

**ALASKA STATE LEGISLATURE**  
**SENATE LABOR AND COMMERCE STANDING COMMITTEE**

March 22, 2005

1:36 p.m.

**MEMBERS PRESENT**

Senator Con Bunde, Chair  
Senator Ralph Seekins, Vice Chair  
Senator Ben Stevens  
Senator Bettye Davis

**MEMBERS ABSENT**

Senator Johnny Ellis

**COMMITTEE CALENDAR**

SENATE BILL NO. 140

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

HEARD AND HELD

SENATE BILL NO. 137

"An Act providing that an institution providing accommodations exempt from the provisions of the Uniform Residential Landlord and Tenant Act may evict tenants without resorting to court proceedings under AS 09.45.060 - 09.45.160."

HEARD AND HELD

SENATE BILL NO. 130

"An Act relating to a special deposit for workers' compensation and employers' liability insurers; relating to assigned risk pools; relating to workers' compensation insurers; stating the intent of the legislature, and setting out limitations, concerning the interpretation, construction, and implementation of workers' compensation laws; relating to the Alaska Workers' Compensation Board; assigning certain Alaska Workers' Compensation Board functions to the division of workers' compensation in the Department of Labor and Workforce Development and to that department, and authorizing the board to delegate administrative and enforcement duties to the division; establishing a Workers' Compensation Appeals Commission; providing for workers' compensation hearing officers in workers' compensation proceedings; relating to workers' compensation

medical benefits and to charges for and payment of fees for the medical benefits; relating to agreements that discharge workers' compensation liability; relating to workers' compensation awards; relating to reemployment benefits and job dislocation benefits; relating to coordination of workers' compensation and certain disability benefits; relating to division of workers' compensation records; relating to release of treatment records; relating to an employer's failure to insure and keep insured or provide security; providing for appeals from compensation orders; relating to workers' compensation proceedings; providing for supreme court jurisdiction of appeals from the Workers' Compensation Appeals Commission; providing for a maximum amount for the cost-of-living adjustment for workers' compensation benefits; relating to attorney fees; providing for the department to enter into contracts with nonprofit organizations to provide information services and legal representation to injured employees; providing for administrative penalties for employers uninsured or without adequate security for workers' compensation; relating to fraudulent acts or false or misleading statements in workers' compensation and penalties for the acts or statements; providing for members of a limited liability company to be included as an employee for purposes of workers' compensation; establishing a workers' compensation benefits guaranty fund; relating to the second injury fund; making conforming amendments; providing for a study and report by the medical services review committee; and providing for an effective date."

HEARD AND HELD

**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

BILL: SB 137

SHORT TITLE: EVICTING INSTITUTIONAL PROPERTY USERS

SPONSOR(s): SENATOR(s) SEEKINS

03/08/05 (S) READ THE FIRST TIME - REFERRALS  
03/08/05 (S) L&C, JUD  
03/22/05 (S) L&C AT 1:30 PM BELTZ 211

BILL: SB 130

SHORT TITLE: WORKERS' COMPENSATION

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

03/03/05	(S)	READ THE FIRST TIME - REFERRALS
03/03/05	(S)	L&C, FIN
03/08/05	(S)	L&C AT 1:30 PM BELTZ 211
03/08/05	(S)	Heard & Held
03/08/05	(S)	MINUTE(L&C)
03/10/05	(S)	L&C AT 1:30 PM BELTZ 211
03/10/05	(S)	Heard & Held
03/10/05	(S)	MINUTE(L&C)
03/15/05	(S)	L&C AT 1:30 PM BELTZ 211
03/15/05	(S)	Heard & Held
03/15/05	(S)	MINUTE(L&C)
03/17/05	(S)	L&C AT 1:30 PM BELTZ 211
03/17/05	(S)	Heard & Held
03/17/05	(S)	MINUTE(L&C)
03/22/05	(S)	L&C AT 1:30 PM BELTZ 211

**WITNESS REGISTER**

Senator Gene Therriault  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Sponsor of SB 140

CURTIS CLOTHIER, Manager  
Data Processing  
Legislative Affairs  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Supports SB 140.

BENJAMIN EDELMAN, PhD. student  
Harvard University  
Boston Massachusetts

**POSITION STATEMENT:** Supports SB 140.

JOE MICHEL  
Staff to Senator Seekins  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Introduced SB 137 for sponsor.

