

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

March 26, 2012

2:01 p.m.

**MEMBERS PRESENT**

Senator Hollis French, Chair  
Senator Bill Wielechowski, Vice Chair  
Senator Joe Paskvan  
Senator John Coghill

**MEMBERS ABSENT**

Senator Lesil McGuire

**COMMITTEE CALENDAR**

SENATE BILL NO. 168

"An Act relating to geographic cost-of-living salary adjustments for justices of the supreme court and judges of the superior and district courts; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 198

"An Act establishing procedures relating to issuance, suspension, or revocation of certification of police officers by the police standards council; making certain court service officers subject to certification by the police standards council; making confidential certain information that personally identifies a police officer; relating to requesting or requiring police officers to submit to lie detector tests; repealing a provision exempting certain police officers from a prohibition against requiring certain employees to submit to lie detector tests; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 138

"An Act relating to the inclusion of the charges of a vendor of goods or services on the bills of certain telecommunications carriers; and adding an unlawful act to the Alaska Unfair Trade Practices and Consumer Protection Act."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 168

SHORT TITLE: GEOGRAPHIC COLA FOR JUDGES

SPONSOR(s): RULES BY REQUEST

01/18/12 (S) READ THE FIRST TIME - REFERRALS  
01/18/12 (S) JUD, FIN  
01/30/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
01/30/12 (S) Heard & Held  
01/30/12 (S) MINUTE(JUD)  
03/26/12 (S) JUD AT 2:00 PM BELTZ 105 (TSBldg)

BILL: SB 198

SHORT TITLE: POLICE OFFICER PROTECTIONS/CERTIFICATION

SPONSOR(s): STATE AFFAIRS

02/17/12 (S) READ THE FIRST TIME - REFERRALS  
02/17/12 (S) STA, JUD  
03/01/12 (S) STA AT 9:00 AM BUTROVICH 205  
03/01/12 (S) Heard & Held  
03/01/12 (S) MINUTE(STA)  
03/06/12 (S) STA AT 9:00 AM BUTROVICH 205  
03/06/12 (S) Moved CSSB 198(STA) Out of Committee  
03/06/12 (S) MINUTE(STA)  
03/07/12 (S) STA RPT CS 1DP 2NR 1AM NEW TITLE  
03/07/12 (S) DP: WIELECHOWSKI  
03/07/12 (S) NR: MEYER, GIESSEL  
03/07/12 (S) AM: PASKVAN  
03/19/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
03/19/12 (S) Heard & Held  
03/19/12 (S) MINUTE(JUD)  
03/21/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
03/21/12 (S) Heard & Held  
03/21/12 (S) MINUTE(JUD)  
03/26/12 (S) JUD AT 2:00 PM BELTZ 105 (TSBldg)

BILL: SB 138

SHORT TITLE: THIRD-PARTY CHARGES ON TELEPHONE BILLS

SPONSOR(s): WIELECHOWSKI, DAVIS, EGAN

01/17/12 (S) PREFILE RELEASED 1/6/12  
01/17/12 (S) READ THE FIRST TIME - REFERRALS  
01/17/12 (S) L&C, JUD  
02/02/12 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
02/02/12 (S) Heard & Held  
02/02/12 (S) MINUTE(L&C)

02/23/12 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
02/23/12 (S) <Bill Hearing Postponed>  
02/28/12 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
02/28/12 (S) Moved CSSB 138(L&C) Out of Committee  
02/28/12 (S) MINUTE(L&C)  
02/29/12 (S) L&C RPT CS 3DP 2NR SAME TITLE  
02/29/12 (S) DP: EGAN, DAVIS, PASKVAN  
02/29/12 (S) NR: GIESSEL, MENARD  
03/23/12 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
03/23/12 (S) Heard & Held  
03/23/12 (S) MINUTE(JUD)  
03/26/12 (S) JUD AT 2:00 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

DOUG WOOLIVER, Deputy Administrative Director  
Alaska Court System  
Anchorage, AK

**POSITION STATEMENT:** Testified that the court supports the CS for SB 168.

THOMAS PRESLEY, Intern  
Senator Bill Wielechowski  
Alaska State Legislature  
Juneau, AK

**POSITION STATEMENT:** Provided supporting information for SB 198 and SB 138 on behalf of the sponsor.

CRAIG GRAZIANO, Attorney  
Office of Consumer Advocate  
Iowa Department of Justice and  
Chair, Consumer Protection Committee  
National Association of State Utility Consumer Advocates  
Des Moines, IA

