanups will continue as it has in the past, but without unnecessary additional cost, enforcement actions, or lawsuits. The bill does this, he said, by clarifying the ability of persons who conduct voluntary cleanups to recover their costs from other responsible parties, adding that this right to recover cost from other responsible parties is known as the right to contribution.

MR. TOSTEVIN said that HB 269 ensures that the right to contribution exists even if the person conducting the cleanup hasn't been sued by the state or by persons thus forcing cleanup

or the collection of damages. The bill would remove the uncertainty and confusion that has been caused by the U.S. Supreme Court's recent decision in Aviall wherein the U.S. Supreme Court found that under the CERCLA, which is the federal statute upon which Alaska's cleanup statute is patterned, a responsible party could not bring a contribution action unless it had been sued by a state government or the federal government or entered into a formal administrative settlement with either one.

MR. TOSTEVIN said that this requirement of being involved in a lawsuit or formal settlement with the state, before a responsible party can bring a contribution action, is not consistent with what the Alaska Supreme Court has interpreted with respect to Alaska's version of the CERCLA. In the 2001 Federal Deposit Insurance Corporation v. Laidlaw Transit, Inc. case, the Alaska Supreme Court recognized that responsible parties could bring a contribution action under [AS 46.03.8.22(j)] in the absence of a lawsuit by the state. The court reasoned that the legislature didn't intend that there be a requirement of a lawsuit before parties could bring a contribution action.

MR. TOSTEVIN relayed that HB 269 would affirm the result in the Laidlaw case, by allowing a contribution action after the issuance of a potential liability determination by the DEC. Furthermore, on page 3, lines 6-16, the bill defines what a "potential liability determination" is in Section 3, and it does that in terms of the DEC's existing practice. The determinations would include, for example, a letter notifying the person that he/she is a potentially responsible party. Under current practice this is called a PRP (Potential Responsible Party) letter and it is issued by the DEC's Contaminated Sites Program. Another example would involve providing notice of state interest to a person regarding a release or threatened release; the DEC's Prevention & Emergency Response Program issues these kinds of letters in catastrophic spill situations pertaining to vessels and large land spills. Another example of notice involves a request for site characterization or cleanup, and these are also issued by the DEC's Contaminated Sites Program.

MR. TOSTEVIN explained that upon receiving a potential liability determination, if the person conducts a voluntary cleanup, then that person would have contribution rights under [proposed AS 46.03.8.22(j)] against other persons who were liable under the statute for that incident. In summary, HB 269 would clarify

these rights, and would encourage voluntary cleanups in the future. To do otherwise, would really punish those who have already cleaned up property in the past and would reward recalcitrant parties who have failed to take action while others have incurred the costs. Again, the Aviall decision has caused great uncertainty and confusion and has resulted in situations where people are afraid to step up and do a voluntary cleanup. He relayed that he has had people asking the State to sue them, and that's just a needless exercise when there are people who - if they know they have the right to seek contribution against others - are willing to voluntarily step up and proceed with the cleanup process.

[1:57:33 PM](#)

REPRESENTATIVE GARA asked whether the bill might make it harder for somebody to recover from a responsible party.

MR. TOSTEVIN indicated that it would not, and stated that HB 269 merely clarifies the right of contribution and recognizes what the Alaska Supreme Court has already opined.

REPRESENTATIVE GARA surmised, then, that the intent of this bill is to prevent the possible rescinding of the Alaska Supreme Court's decision in light of what the U.S. Supreme Court did in Aviall.

MR. TOSTEVIN concurred, reiterating that the concern is that the Alaska Supreme Court might revisit it's ruling in light of Aviall. He pointed out that by addressing this issue via legislation ahead of time, that potential uncertainty is prevented.

[1:59:55 PM](#)

REPRESENTATIVE DAHLSTROM moved to report HB 269 out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, HB 269 was reported from the House Judiciary Standing Committee.

HB 268 - OVERTAKING/PASSING STATIONARY VEHICLES

[2:00:06 PM](#)

REPRESENTATIVE ANDERSON announced that the next order of business would be HOUSE BILL NO. 268, "An Act relating to overtaking and passing certain stationary vehicles."

REPRESENTATIVE JAY RAMRAS, Alaska State Legislature, sponsor, informed the committee that the genesis of HB 268 took place at a dinner honoring former Lieutenant Governor Jack Coghill. During that dinner a tow truck driver described the great peril and risk to which tow truck drivers are subject to in non-police calls. Research has indicated that nationwide, a tow truck driver once a week is killed. The legislation also includes animal control vehicles and their drivers, and seeks to amend the "move over" [provisions of current law by including] tow trucks when picking up a vehicle and animal control vehicles when rescuing animals or removing their carcasses.

