

**ALASKA STATE LEGISLATURE  
HOUSE RULES STANDING COMMITTEE**

May 3, 2005

1:09 p.m.

**MEMBERS PRESENT**

Representative Norman Rokeberg, Chair  
Representative John Coghill, Vice Chair  
Representative John Harris  
Representative Vic Kohring  
Representative Lesil McGuire  
Representative Ethan Berkowitz  
Representative Beth Kerttula

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

CS FOR SENATE BILL NO. 140(JUD)

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

- MOVED HCS CSSB 140(RLS) OUT OF COMMITTEE; ADOPTED A HOUSE  
CONCURRENT RESOLUTION ALLOWING THE TITLE CHANGE

**PREVIOUS COMMITTEE ACTION**

BILL: SB 140

SHORT TITLE: COMPUTERS & INTERNET

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	(S)	JUD AT 8:00 AM CAPITOL 120

04/08/05 (S) Scheduled But Not Heard  
 04/13/05 (S) JUD AT 8:30 AM BUTROVICH 205  
 04/13/05 (S) Heard & Held  
 04/13/05 (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  
 04/14/05 (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)  
 04/19/05 (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  
 04/27/05 (H) Moved Out of Committee  
 04/27/05 (H) MINUTE(JUD)  
 04/28/05 (H) JUD RPT 6DP 1NR  
 04/28/05 (H) DP: KOTT, ANDERSON, DAHLSTROM, COGHILL,  
 GARA, MCGUIRE;  
 04/28/05 (H) NR: GRUENBERG  
 05/03/05 (H) RLS AT 1:00 PM CAPITOL 124

**WITNESS REGISTER**

SENATOR GENE THERRIAULT  
 Alaska State Legislature  
 Juneau, Alaska  
 POSITION STATEMENT: Spoke as the sponsor SB 140.

DAVE STANCLIFF, Staff  
 to Senator Gene Therriault  
 Alaska State Legislature  
 Juneau, Alaska  
 POSITION STATEMENT: During discussion of SB 140, answered  
 questions.

**ACTION NARRATIVE**

**CHAIR NORMAN ROKEBERG** called the House Rules Standing Committee meeting to order at [1:09:09 PM](#). Representatives Rokeberg, Coghill, Harris, Kohring, McGuire, Berkowitz, and Kerttula were present at the call to order.

SB 140-COMPUTERS & INTERNET

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

[1:09:31 PM](#)

SENATOR GENE THERRIAULT, Alaska State Legislature, sponsor, informed the committee that he introduced SB 140 in an attempt to address the issue of spyware on computer systems in Alaska. With increased use of the Internet and the downloading of programs, often users unknowingly end up having spyware downloaded on their computers as well. He explained that spyware monitors the types of web sites one visits and attempts to block the site with a competing site. Senator Therriault said that Internet technology isn't his expertise, and therefore he and his staff worked with an individual versed in this matter as well as with the legislature's own Data Processing staff. He noted that the legislature's Data Processing staff supports this legislation.

[1:11:41 PM](#)

REPRESENTATIVE COGHILL moved that the committee adopt Amendment 1, labeled Y.4, Luckhaupt, 5/2/05, which read:

Page 1, line 1:

Delete **"to spyware and unsolicited Internet advertising"**

Insert **"to computers, computer communications, and the Internet"**

Page 1, following line 2:

Insert new bill sections to read:

**"\* Section 1.** AS 11.41 is amended by adding a new section to read:

**Sec. 11.41.452. Online enticement of a minor.**

(a) A person commits the crime of online enticement of a minor if the person, being 18 years of age or older, knowingly uses a computer to communicate with

another person to entice, solicit, or encourage the person to engage in an act described in AS 11.41.455(a)(1) - (7) and

(1) the other person is a child under 16 years of age; or

(2) the person believes that the other person is a child under 16 years of age.

(b) In a prosecution under (a)(2) of this section, it is not a defense that the person enticed, solicited, or encouraged was not actually a child under 16 years of age.

(c) In a prosecution under this section, it is not necessary for the prosecution to show that the act described in AS 11.41.455(a)(1) - (7) was actually committed.

(d) Except as provided in (e) of this section, online enticement is a class C felony.

(e) Online enticement is a class B felony if the defendant was, at the time of the offense, required to register as a sex offender or child kidnapper under AS 12.63 or a similar law of another jurisdiction.

\* **Sec. 2.** AS 11.61 is amended by adding a new section to read:

**Sec. 11.61.128. Electronic distribution of indecent material to minors.** (a) A person commits the crime of electronic distribution of indecent material to minors if the person, being 18 years of age or older, knowingly distributes to another person by computer any material that depicts an act described in AS 11.41.455(a)(1) - (7) and

(1) the other person is a child under 16 years of age; or

(2) the person believes that the other person is a child under 16 years of age.

(b) In this section, it is not a defense that the victim was not actually under 16 years of age.

(c) Except as provided in (d) of this section, electronic distribution of indecent material to minors is a class C felony.

(d) Electronic distribution of indecent material to minors is a class B felony if the defendant was, at the time of the offense, required to register as a sex offender or child kidnapper under AS 12.63 or a similar law of another jurisdiction."

Page 1, line 3:

Delete "**Section 1**"

Insert "**Sec. 3**"

Renumber the following bill sections accordingly.

Page 4, following line 24:

Insert a new bill section to read:

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

APPLICABILITY. Sections 1 and 2 of this Act apply to offenses occurring on or after the effective date of this Act."