**POSITION STATEMENT:** Testified in support of SB 138.

MATT WALLACE, Executive Director  
Alaska Public Interest Research Group (AKPIRG)  
Anchorage, AK

**POSITION STATEMENT:** Testified in support of SB 138.

DEBORAH COOK, Senior Manager  
Billings and Collections  
Alaska Communications Systems  
Anchorage, AK

**POSITION STATEMENT:** Testified in opposition to SB 138.

CYNTHIA DRINKWATER, Assistant Attorney General  
Civil Division  
Commercial/Fair Business Section  
Department of Law (DOL)  
Anchorage, AK

**POSITION STATEMENT:** Answered questions related to SB 138.

**ACTION NARRATIVE**

[2:01:37 PM](#)

**CHAIR HOLLIS FRENCH** called the Senate Judiciary Standing Committee meeting to order at 2:01 p.m. Present at the call to order were Senators Coghill, Paskvan, Wielechowski and Chair French.

**SB 168-GEOGRAPHIC COLA FOR JUDGES**

[2:02:01 PM](#)

**CHAIR FRENCH** announced the consideration of SB 168, "An Act relating to geographic cost-of-living salary adjustments for justices of the supreme court and judges of the superior and district courts; and providing for an effective date."

He asked for a motion to adopt the proposed committee substitute (CS), version M.

[2:02:13 PM](#)

**SENATOR WIELECHOWSKI** moved to adopt CS for SB 168, labeled 27-LS1181\M, as the working document.

**CHAIR FRENCH** announced that without objection, version M was before the committee.

[2:02:38 PM](#)

**DOUG WOOLIVER**, Deputy Administrative Director, Alaska Court System, stated that the court supports the amendment and asks the committee's favorable consideration of the CS.

[2:03:32 PM](#)

**CHAIR FRENCH** referenced page 1, line 7, and asked the fiscal impact of removing the \$40,000 cap.

**MR. WOOLIVER** explained that the original version of the bill would have cost just under \$800,000, and this version would cost \$249,199. Judges now receive 17.5 percent of the first \$40,000 of salary for a maximum geographic differential of \$7,000. Under version M, the 17.5 percent applies to the entire salary.

CHAIR FRENCH summarized version M provides a smaller increase in salary but removes the \$40,000 cap, thus reducing the size of the fiscal note.

[2:05:38 PM](#)

SENATOR PASKVAN asked who came up with the concept in version M, and what their reasoning was.

MR. WOOLIVER explained that the court's fiscal office developed a number of different scenarios, and this was among the simplest. He noted that the House was considering the same amendment.

CHAIR FRENCH commented that members experienced sticker shock with the original version and found the version the House was considering more reasonable. Most legislators agree that the current system is a little too penurious for compensating judges who serve in high-cost areas like Barrow, Kotzebue, and Nome.

[2:07:18 PM](#)

SENATOR COGHILL asked if Dillingham was singled out because of transportation and housing.

MR. WOOLIVER explained that the governing statute was adopted in 1978 when Dillingham didn't have a superior court judge. The statute was never updated, but Dillingham gets the same geographic differential as Bethel.

[2:08:14 PM](#)

CHAIR FRENCH closed public testimony and announced he would hold SB 168 in committee.

#### **SB 198-POLICE OFFICER PROTECTIONS/CERTIFICATION**

[2:08:37 PM](#)

CHAIR FRENCH announced the consideration of SB 198, "An Act establishing procedures relating to issuance, suspension, or revocation of certification of police officers by the police standards council; making certain court service officers subject to certification by the police standards council; making confidential certain information that personally identifies a police officer; relating to requesting or requiring police officers to submit to lie detector tests; repealing a provision exempting certain police officers from a prohibition against requiring certain employees to submit to lie detector tests; and providing for an effective date."

He asked for a motion to adopt the proposed committee substitute (CS), version E.

SENATOR WIELECHOWSKI moved to adopt the work draft CS for SB 198, labeled 27-LS1306\E, as the working document.

CHAIR FRENCH found no objection and announced that version E was before the committee.

[2:09:35 PM](#)

THOMAS PRESLEY, Intern to Senator Bill Wielechowski, sponsor of SB 198, explained that the CS removes Section 4. The previous version inadvertently removed a department's power to do investigative polygraph testing during employment. The intent was to give police officers the right to refuse a polygraph test during an investigative procedure without fear of punishment. The CS reinstates a department's power to ask for an investigative polygraph test and maintains, without punishment, the right for an officer to refuse to take the test.

[2:09:49 PM](#)

At ease to distribute copies of the new CS.