[2:02:31 PM](#)

REPRESENTATIVE ANDERSON, upon determining no one else wished to testify, closed public testimony.

REPRESENTATIVE KOTT asked if tow trucks are currently required to have emergency lights.

REPRESENTATIVE RAMRAS said he believes they are and that they are actually equipped with such.

REPRESENTATIVE DAHLSTROM asked whether tow truck drivers are required to use those lights.

REPRESENTATIVE RAMRAS indicated that he wasn't sure.

REPRESENTATIVE KOTT relayed his understanding that this legislation only applies to those vehicles that have emergency lights which are flashing. He questioned whether animal control vehicles have emergency lights.

REPRESENTATIVE RAMRAS related that at the very minimum these vehicles would have standard parking lights, which he assumed would be turned on when an animal control vehicle is stopped on the side of the road. He said he didn't know whether the lights animal control vehicles have actually flash.

[2:04:54 PM](#)

REPRESENTATIVE GRUENBERG noted that his wife sits on the Anchorage animal control board, and asked if the sponsor would be amenable to changing the language "in the act of removing an animal from the roadway" to "performing official functions".

REPRESENTATIVE RAMRAS returned to the earlier issue and related that animal control vehicles have strobe lights. He then said that he was amenable to any amendment that would improve the legislation.

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 1, as follows:

Page 1, lines 6-7;

Delete "in the act of removing an animal from the roadway"

Insert "performing official functions"

Page 1, lines 11-12;

Delete "in the act of removing an animal from the roadway"

Insert "performing official functions"

REPRESENTATIVE ANDERSON asked whether there were any objections to Conceptual Amendment 1. There being none, Conceptual Amendment 1 was adopted.

[2:07:03 PM](#)

REPRESENTATIVE GARA asked whether HB 268 is creating a crime or a violation.

REPRESENTATIVE RAMRAS specified that it would be a class A misdemeanor.

REPRESENTATIVE GRUENBERG interjected that it would be a class A misdemeanor only if someone is injured, otherwise it's an infraction.

REPRESENTATIVE ANDERSON informed the committee that AS 28.35.185(b) currently reads:

(b) A person who violates this section is guilty of

(1) a class A misdemeanor if personal injury results from the person's failure to vacate the lane or slow as required by this section;

(2) an infraction, under circumstances other than in (1) of this subsection.

REPRESENTATIVE ANDERSON clarified that HB 268 would merely add tow trucks and animal control vehicles to the list of vehicles to which the above language applies.

REPRESENTATIVE RAMRAS highlighted that tow truck drivers perform a very important function and free law enforcement to pursue more serious issues.

REPRESENTATIVE DAHLSTROM asked whether the change proposed by the bill imposes the same level of infraction as would apply if a citizen hits a firefighter or a police officer while in the line of duty.

REPRESENTATIVE RAMRAS commented that the public automatically shows great deference to emergency vehicles. However, the same degree of deference isn't applied to tow truck drivers or animal control vehicles, and therefore those folks are placed at a greater risk than public safety individuals.

[2:11:33 PM](#)

REPRESENTATIVE RAMRAS, in response to Representative Dahlstrom, offered his belief that [tow truck drivers and animal control officers] are subject to the same degree of risk as [public safety personnel] when they stop on the side of the road. He clarified that he didn't want to draw a distinction between public safety personnel and other trained professionals who stop on the side of the road. He indicated that it's common sense and a sign of respect [to slow down and vacate the lane closest to vehicle that's pulled over]. He concluded by characterizing HB 268 as another "move over" bill.

REPRESENTATIVE DAHLSTROM asked whether a police officer or fire fighter is already afforded the same protection.

REPRESENTATIVE RAMRAS replied yes.

[2:13:37 PM](#)

REPRESENTATIVE DAHLSTROM moved to report HB 268, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 268(JUD) was reported from the House Judiciary Standing Committee.

REPRESENTATIVE KOTT offered his thought that this legislation could potentially have a fiscal impact if the driver's license

manual has to be changed. He opined that individuals wouldn't have a clue that animal control vehicles would be included in the statute, and therefore he expressed the hope that that information would be included in the manual.

REPRESENTATIVE ANDERSON posited that the driver's license manual is reprinted every year that the legislature changes some aspect of the laws to which it pertains. He further posited that he has never seen a fiscal note for changing the driver's license manual when the legislature has changed a traffic violation. Therefore, he is assuming that the cost, although small, is absorbed.