MIKE SFRAGA  
University of Alaska

Anchorage AK

**POSITION STATEMENT:** Supports SB 137.

MIKE HOSTINA

University Of Alaska

**POSITION STATEMENT:** Supports SB 137.

BARBARA WILLIAMS

Alaska Injured Workers Alliance

Anchorage AK

**POSITION STATEMENT:** Opposes SB 130.

JERRY FLOCK

Anchorage AK

**POSITION STATEMENT:** Supports SB 130.

PAUL LISANKIE, Director

Division of Workers Compensation

Department of Labor & Workforce

Development

PO Box 21149

Juneau, AK 99802-1149

**POSITION STATEMENT:** Commented on SB 130.

#### **ACTION NARRATIVE**

**CHAIR CON BUNDE** called the Senate Labor and Commerce Standing Committee meeting to order at [1:36:34 PM](#). Present were Senators Ben Stevens, Seekins and Chair Bunde. Senator Davis arrived at 1:38.

#### **SB 140-BAN INTERNET SPYWARE**

CHAIR CON BUNDE announced SB 140 to be up for consideration.

SENATOR THERRIAULT, sponsor of SB 140, gave a short introduction before presenting a slide show.

I've introduced SB 140 to accomplish two main objectives. The first is to send a message to computer invaders that it will be illegal in Alaska to conduct certain practices involving the injection of unwanted and malicious programs into computers. The second objective is to heighten through the legislative process both the awareness of the magnitude of the spyware problem and how to deal with it in the most cost-effective and time-efficient manner.... We have

through research made contact with a nationally recognized expert [Ben Edelman] who has worked with us in drafting SB 140....

Virtually every branch of local and state governments have spyware problems. The cost of protecting private citizens from spyware is \$21 billion nationally. This is based on the estimated three to six minutes each day people use to clean or otherwise deal with unwanted programs that affect their computers. The challenge is to keep the legislation targeted at unscrupulous and malicious sources without making it so broad that it will damage legitimate uses of computer programs.

SENATOR THERRIAULT said that SB 140 is broadly based on the Utah model with some features of the California version worked in. It may be difficult to prosecute those who ply their invasive practices in Alaska, but the magnitude of the problem moved him to declare such activities illegal so that legal recourse is available to those who wish to pursue the violators.

CURTIS CLOTHIER, Manager, Data Processing, Legislative Affairs, narrated a presentation called "Spyware 101."

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He explained that spyware is software that collects personal information or makes changes on your computer without your knowledge or consent. Sometimes it's accompanied by an Addware program that launches customized advertising. Spyware is relatively new; the first document case being in early 2000. But it started to hit radar screens in 2003 when a study indicated that two out of 100 support calls to help desks were related to spyware. Now it is estimated to be two out of five calls.

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CHAIR BUNDE asked if anti-virus programs would help.

MR. CLOTHIER answered no; virus guards usually check only for viruses. Spyware usually makes its way through the Web browser. Most virus guards are aimed at Email or viruses that are already on a computer in files.

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He described ways spyware can get on a computer - generally by installation of an application that is free with the end-user license agreement too long. It generally causes a computer to slow down or crash.

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Spyware doesn't necessarily collect bad information. Some computers have it preloaded and it gives manufacturers information about a computer's health. The customer is generally informed, however. Other software has a free version and a paid version. The free version includes advertising. "It's the knowledge and consent thing, which I think is really critical in loading software."

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Once spyware is on a computer, it requires a call to a technical support person who can run several different programs, but that is not always successful.

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MR. CLOTHIER said that despite his division's best efforts, the legislature gets on average four to five machines a week that are infected with spyware - each taking as much as several hours to fix. He said that, "Spyware prevention and removal now takes up more of our time than virus and spam issues."

He said there isn't any one good solution to the problem. He is trying to focus on educating his customers. He tells them not to click on advertisements to download software. Programs are being developed, but they cost money. All indicators lead him to believe it will be a problem well into the future.

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CHAIR BUNDE asked how enforcement would work.

MR. CLOTHIER replied that programs can trace things, but that in the vast majority of cases, people are covering their tracks pretty well. Many times they have moved on from a physical location by the time they are found.

CHAIR BUNDE asked if this law were passed, would legitimate vendors have to stop their activity while the serious criminals would still be operating.

MR. CLOTHIER replied that license agreements are made difficult on purpose and he was sure vendors could do a better job of making it clear what they are intending to do with free software. "Certainly, it's such a mess right now that no one reads and people who aren't really savvy to the technology, just say yes to everything and trap themselves."