CHAIR ROKEBERG objected for discussion purposes.

[1:12:04 PM](#)

SENATOR THERRIAULT explained that Amendment 1 contains the language of a number of bills [SB 118 and SB 119] that have been caught up in the backlog [of legislation]. He noted that the list of co-sponsors illustrates fairly broad support in the Senate such that SB 140 could be used as a vehicle to move the legislation addressing the use of the Internet for the enticement of minors forward.

[1:12:54 PM](#)

CHAIR ROKEBERG asked if the sponsors are in agreement with incorporating the aforementioned legislation into SB 140.

SENATOR THERRIAULT said that the sponsor seems to understand that it's a way to have the provisions in the other legislation placed in the statutes this year.

[1:13:27 PM](#)

REPRESENTATIVE KOHRING inquired as to how one can determine spyware has been installed.

SENATOR THERRIAULT pointed out that there are software applications, which the legislature's Data Processing division uses, that sweep the computer system for identifiable spyware and remove it.

[1:14:36 PM](#)

REPRESENTATIVE BERKOWITZ commented that it seems spyware poses the same risks as a trespass in a criminal context. He informed

the committee that criminal mischief is defined as "tampering with the property of another." Therefore, he surmised that there are some criminal avenues available as well.

SENATOR THERRIAULT explained that part of the problem is that the pop-up advertisements on the Internet may or may not have a disclosure statement. Often people accept pop-up advertisements without knowing that they have agreed to place something on their computer and not [be able] to remove it without specific permission from the company. Senator Therriault said that although the Internet has made available many benefits, it's a tool for scams as well.

REPRESENTATIVE BERKOWITZ informed the committee that criminal mischief in the fourth degree includes a prohibition against knowingly accessing the computer, the computer system, the computer program, and computer network or part thereof. He suggested that if there is a rash of these problems, perhaps there could be some sort of criminal cases made.

SENATOR THERRIAULT said he was sure that this won't be the last time the legislature will address this because he suspected the problem will mutate.

[1:17:12 PM](#)

SENATOR THERRIAULT, in response to Chair Rokeberg, acknowledged that there has been some concern expressed regarding constitutional concerns in relation to the Commerce Clause. However, the April 27, 2005, memo from Legislative Legal and Research Services relates the belief that there could be a challenge of SB 140 based on the general Commerce Clause analysis. The aforementioned memo specifies that regulation of spyware is a legitimate local concern and it doesn't burden out-of-state businesses any more than local businesses. Therefore, this legislation doesn't appear to erect a barrier to interstate trade, which is the focus of the federal Commerce Clause.

[1:18:08 PM](#)

REPRESENTATIVE COGHILL asked if there has been a successful criminal prosecution for charges with regard to spyware or misuse of a computer.

[1:18:38 PM](#)

DAVE STANCLIFF, Staff to Senator Gene Therriault, Alaska State Legislature, answered that he hasn't received any confirmation to that effect. This legislation provides a threshold for a civil remedy without having to show a higher level of damage to the courts. This legislation allows the attorney general, on a broader scale, to address this issue on behalf of the state.

[1:19:25 PM](#)

CHAIR ROKEBERG turned to Amendment 1 and the felony level sanctions, and asked if the House Judiciary Standing Committee took up any of the issues embodied in Amendment 1.

REPRESENTATIVE MCGUIRE replied no. However, she noted that she has been in contact with the bill sponsor and his intent to include it [in SB 140]. She related her understanding that the matter was thoroughly reviewed in the Senate Judiciary Standing Committee.

[1:20:01 PM](#)

REPRESENTATIVE COGHILL, in response to Chair Rokeberg, noted that his legislation regarding indecent exposure is on the Senate floor.

SENATOR THERRIAULT noted that the difference is that the indecent exposure in Representative Coghill's legislation is regarding the act being done in person whereas SB 140 refers to it occurring over the Internet.

CHAIR ROKEBERG asked if there is any relation in Representative Coghill's legislation and SB 140 regarding the sanctions.

REPRESENTATIVE COGHILL informed the committee that his legislation addressed indecent exposure to minors and increasing a second offense from a misdemeanor to a felony.

[1:20:45 PM](#)

REPRESENTATIVE MCGUIRE opined that she didn't think the charge should be lower than a class C felony, and furthermore she expressed the need to send a strong message on this matter for which the damage can be life long.

[1:21:13 PM](#)

REPRESENTATIVE BERKOWITZ opined that Amendment 1 refers to a number of acts that if they occurred in person, would be class B felonies. He, too, agreed that a C felony is an appropriate level.

[1:22:02 PM](#)

CHAIR ROKEBERG noted for the record that staff from Senator French's office [Senator French is the sponsor of SB 118 and SB 119] related his agreement with [incorporating SB 118 and SB 119 into SB 140]. Chair Rokeberg then removed his objection.

Therefore, Amendment 1 was adopted.

[1:22:25 PM](#)

REPRESENTATIVE BERKOWITZ moved to report CSSB 140(JUD), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HCS CSSB 140(RLS) was reported from the House Rules Standing Committee.

[1:22:53 PM](#)

REPRESENTATIVE HARRIS moved to report Version 24-LS0996\A, Luckhaupt, 5/2/05, [what later became HCR 17] as the title resolution. There being no objection, it was so ordered.

#### **ADJOURNMENT**

There being no further business before the committee, the House Rules Standing Committee meeting was adjourned at [1:23:17 PM](#).