[CSHB 268(JUD) was reported from committee.]

HB 276 - BUSINESS LICENSE TOBACCO ENDORSEMENT

[2:16:32 PM](#)

REPRESENTATIVE ANDERSON announced that the next order of business would be HOUSE BILL NO. 276, "An Act relating to business license endorsements for tobacco products, to holders of business license endorsements for tobacco products, and to the employees and agents of holders of business license endorsements for tobacco products."

[Representative Anderson returned the gavel to Chair McGuire.]

MICHAEL O'HARE, Staff to Representative Pete Kott, Alaska State Legislature, sponsor, presented HB 276 on behalf of Representative Kott. He said HB 276 addresses the amendment of AS 43.70.075 regarding the sale of tobacco products to minors. Basically, HB 276 increases financial penalties for non-compliance by employees and employers who sell tobacco products; removes the automatic suspension of tobacco endorsement provision of current law; and increases the minimum fines, per violation, for employers with education, monitoring and enforcement programs in place - from the current levels of \$300, \$500, \$1000 and \$2,500 - to \$750, \$1,000, \$2,500 and \$3,500 respectively. The bill also increases the minimum fines, per violation, for employers without education, monitoring, and enforcement programs - from the current levels of \$300, \$500, \$1,000 and \$2,500 - to \$500, \$750, \$1,500, and \$2,500 respectively, as well as suspends the violator's tobacco endorsement for a predetermined period of time.

MR. O'HARE said that HB 276 also makes an employee responsible for the sale of tobacco products to minors by imposing separate fines for those in violation. The bill allows qualifying employers - employers with documented education, monitoring and enforcement programs - to assert defenses and provide evidence at administrative hearings of endorsement suspension regardless of the disposition of a case against the violating employee. Under current law, employers have little or no chance to present their own cases if an employee pleads no contest or guilty. This should encourage more employers to create education, monitoring, and enforcement programs to prevent the sale of tobacco products to minors. House Bill 276 would require employees to sign a statement that they understand it is against the law to sell tobacco to minors and that they will bear some of the responsibility, personally, if they violate the law.

MR. O'HARE relayed that HB 276 creates a separate cause of action against the employee for selling tobacco to minors and imposes a fine of \$300 to the employee. The state needs to continue to hold employers responsible in order that they may improve their own internal operations, and needs to put more responsibility on those employees who either refuse to participate in education programs or intentionally violate the law. The state must also recognize responsible employers who make strong internal efforts at curbing underage smoking in a fair, balanced, and reasonable manner. These changes could also make Alaska one of the strongest states in the country in terms of employer-sponsored education, monitoring, and enforcement programs, and could lead to even better federal compliance.

REPRESENTATIVE GARA asked whether, under the bill, a tobacco seller could still lose his/her tobacco endorsement under certain circumstances.

[2:21:17 PM](#)

MR. O'HARE reiterated that HB 276 removes the automatic suspension provision while increasing the fines for employers who have been documented to have education, monitoring, and enforcement programs in place.

REPRESENTATIVE GARA asked for a comparison between current law and the changes being proposed by HB 276 as they pertain to losing a tobacco endorsement.

[2:22:14 PM](#)

CYNTHIA DRINKWATER, Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage), Department of Law (DOL), relayed that she represents the Division of Occupational Licensing in tobacco-endorsement matters. She explained that currently there is a very strong incentive for vendors of tobacco products to be very vigilant in the hiring, training, and monitoring of their employees who sell tobacco, because, under the current framework, if the holder of the tobacco endorsement is convicted of selling to a minor, or if the employees or agents - while acting within the scope of employment or agency - are convicted of selling to minors, then the holder of the endorsement is liable and there are mandatory stepped penalties starting with a 20-day suspension and a \$300 fine. Then, if there is a second conviction within a two-year period, the fine is \$500 and the suspension is 45 days. Further convictions warrant higher fines and longer suspensions.

MS. DRINKWATER went on to explain that after conviction, once the holder of an endorsement receives a notice of suspension, there is an appeal process, but its currently a fairly limited process. The legislative intent was to create a framework of penalties wherein the outcome was known, determinant, and would not require lengthy hearings. There was also the consideration that the sanctions that were imposed - both civil penalties and suspension periods - would essentially level the playing field for different types of vendors. For example, for small vendors, it is the fine that will get their attention, whereas for [large vendors, it is the suspension of the endorsement that will get their attention].