CHAIR BUNDE remarked, "We need to protect people from themselves a little bit - sort of like a seat belt law."

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BENJAMIN EDELMAN, PhD. student at Harvard University, said he is a independent researcher testing spyware in his lab. It has become quite a serious problem. Some do bona fide spying by tracking purchases and credit cards, but others track your Websites to find out which ones you like to visit and have pop ups - generally with offers from competitors of the sites asked for. There is nothing legitimate with putting yourself out there as Hertz when you are Budget.

Hard enforcement is needed, because stealing credit cards is already against the law. There is no clear benefit to passing another law that would continue to be broken. Pop ups need to be addressed, because some people think it is a grey area - as in the Hertz/Budget scenario. It creates troubling economic incentives where everyone and his brother wants to sneak on to your computer with a pop up ad.

SB 140 focuses on pop up ads. It says it's not a legitimate business practice to show a user an ad for one company when the user asked for that company's competitor or for some other site by domain name.

So, if I picked up my cell phone and I called 1-800-American, trying to reach American Airlines, that wouldn't be legitimate for Sprint to connect me to United instead - even if United offered a nice advertising fee to my cell phone company. That's not fair competition....

Courts have gone both ways, but this bill makes it very clear that it can't be done in Alaska.

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California passed a bill last year that names about a dozen specific tactics that are absolutely abominable - like using one person's computer as part of an attack against another computer. They named a lot of behaviors that are problematic, but he thought it was ultimately ineffective because the outrageous tactics are not the ones that are used by the biggest companies trying to sneak on to users' computers.

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Utah's governor signed a bill into law on which SB 140 is modeled. He emphasized that constitutional issues need to be looked at. Critics of bills like this might suggest granting extra protection to trademark holders and that would, in turn, be bad for consumers. This would suggest that Hertz has a right to have their site displayed on screen and Budget can't interfere with that. That is giving a windfall to Hertz.

He thought it was important to think through who exactly is being harmed and who is being benefited.

It seems to me that users are receiving the brunt of the benefit.... When a user types in Hertz.com, it's quite clear the user wants Hertz. The user does not want 10 different pop up ads for 10 different competitors....

He was surprised at the number of software companies that objected to the state of Utah passing any bill having to do with soft ware. They thought they should be exempt from any government regulation, especially from any state regulation. "That seems entirely wrong to me. People who make products have to comply with laws in all 50 states...."

MR. EDELMAN said that enforcement is difficult especially if the companies are offshore, but the people who are doing the biggest harm are big companies. Gator, a big spyware firm, is talking about going public. Other spyware companies are big firms with lobbyists and lawyers.

These are folks we can get to and to the extent that they have big companies advertising with them, Budget Car Rental or Expedia or you name it, we can get to their advertisers, too. It is not impossible to find these folks....

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SB 140 has two different ways to identify spyware - one is to ask the user if he is an Alaskan resident and the other is for the computer's IP address to indicate it's an Alaska address.

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Chair Bunde asked Senator Therriault if he knew of any opposition to this bill from companies in Alaska.

SENATOR THERRIAULT replied that he had not heard of any opposition. He thought the committee might ask for the difference between a cookie and spyware.

CHAIR BUNDE asked if a cookie is a form of spyware.

MR. EDELMAN replied that it isn't a form of spyware. It is a data file that a Website can place on a person's computer so that it can store information, like a password. They do not slow down a computer, make it crash or send your information anywhere else. They don't cause problems. There is no need to talk about cookies in a spyware bill.

SENATOR DAVIS asked what Mr. Edelman thought about this particular bill.

MR. EDELMAN said he thinks it is a strong bill; it makes specific people and entities accountable. It has a clear plan for enforcement - by private parties under existing statutes pertaining to unfair competition and consumer protection. Some legislation in other states places the burden on the state to hire investigators and lawyers to figure out who the spyware purveyors are. The harm is actual and targets a lot of people; it is a grey problem and courts haven't handled it consistently.

CHAIR BUNDE thanked him for his testimony and said SB 140 would be addressed again on Thursday.

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### **SB 137-EVICTING INSTITUTIONAL PROPERTY USERS**

CHAIR CON BUNDE announced SB 137 to be up for consideration.

JOE MICHEL, staff to Senator Seekins, sponsor, said the University of Alaska requested this legislation which stems from a few cases where disruptive students have used the court system to stall evictions from their unit until it's most convenient for them. The students' infractions were way beyond what was allowed under their student housing contract. The University needed to remove these students from their housing before their disruptive behavior started affecting other students.