[2:11:52 PM](#)

CHAIR FRENCH reconvened the meeting and noted that the representatives from the Alaska Police Standards Council (APSC) and the Public Safety Employees Association (PSEA) indicated they had nothing to add to their previous testimony. He asked the sponsor if he had any comment on his conversations with APSC and PSEA.

SENATOR WIELECHOWSKI said there were still differences of opinion and, at some point, the Legislature would have to make a policy call.

CHAIR FRENCH announced he would hold SB 198 in committee.

#### **SB 138-THIRD-PARTY CHARGES ON TELEPHONE BILLS**

[2:13:48 PM](#)

CHAIR FRENCH announced the consideration of SB 138, "An Act relating to the inclusion of the charges of a vendor of goods or services on the bills of certain telecommunications carriers; and adding an unlawful act to the Alaska Unfair Trade Practices and Consumer Protection Act."

He asked Mr. Presley if the bill affected just landlines, not cellphones.

THOMAS PRESLEY, Intern to Senator Bill Wielechowski, sponsor of SB 138, explained that cramming affects both, but SB 138 focuses on landlines.

CHAIR FRENCH asked how prevalent the problem is in Alaska.

MR. PRESLEY replied it's difficult to ascertain because consumers are generally unaware of the problem.

[2:15:18 PM](#)

CRAIG GRAZIANO, Attorney, Office of Consumer Advocate, Iowa Department of Justice, and Chair of the Consumer Protection Committee, National Association of State Utility Consumer Advocates, stated that in 1999 Iowa passed a statute and regulations prohibiting unauthorized changes in telecommunication service, including cramming. He confirmed that the problem is not confined to wire-line billings. Civil penalties of up to \$10,000 can be assessed for each violation, although the average penalty is just \$1,500. The belief is that the penalties take the profit out of the practice and appear to have a sentinel effect throughout the industry. He said that the regulatory efforts have reduced the volume of complaints markedly. He described four complaints and commented that these were probably the tip of the iceberg, because most consumers did not notice unauthorized charges. He highlighted that the FCC issued a \$3 million penalty against one company for instituting an Internet order validation system that did not validate anything.

MR. GRAZIANO offered his belief that states are in the best position to stop the problem. They're close to the complainants and often have the resources to assist victims, institute enforcement proceedings, force restitution, and assess penalties.

[2:20:13 PM](#)

SENATOR PASKVAN asked if the companies that engage in cramming are generally U.S.-based, offshore, or international.

MR. GRAZIANO said that most of the companies that put the charges on bills have domestic addresses, but he didn't know if their operations were located in the U.S.

SENATOR PASKVAN asked how the \$3 million penalty compared to the amount of money that the companies collected by cramming.

MR. GRAZIANO said he didn't know the correlation, but that same day the FCC issued similar penalties to three other companies for similar violations.

[2:22:05 PM](#)

CHAIR FRENCH asked if he believes that crammers target states randomly or based on the strength of their anti-cramming laws.

MR. GRAZIANO opined that there was a good deal of awareness of enforcement efforts.

[2:22:44 PM](#)

MATT WALLACE, Executive Director, Alaska Public Interest Research Group (AKPIRG), stated that a key focus of AKPIRG is to stop marketplace practices that track consumers and get into their pocketbooks. He highlighted that the practice of cramming is extremely widespread and that to some extent telephone companies generate revenue from cramming by charging fees to third parties and third-party aggregators.

He described SB 138 as a proactive step to stop scammers from ripping off Alaskan consumers. He said that a growing number of states are passing legislation to ban this practice, federal legislation was pending introduction, and the large telecommunications carrier, Verizon, had pledged to end the practice of unauthorized third-party charges. He agreed that it was difficult to surmise the impact of the problem in Alaska, but that AKPIRG had received a number of calls since it started its investigation. He concluded that this is a huge first step and AKPIRG looks forward in the future to investigating the problem in the wireless market.

CHAIR FRENCH noted that attorney Cindy Drinkwater with the Department of Law consumer protection was available to answer questions.

[2:26:37 PM](#)

DEBORAH COOK, Senior Manager, Billings and Collections, Alaska Communications Systems, said the vice president of legal, regulatory, and government affairs asked her to read the following letter into the record: [Original punctuation provided.]

Alaska Communications discourages further action on CSSB 138. However, if further action is taken by the Senate Judiciary Committee, Alaska Communications recommends a few amendments, which are attached to this letter.

If enacted, CSSB 138 would place new burdens on telecommunications providers that provide third party billing services. Alaska Communications opposes this legislation because there is no evidence of a problem in this area that needs fixing. We are not aware of any consumer rebellion tied to third party billing, we do not have a large in-box filled with complaints, and we are not aware of this being an issue for other telecommunications providers in Alaska. For these reasons, we see no need for legislation such as CSSB 138.