[2:25:48 PM](#)

DIANE CASTO, Section Manager, Prevention and Early Intervention Section, Division of Behavioral Health, Department of Health and Social Services (DHSS), relayed that the DHSS is in opposition to HB 276 for a number of reasons, two of them being primary reasons. She explained that the Tobacco Youth Education & Enforcement Program falls under the purview of the Division of Behavioral Health because the "sell rate" of tobacco products to youth is directly linked to the federal Substance Abuse Prevention And Treatment (SAPT) Block Grant made available through the federal "Synar legislation." She went on to say:

The two primary reasons that our department ... opposes this bill is that first and foremost, one of our main goals is to promote healthy youth in the state of Alaska, and obviously smoking is a huge

problem - all tobacco products are a problem - for youth in the state of Alaska, and we believe that the current system that we have ... has been very effective in reducing access to tobacco products by our youth. So we hope to continue the great progress that we have made. ... The mandatory suspension of tobacco endorsements began in July of [2001], which was the beginning of fiscal year [FY] 02, and ... prior to fiscal year 03 we [were] ... always in violation of the federal 20 percent sell rate for youth. And in 2003, after a full year of the new regulation, we went down to a 10 percent sell rate for youth, which put us below, at that time, the national sell rate average. Last year ... we increased just a little bit ..., up to almost 12 percent. ...

2:28:54 PM

REPRESENTATIVE GARA asked what "sell rate" refers to.

MS. CASTO said that the "Synar survey" is conducted between May and September each year, and it involves a process of doing a random sample poll of all of the businesses that have a business license with a tobacco endorsement that are accessible to youth. Last year the sample included just under 400 businesses. During the aforementioned months, departmental tobacco investigators go out with confidential youth informants to those businesses selected via the random sample and attempt to buy cigarettes. If the confidential youth informants are successful and "complete a sell," those [sales] go into the "sell rate."

MS. CASTO, in response to a question, said only one attempted buy occurs at each business. She reiterated that once the mandatory suspension of the tobacco endorsement went into place, the sell rates dropped significantly, and the DHSS believes that that drop was a result of the possible consequence of losing one's tobacco endorsement. Such a loss can cost businesses money, much more money than the fines, which were not successful in reducing sell rates. Additionally, there has been a significant reduction, overall, in smoking among youth - the rate dropped from 37 percent to 19 percent, which is lower than the national rate. In conclusion, she said that the DHSS feels very encouraged by this reduction and feels that the endorsement suspension provision of current law has been a great part of that reduction. She provided the committee with the DHSS's tobacco vendor education packets.

REPRESENTATIVE COGHILL raised the issue of individual responsibility.

MS. CASTO said:

We believe it's a mutual responsibility. Obviously it is [the] responsibility of the employee to not sell, and I think that through ... vendor education - if our retailers are providing the vendor education as was pointed out in the introduction of this bill - that they do have responsibility and they should not be selling. And there is a fine both for the employee and that employer, as well as the tobacco [endorsement] suspension.

[2:33:56 PM](#)

CHRISTIE GARBE, Chief Executive Officer (CEO), American Lung Association of Alaska, relayed that she would be testifying in opposition to HB 276 on behalf of the group, Alaskans for Tobacco-Free Kids, an alliance of a number of health-focused nonprofit organizations. She indicated that Alaskans for Tobacco-Free Kids believes that HB 276 will effectively weaken the enforcement component - the cornerstone - of the statewide comprehensive tobacco control program, and that it strikes at the heart of efforts to deter kids from smoking.

MS. GARBE said that Alaskans for Tobacco-Free Kids would remind members of the amazing progress made in the reduction of youth tobacco consumption as measured by the Youth Risk Behavior Survey (YRBS), which shows a 50 percent reduction in cigarette smoking among Alaska high school students from 1995 to 2003. Another YRBS statistic indicates that Alaska students who reported purchasing cigarettes at a store also dropped 50 percent in that same time period. She said that the bill will, for all practical purposes, eliminate the ability to take away vendors' rights to sell tobacco. Without this ability there will be no financial incentive on the part of the vendor - the party profiting from the sale of tobacco - to comply with current law. In fact, history has shown that suspension has been a necessary component of enforcement.

MS. GARBE opined that companies which have the privilege of holding a license to sell tobacco - a legal yet deadly and addictive product - must also bear the serious responsibility for selling this product to Alaska's children. The company is the entity making the profit from the sales of tobacco and

therefore it is the company that must bear the responsibility to hire capable, responsible, trainable, competent employees who follow the policy of not selling tobacco to those under the age of 19. It just doesn't seem that difficult a rule for management to train employees to follow, she opined. In conclusion, she asked the committee not to fix something that is not broken, and characterized "this proposal" as a giant step backward for efforts to prevent youth tobacco addiction; the current law has effectively done the job of reducing tobacco sales to youth and therefore does not need any further changes.