He said this bill is an attempt to correct a discrepancy between legislative intent and some recent lower court decisions on the Uniform Landlord Tenant Act in AS 34.03.330. It reads:

'Unless created to avoid the application of this chapter, the following arrangements are not governed by this chapter: residence at an institution, public or private, if incidental to detention or provision of medical geriatric, educational counseling, religious or other similar services.' And [this] basically means public service institutional entities such as hospitals, schools, counseling centers or higher educational establishments are not compatible with the heightened protections that were designed under the Landlord Tenant Act.

He said the University of Alaska has put into place a three-strike system intending to work with students regarding their university housing. There's a review and an appeals process for major infractions. The university has shown a dedication to working with students who are not observing housing rules.

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MIKE SFRAGA, University of Alaska, said it is their role and mission to serve its students. Some students make the environment not as productive as might be. Processes are in place that allow the university to do a case by case review.

It is certainly not the intent of any of us to make undue challenges to our students in terms of hurdles. In fact, we look to do things on a case-by-case basis, although within a framework, to address issues because we don't want to treat all students the same way....

So, we have those processes that were presented to you. These are internal processes, administrative guidelines that we follow.... If we find that it is in the best interests of the institution, our students and a particular student, we will ask them to leave the residence. The student has the right in a due process procedure to appeal that to a dean of students. Then certainly the dean of students can make the final decision.

If the student does not agree with the final appeal decision, they can go to superior court for an appeal as well.

I guess we would like to emphasize that this is an educational institution. These are not arbitrary dismissals of students. There is a process in place. We follow that process and we have a responsibility to

make sure that our environment is conducive to education while maintaining the processes in place and understanding that our role is to educate our students.

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MIKE HOSTINA, University of Alaska, said he would answer legal questions. He said:

Our concern is we ended up in a few cases with students really getting two bites of the apple. They follow the administrative procedure within the university. If they don't like that outcome, they, then, go to court to seek to block their removal from housing. We end up with multiple processes going on and I think it was you, Mr. Chairman, who hit the nail right on the head. We have some school-house lawyers here on campus and they've cost us literally tens of thousands of dollars and hundreds of hours of administrative time to accomplish what everybody agrees, even the courts agree, should be a relatively simple process. But, the courts have felt obligated to require an eviction action, because of the language of the current forcible entry and detainer statute.

CHAIR BUNDE asked how many students have been a problem.

MR. HOSTINA said that just one student had cost the university tens of thousands dollars and hundreds of hours of time in the two years he has been there.

CHAIR BUNDE saw no further questions and said he would hold SB 137 for another hearing.

#### **SB 130-WORKERS' COMPENSATION**

CHAIR CON BUNDE announced SB 130 to be up for consideration.

BARBARA WILLIAMS, Alaska Injured Workers Alliance, did not support SB 130, because rolling back the rates would lead to a bigger shortage of physicians to treat injured workers. Further, she said it didn't address the problems with the fee schedule. Some health care providers the Alliance surveyed hold a fee schedule and regularly have their bills reduced below the rate set out in it. She stated:

This would mean that globally, if insurance review companies are reducing payments, there is no clear idea of how much a company is saving on medical costs. What it does reveal to us is that the medical costs are already being cut. It also tells us that not only are insurance companies saving money, but they are providing little information on what those savings might be.

We also have no enforcement of the current fee schedule. It would appear that there is more cost shifting here than enforcement of this current fee schedule. We need reliable data and information to address these costs.

Her survey has information from an audit review indicating that the bills are being reduced at Providence Hospital. Regarding medical benefits, she said:

We do not believe that a preferred provider list or a drug list would be appropriate for Workers' Compensation. This further limits the care and drugs workers could potentially receive and insurance companies now have control over what they are willing to pay for. The current law does not provide for preauthorization of service and pushing a list of providers and drugs would further complicate an already complex process.

Equally, the injured employees would like to suggest the employer is to be held to an independent medical evaluator provider list. Injured workers would like to see only one doctor at a time unless a referral is provided. Right now, currently, injured workers are subject to panels of doctors paid for by employers.

Adjudication of claims - We do not feel the proposed education would better serve injured workers or employers. There is currently no education process to explain to them how they should participate in the adjudication process. Complex changes in the proposed bill will, in our view, increase time delay appeals to about the same time that we're currently looking at. Additionally, we do not feel that an over panel should have the authority to set precedence over Superior and Supreme Court. The balance must be restored to the impartial process to create a fair chance for all

parties. We're giving a lot of power to an unbalanced board or division and we feel this is wrong.