Alaska Communications does bill customers for third parties at the same time it bills for its own services. Customers do short pay bills and when they inform us of the reason we allocate the funds submitted appropriately. Too often, however, customers fail to explain why [their] bill is short paid or how to allocate the funds they submit. In the absence of any information from the customer, Alaska Communications applies a rational allocation of the funds between itself and the third parties. This can lead to nonpayment of telephone bills through no fault of the telephone provider.

Alaska Communications takes its responsibility to provide quality services very seriously. Customers too, however, need to be responsible and explain why they have short paid a bill and how to allocate any funds submitted. Therefore, although Alaska Communications sees no need for this legislation at all, we submit the attached proposed amendment providing for customer responsibility for your consideration.

[2:29:02 PM](#)

MS. COOK reviewed the amendments suggested by ACS. In Section 1, add to subsection (b) a new paragraph (5) that says that telecommunications carriers may recover reasonable costs of implementing the bill. To subsection (c) add a new paragraph (1) that says that customers must explain in writing that there is a

dispute and how to allocate their payment if they are short paying their bill. In Section 3, add to subsection (c)(4) a new subparagraph (C) that says that telecommunications carriers are not obliged to verify the accuracy of third-party charges.

[2:30:17 PM](#)

SENATOR PASKVAN asked if ACS monitors billings for evidence of potential cramming.

MS. COOK answered yes; ACS validates billings as they go out and is careful about who can be third-party providers. Disputed 800 calls are returned to the third-party provider without question.

SENATOR PASKVAN asked what process ACS follows to allow a third-party vender to place a charge on a customer's bill.

MS. COOK explained that ACS requires a contractual relationship with its venders so it knows where the billing is coming from. ACS is the customer's advocate for questions to third parties and the fraud department can validate charges for the customer. However, she emphasized, it is the customer's responsibility to let ACS know if there is a disputed charge.

SENATOR PASKVAN asked if ACS substantively investigates providers and if it profits from third-party charges.

MS. COOK replied there are costs associated with billings, but ACS does background checks and validates providers before they are allowed to place charges on ACS billings.

SENATOR PASKVAN said he was trying to find out whether the contractual relationship includes a substantive inquiry, or if the provider simply has to sign a boilerplate agreement.

MS. COOK explained that the inquiry includes credit validation, validation of previous services, and contractual obligations once ACS does billings for someone. She noted that ACS rarely signs new third parties for wireless billings

[2:35:32 PM](#)

CHAIR FRENCH asked for some mainstream examples of third-party vendors, other than sex hotlines.

MS. COOK replied ACS regularly does third-party billing for 800 lines, people who are incarcerated, and directory advertising. She reiterated that these are all thoroughly vetted.

CHAIR FRENCH asked the volume of business that these billings represent and if ACS makes money on third-party billings.

MS. COOK said the directory contract is the largest and a signed contract is required, but she would have to follow up with specific information about volume.

2:38:00 PM

SENATOR WIELECHOWSKI asked if ACS charges for third party enhanced services that are not telephone related. He cited diet services as an example.

MS. COOK said that about five years ago ACS saw potential problems and told providers they would no longer bill for things like diet services and magazines.

SENATOR PASKVAN said he was looking for reasonable assurance that ACS was working in the consumer's interest to eliminate the potential for cramming.

MS. COOK responded that it is in the best interest of both the consumer and ACS to eliminate inappropriate billing.

SENATOR COGHILL asked if ACS would move away from third-party services if the bill were to pass without the amendments that ACS suggested.

MS. COOK replied ACS is already moving away from these services. The amendments would help make the customer aware that without their input it is difficult for ACS to know that there is a problem. As a general policy, ACS takes action as soon as it is aware that there is an issue.

2:41:27 PM

CHAIR FRENCH summarized that ACS customers have supposedly agreed to each of the charges on their bill.

MS. COOK answered that's correct.

SENATOR PASKVAN asked if all the agreements are in writing.

MS. COOK responded that the agreements can be verbal if there is some capture of a voice recording, but ACS prefers signed written contracts. Verbal contracts are more thoroughly investigated.

SENATOR PASKVAN asked how quickly ACS pays the third-party vender after it sends the bill to the customer.

MS. COOK said it was probably between 60 and 120 days, but she would have to confirm that.

SENATOR WIELECHOWSKI asked to hear from Ms. Drinkwater.