2:37:12 PM

MS. GARBE, in response to a question, offered her understanding that under the bill, vendors would have the ability to put in place an educational program of some sort that they consider to be adequate and then, once they have done that, they will be immune from suspension of their tobacco endorsement.

2:38:10 PM

MIKE ELERDING, Northern Sales Company of Alaska, Inc., relayed that Alaska's tobacco industry supports HB 276 because it believes that the bill corrects a deficiency in current law while continuing to provide enforcement officials with the powerful tools necessary to assist them in keeping tobacco out of the hands of children. He offered the industry's belief that Alaska retailers, in partnership with the State, are doing a good job of keeping tobacco out of the hands of children. The results of the Synar surveys indicate that the state has made huge progress in becoming and remaining compliant with federal guidelines. Nationally, for 2003 and 2004, Alaska ranks in the top one-third of all states for "Synar scores."

MR. ELERDING offered his belief that HB 276 will continue to provide the state with the tools to penalize non-conforming retailers while not unjustly punishing the retailers that are doing everything within their power to comply with state law. The problem with the current law, he opined, is that the penalty range does not distinguish between different retail classifications or size of retail operations. As a consequence, the penalty for a violation impacts different businesses differently. For example, if a business sells a large volume of tobacco products - or sells only tobacco products - the suspension of its tobacco endorsement is going to have a much more severe impact on it than would an endorsement suspension on a business that sold very little in the way of tobacco products.

Furthermore, license suspensions are currently mandatory and do not take into account any mitigating circumstances such as whether the retailer had a training program in place.

MR. ELERDING concluded by offering his understanding that HB 276 changes the license suspension phase and continues to provide the DHSS with the right to impose license suspensions but only after initiating a proceeding that examines a retailer's efforts to comply with state law regarding the prohibition of tobacco sales to minors. This change is significant because it provides retailers that have an effective training program in place with an affirmative defense and also provides retailers the opportunity to have a hearing before the imposition of a license suspension. He said, "We support HB 276 and would like to see the committee pass this bill out."

[Following was a brief discussion regarding a possible amendment Mr. Elerding suggested for a different bill.]

[2:46:29 PM](#)

STEVE RUSH, Holiday Stationstores, Inc., after mentioning that Holiday Stationstores owns and operates approximately 30 convenience stores in Alaska, said that Holiday Stationstores is in favor of HB 276 and believes that it should be enacted for a number of reasons. He offered his belief that the bill substantially stiffens the penalties for selling tobacco to minors - those fines being the highest he's ever encountered - and also encourages employers to implement the aforementioned education, monitoring, and enforcement programs. Current law, he opined, provides little incentive for employers to train employees, since [all vendors] are treated the same. He said that Holiday Stationstores has a very comprehensive, proprietary computer-based training program, and is quite proud of that program; however, current law does nothing to reward Holiday Stationstores for its efforts to curb tobacco purchases by minors.

MR. RUSH offered his belief that HB 276 will also establish a more predictable and fair due process for employers. Current law does provide a very streamlined process for going after a license holder, but it leaves a license holder with no defense when an employee sells tobacco to a minor and pleads guilty or no contest; in such cases the employer is held strictly liable, pays the fine, and faces the 20-day suspension of his/her tobacco endorsement. He opined that this is unfair; instead, an employer ought to be able to offer up all of his/her efforts

towards compliance as part of a defense. Additionally, the bill would encourage employees to be more diligent in checking IDs when selling tobacco, because it creates a civil penalty for the employee who sells tobacco to a minor, and the employee would be required to sign a statement acknowledging that it is against the law to sell tobacco to a minor and thus he/she would bear some of the responsibility for violating the law.

MR. RUSH acknowledged that there is some concern that removal of the current suspension provision might jeopardize "Synar funding," but offered his belief that such has not been borne out by empirical evidence from California, Oregon, and Washington. Thus, he surmised, removal of the current suspension provision will have no effect on federal funding. He concluded by asking the committee to pass the bill.

[2:51:44 PM](#)

DAN RILEY, Vice President, Government Relations, Tesoro Refining and Marketing Company ("Tesoro"), relayed that he would be speaking in support of HB 276. Tesoro, he explained, operates 32 convenience stores in Alaska and is a strong advocate of preventing the selling of tobacco products to minors. He elaborated:

We have training programs in place to ensure our employees are aware of their responsibilities not to sell tobacco products to minors. All of our convenience store employees are required to complete a "new employee" orientation when they are hired. That employee orientation program contains a section on techniques for alcohol management and specific lessons on restricted products. The training covers, in detail, procedures regarding the sale of restricted products, and employees are required to pass a validation test with a score of 100 percent at the conclusion of their training. As many of you know, Tesoro started out in Alaska; we now operate convenience stores in 16 states across the western United States. I can tell you that Alaska is the most stringent, regarding tobacco sales laws, of any of the states that we operate in.