Retraining benefits - We feel that a clear retraining process that provides results for injured workers would be of greater benefit than the proposed bill. Injured workers know little or nothing about the retraining process and this will add more red tape and confusion to an already complex part of the benefits available to injured workers. Workers need to understand and not guess about what benefits they need.

Overall, we know that the personnel in the division have little or no training on the complex hearing process, the Workers' Compensation Act and little or no medical training. Yet, they must make complex decisions based on the information that is available to them. We need to encourage training for all staff, make benefits more clear and base rate increases on tangible, factual data. We do not need to make sacrifices for the sake of expediency, but we do need to make informed changes based on facts. We have little or no information on the complex [indisc.] medical costs, rehabilitation, retraining benefits and know the hearing process is far from impartial....

Legal counsel would not become more available unless defense costs are fully reported. Plaintiff attorneys are making approximately 50 cents on the dollar while defense attorneys get dollar for dollar what they bill for. Why not drop the defense costs to match that of injured workers to contain costs?

Insurance premiums should be frozen until we can figure out this mess so that employers are not overcharged for their insurance product. Hiring advocates in theory is good, but who wants the job? Legal services is a non-profit and Alaska pro bono programs are not geared for Workers' Compensation. At minimum, it could potentially take up to two years for them to get the nuances of the program as well as the practices and procedures. We urge you not to pass this bill....

MS. WILLIAMS said that a bill from Providence Hospital was \$14,000 and by not utilizing the proper fee schedule, it

collected only \$11,000. She said there is no mechanism to report accurate figures to the Division of Workers' Compensation.

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CHAIR BUNDE asked who belongs to her organization.

MS. WILLIAMS replied that the Alaska Injured Workers Alliance is a non-profit organization educating injured workers. It is partnering with Alaska Public Interest Research Group Alaska Public Interest Research Group (AKPIRG) on this issue, because she feels there are consumer issues involved.

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JERRY FLOCK, injured worker, said he has fallen through every possible crack in the current system. "Because my employer was uninsured, my employer got to pick what medical it would and would not pay for."

He said there have been problems with workers' compensation for a while. An audit report dated October 31, 1999, was written about the insufficiencies of workers' compensation. SB 130 is just a bandaid. The Division of Workers' Compensation already has police powers. In his case, the state had to pay \$10,000 for an operation, because his employer wasn't insured. His employer had an annual edit error and there is a \$10,000 fine for that and \$100 per day fine for 10 days afterwards.

That means this employer owes the state a total of \$77,000. Will the state go for it? No, they don't go for it. They don't even ask for it, but yet the state will come after me for a \$10,000 surgery that they paid for.

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MR. FLOCK discussed the penalty section and how his employer allowed his insurance to lapse 18 times, but was still able to get a business license.

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CHAIR BUNDE said his point is well-taken. He said even though Mr. Lisankie couldn't comment on Mr. Flock's case, he wanted to know what enforcement tools the division has and how well they are being used on people who drop their insurance.

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PAUL LISANKIE, Director, Division of Workers Compensation, replied that he didn't have the specifics of Mr. Flock's case,

but it is well-known in the division. This is why he has mentioned to the committee that the division needs some kind of a hammer to get on top of an uninsured employer quickly rather than to try to come in after the fact and clean up the mess. Mr. Flock's testimony indicated how difficult it is to get anything once a problem has transpired.

He disagreed that this bill doesn't change anything, however. Under this bill, the director of the division could order a stop work order immediately, as opposed to what happens now where an investigator comes back, gets a hearing scheduled before the Workers' Compensation Board and then there is a hearing to decide if the employer is still uninsured at that moment.

I have no doubt that there are employers that do run without insurance for a period of time. If they get detected, their normal response oftentimes is to bring their insurance current and go forward. That can be a recurrent problem and that would be some of the factors that would be considered under this bill...that the board could consider how much to fine that employer.

I think also based on Mr. Flock's testimony, which is eloquent as far as what happens when you get court orders and then you try to enforce them in the court system against somebody who may or may not have money....

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CHAIR BUNDE remarked that it is hard to collect money from someone who doesn't have it. He said he would continue taking public testimony on Thursday and would address a CS one week from today. There being no further business to come before the committee, he adjourned the meeting at [2:51:19 PM](#).