The proposed bill before you will allow Alaska to continue to have the toughest penalties of any state, and will [ensure] that Alaska is the country's leader in terms of [employer-sponsored] education,

monitoring, and enforcement programs. Tesoro supports the provisions that stiffen penalties for non-compliance; we also support the provision that will allow ... employers with aggressive internal education and monitoring and enforcement programs - like we believe we have - to take credit for those programs as mitigating factors in administrative hearings. We believe the bill establishes a more predictable and fair due process, and encourages employees to be more diligent in checking IDs at the point of sale. I respectfully request that you support HB 276, and I would be happy to answer any questions.

[2:54:07 PM](#)

CHAIR McGUIRE, after ascertaining that no one else wished to testify, relayed that HB 276 would be held over.

SB 140 - BAN INTERNET SPYWARE

[2:54:19 PM](#)

CHAIR McGUIRE announced that the committee would resume the hearing on CS FOR SENATE BILL NO. 140(JUD), "An Act relating to spyware and unsolicited Internet advertising."

REPRESENTATIVE KOTT noted that the bill's presentation occurred earlier in the meeting, characterized the SB 140 as a good bill, and said he would support reporting it from committee.

REPRESENTATIVE COGHILL indicated that he would be doing further research on the issues raised by SB 140.

[2:56:30 PM](#)

REPRESENTATIVE GRUENBERG noted that he'd missed the earlier testimony, and asked for an explanation of the bill.

DAVID STANCLIFF, Staff to Senator Gene Therriault, Alaska State Legislature, sponsor, said on behalf of Senator Therriault that SB 140 is modeled after legislation in other states, particularly Utah, and is aimed directly at those companies that violate fair trade practices by inserting information into one's computer without one's knowledge. He relayed that a recent search for spyware on legislative computers found 685 spyware programs. The bill allows a person or business to seek civil recourse for damages caused by spyware, and allows the attorney

general to pursue violators under existing statutes. He noted that Legislative Legal and Research Services has provided a memo to the effect that SB 140 does not violate the federal commerce clause.

REPRESENTATIVE GRUENBERG surmised, then, that SB 140 addresses pop-up ads.

MR. STANCLIFF concurred, adding that spyware invades computers and is being used by major companies to influence commerce.

[2:59:28 PM](#)

REPRESENTATIVE ANDERSON moved to report CSSB 140(JUD) out of committee with individual recommendations and the accompanying zero fiscal notes. There being no objection, CSSB 140(JUD) was reported from the House Judiciary Standing Committee.

SB 36 - ABSENTEE BALLOTS

[2:59:46 PM](#)

CHAIR McGUIRE announced that the final order of business would be CS FOR SENATE BILL NO. 36(JUD), "An Act relating to absentee ballots." [Before the committee was HCS CSSB 36(STA).]

DAVID STANCLIFF, Staff to Senator Gene Therriault, Alaska State Legislature, sponsor, relayed on behalf of Senator Therriault that during last year's election period, some irregularities occurred regarding absentee ballot applications wherein some applications were held back, were made viewable by the public, were changed after being signed by the voter, or were altered such that they requested personal information from the voter that the Division of Elections doesn't require. Because of these irregularities, SB 36 proposes to allow the division to authorize the application form that will be used, and proposes to require that applications follow a direct route between the applicant and the division. Furthermore, he remarked, intent language added in the House State Affairs Standing Committee ought to ensure that friends and family members of the applicant will be allowed to deliver applications to either some form of mail delivery service or directly to the division. In conclusion, he said the bill has had widespread, bipartisan support, and that it is not the sponsor's intent to point fingers at any particular political party.

[3:02:46 PM](#)

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on SB 36.

REPRESENTATIVE GARA distributed an amendment pertaining to the issue of pre-marking a party affiliation on an absentee ballot application, and said he might offer that amendment on the House floor. He then referred to page 2, line 7, and said he wants to ensure that registrars will also be allowed to deliver absentee ballot applications to the division.

MR. STANCLIFF indicated that registrars are considered by Division of Elections to already be acting on its behalf.

REPRESENTATIVE GARA asked whether "voter" is statutorily defined as also including a registrar.

MR. STANCLIFF indicated that he would research that issue before the bill is heard on the House floor.

REPRESENTATIVE GARA said he would like to offer a conditional conceptual amendment such that the bill would refer to "the voter or authorized representative", if it is deemed by the drafter that such language is necessary.

MR. STANCLIFF noted that the bill authorizes the division to develop and institute regulations to implement the bill, and suggested that Representative Gara's concern will be addressed via regulations.

[3:05:57 PM](#)

REPRESENTATIVE GARA indicated that he would instead have his conditional conceptual amendment change the bill such that it would refer to "voter registrar or authorized representative".

REPRESENTATIVE GRUENBERG noted that the drafter, via a memorandum dated 3/17/05, has recommended that the intent language be placed into the bill itself rather than simply in an intent section, and asked Mr. Stancliff whether he would have any objection to such a change.

MR. STANCLIFF offered his belief such a change would be unobjectionable to the sponsor.

REPRESENTATIVE GRUENBERG made a motion to adopt Conceptual Amendment 1, to adopt the drafter's suggestion of placing the

intent language currently in Section 1 into a section of the bill that is to be codified; such a change would eliminate what is currently Section 1. There being no objection, Conceptual Amendment 1 was adopted.

[3:08:01 PM](#)

REPRESENTATIVE GARA made a motion to adopt Amendment 2, to insert after "voter" on page 2, line 7, the words ", registrar or authorized representative".

CHAIR McGUIRE objected for the purpose of discussion.

MR. STANCLIFF offered his belief that the sponsor would consider adding "registrar" to the bill to be an acceptable change, but not adding "authorized representative". He reiterated his understanding that language authorizing registrars to deliver absentee ballots to the division would not be necessary because they are already considered to be part of the division.

REPRESENTATIVE GARA withdrew Amendment 2.

REPRESENTATIVE GARA made a motion to adopt a new Amendment 2, to insert after "voter" on page 2, line 7, the words "or registrar".

MR. STANCLIFF indicated that he had no objection to new Amendment 2.

CHAIR McGUIRE asked whether there were any objections to new Amendment 2. There being none, new Amendment 2 was adopted.

[3:09:38 PM](#)

REPRESENTATIVE GARA said he is not sure that he agrees with the change proposed by Section 3 of the bill - changing the deadline by which the division must receive a request for an absentee ballot from seven days to ten days - adding that he does not want to make it harder for people to get an absentee ballot.

REPRESENTATIVE GARA made a motion to adopt [Amendment 3], to delete Section 3 of the bill.

MR. STANCLIFF explained that the change proposed by Section 3 of the bill was requested by the Division of Elections because it wants more time in which to fully process absentee ballot requests, particularly given that there were a large number of

such requests last year. Without that change, the Division of Elections has predicted, more people would have to be hired and employees would have to work overtime in order process all the requests. Therefore it is a policy call as to whether the legislature wants to give the division more time or would prefer the division to hire more staff and have everyone working overtime.

REPRESENTATIVE COGHILL said he would be objecting [to Amendment 3], and indicated that giving the division more time would be his preferred choice, particularly given how much easier it is these days for people to vote absentee. The earlier deadline will ensure that all applications are processed in a timely and fair manner.

[3:12:37 PM](#)

LAURA A. GLAISER, Director, Central Office, Division Of Elections, Office of the Lieutenant Governor, confirmed that the division had asked for the extension proposed by Section 3 of the bill. During the last election, she explained, the division saw an overwhelming increase in absentee ballot applications, and now considers the seven-day deadline to be insufficient, particularly given that once an application is received by a regional office of the division, it must be checked in there and then sent to the main office in Juneau for final processing. This process alone can take up to two or three days, leaving only four or five days for the applicant to receive, complete, and return the ballot. The success rate for absentee voters to even get a ballot when their request is received by the division seven days before election day is [very small]; with a seven-day deadline, the state is being set up for failure and the voters are being set up to possibly not even receive a ballot.

MS. GLAISER relayed that the division's interest in requesting the change proposed by Section 3 was to ensure that voters get an absentee ballot. At one point, the division - at the suggestion of experienced staff - considered asking for the deadline to be changed to two weeks, but the lieutenant governor said that deadline was too far out, and so the compromise was a ten-day deadline. She opined that Alaskans have many opportunities to vote, and the change proposed by Section 3 of the bill is the best way to ensure that an absentee ballot application sent by mail will result in the ballot being received by the voter in a timely manner.

REPRESENTATIVE COGHILL opined that in fairness to the voter, particularly those serving in the military, he is in favor of [the change proposed in the bill].

REPRESENTATIVE GRUENBERG offered his belief that the change proposed by Section 3 of the bill will have the opposite effect of what the division intends. He opined that military personnel should be allowed to submit a request for an absentee ballot as close as possible to the day of the election.

[3:17:57 PM](#)

REPRESENTATIVE COGHILL acknowledged that point. He then asked what would happen if an application is received after the deadline.

MS. GLAISER said that the division would not process it.

REPRESENTATIVE COGHILL said his concern is that such ballots wouldn't be counted. He said he is interested in ensuring that the division is able to handle the absentee ballot application process.

[3:20:12 PM](#)

MS. GLAISER offered her recollection that absentee ballot applications can be sent in beginning January 1 of the year the election takes place. She noted that "shut ins" are afforded a "special needs" voting process, and that military units have voting officers who are charged with making sure that military personnel are aware of the timelines pertaining to voting absentee; additionally, military personnel have their own applications and can become Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) voters. She also noted that last year the division received a request to set up early voting sites in certain military bases a few days prior to deployment.

MS. GLAISER opined that the voting process isn't so narrow as to preclude one from choosing to vote absentee via mail, but acknowledged that last year many waited until the last minute to apply for an absentee ballot. She pointed out that last year, there were people who did not receive their absentee ballot in time even though division personnel worked up until the last minute attempting to ensure that all absentee ballot requests were filled.

[3:22:40 PM](#)

CHAIR MCGUIRE acknowledged that with a seven-day deadline, there is the likelihood that voters won't get the chance to get their absentee ballot returned to the division in time, and pointed out that absentee ballots from military personnel stationed overseas might be further delayed.

MS. GLAISER, in response to a question, said that last year, the division attempted to get absentee ballots sent out up to just a few days prior to the election, but still got complaints from people who didn't receive their ballot in time even though division personnel worked day and night in an attempt to fill requests. In response to another question, she indicated that as election day drew near, when it became clear that absentee ballots being sent out so late that they were not going to reach the voters in time, division personnel resorted to calling voters in order to facilitate voting via fax.

[3:25:43 PM](#)

REPRESENTATIVE GRUENBERG offered his understanding that one can vote up to midnight on election day, and that a vote must be counted as long as the ballot is received by the applicant by that time.

CHAIR MCGUIRE pointed out that the director of the division has been attempting to explain that the current seven-day deadline is not sufficient, that the division needs more time in which to ensure that those applying for absentee ballots receive their ballots in time to have their vote counted, and that a ten-day deadline will afford the division a better chance of success.

REPRESENTATIVE GRUENBERG concurred, but remarked that there are those who would receive a ballot in time under the current deadline.

CHAIR MCGUIRE acknowledged that point, but mentioned that regardless of what the deadline is, there are those who, for one reason or another, will still not receive an absentee ballot in time to have their vote counted.

[3:28:23 PM](#)

REPRESENTATIVE GARA indicated that his hope is that if Amendment 3 is adopted and the seven-day deadline remains in place, that the division will hire the extra staff needed to ensure that applicants get their absentee ballots in time.

MS. GLAISER pointed out that the division doesn't have the power of appropriation and therefore cannot ensure that the funding for hiring extra staff would be available; if, however, the funding does end up being available, the division would hire the staff needed. She mentioned that last year no one at the division expected the 1,300 percent increase in federal oversees ballots. The division is asking that the deadline be extended to ten days in order to ensure that more absentee ballots are received in time. Meanwhile the division will also be looking at ways to address the issue of absentee ballots. In conclusion, she reiterated that she believes the proposed ten-day deadline will ensure that the most voters get their ballots in a timely manner and can thereby have their votes counted.

REPRESENTATIVE GARA opined that if Amendment 3 is adopted, it will be the legislature's duty to provide adequate funding to the division.

[3:31:10 PM](#)

A roll call vote was taken. Representatives Gruenberg and Gara voted in favor of Amendment 3. Representatives McGuire, Anderson, Coghill, Kott, and Dahlstrom voted against it. Therefore, Amendment 3 failed by a vote of 2-5.

[3:31:38 PM](#)

REPRESENTATIVE DAHLSTROM moved to report HCS CSSB 36(STA), as amended, out of committee with individual recommendations and the accompanying fiscal note. There being no objection, HCS CSSB 36(JUD) was reported from the House Judiciary Standing Committee.

ADJOURNMENT

[3:32:55 PM](#)

The House Judiciary Standing Committee was recessed at 3:32 p.m. to a call of the chair. [The meeting was never reconvened.]