[2:45:32 PM](#)

CYNTHIA DRINKWATER, Assistant Attorney General, Civil Division, Commercial/Fair Business Section, Department of Law (DOL), introduced herself and offered to answer questions.

CHAIR FRENCH asked if the administration supports the bill.

MS. DRINKWATER replied she wasn't in a position to offer support or not; she was prepared to address legal issues that might be of concern to the committee.

SENATOR WIELECHOWSKI asked her to discuss the memo the state attorney general signed regarding the FCC action.

MS. DRINKWATER explained that in October 2011 a number of state attorneys general, including Alaska, signed a letter to the FCC commenting on proposed rulemaking regarding telephone cramming. The letter urged the FCC to consider either an outright ban on cramming or a ban with exceptions for telephone-related services such as collect calls and inmate calls. Another alternative was for a system where consumers would opt in to certain charges on a vender-by-vender basis as opposed to the current situation where consumers essentially have to opt out by calling their carrier to have charges removed from their bills.

[2:48:34 PM](#)

SENATOR WIELECHOWSKI asked if SB 138 addresses the concerns that the administration advocated for in the letter to the FCC.

MS. DRINKWATER replied the intent is consistent and it does require venders or billing aggregators to provide proof to the carrier of express authorization. This would be of assistance in an investigation because it is sometimes difficult to find the party that placed the charge on the bill. However, the bill still leaves room for abusive practices such as doctoring telephone recordings and failure to verify that a consumer agreed to a service.

[2:51:00 PM](#)

SENATOR PASKVAN asked if the bill would be beneficial to the extent that it would authorize the attorney general's office to take action under AS 45.50.471(b) if a cramming company was abusing Alaskans.

MS. DRINKWATER said the attorney general's office would probably have some authority to proceed with a cramming investigation under any circumstances, but the bill would make it easier to obtain records of customers' authorization if it was indeed given.

SENATOR PASKVAN asked how she would proceed as to an unlawful or deceptive act unless it was under AS 45.50.471(b).

MS. DRINKWATER responded that there is benefit to a specific listing because it makes it easier to show there has been a violation, but the unlawful acts listed in subsection (b) aren't exclusive.

SENATOR WIELECHOWSKI asked what rationale the Parnell administration and other state attorneys general gave when they urged the FCC to outright ban third-party cramming.

MS. DRINKWATER replied it was to stop those practices whereby customers are billed for services they didn't authorize or agree to.

SENATOR COGHILL asked if, under the present law, DOL would take action against the carrier or the third-party vender if it became aware of unauthorized charges on consumers' telephone bills.

MS. DRINKWATER replied DOL currently has the ability to issue subpoenas or civil investigative demands, but the difficulty with cramming investigations is that it is sometimes difficult to find the party that is placing the charges on the bills.

SENATOR COGHILL asked whose fault that is.

MS. DRINKWATER said that in her somewhat limited experience there is more problem finding the vender.

SENATOR COGHILL asked if cramming might not become an even larger issue for cellphones.

MS. DRINKWATER offered her understanding that cramming on cellphones would increase in the future. She agreed with Mr.

Presley's comment that as cellphone use increases, people would probably pay less attention to their landline bills.

SENATOR COGHILL asked if it was reasonable for ACS to request that customers take responsibility in notifying the carrier about unauthorized charges.

MS. DRINKWATER said she wasn't in a position to comment because this was the first she'd heard that customers weren't passing that information along to their carriers.

[2:58:48 PM](#)

SENATOR PASKVAN asked if she believes that carriers have an obligation to screen third-party venders.

MS. DRINKWATER said that consumers should not have to face charges on their phone bills for services that they did not agree to, and it makes sense that carriers should have a process to ensure that doesn't happen. She reiterated that one advantage of the bill is that it would require venders or billing aggregators to produce proof of express authorization to the carriers. That would seemingly help carriers ensure that the consumer really did agree to a service before they are billed for it.

MR. PRESLEY spoke to ACS's objection to the bill by pointing out that the truth in billing guidelines recommend that telecommunications carriers separate on the bill those charges that will result in loss of service and charges that, if not paid, will not result in loss of service. He noted that two judges have found that consumers should not have to be investigators of their own phone bill.

In conclusion, he quoted from a letter that talked about the state attorneys general recommendations regarding phone cramming. He read the following:

Because the majority of customers do not want third-party charges on their bills and most are unaware that their telephone bills are vulnerable to such charges, all wire line telephone companies should be required to block third-party billing for all existing and newly enrolled customers by default. The customer should not be burdened with requesting a block, as most customers will not understand [the need] for such protection until after being victimized by a crammer.

CHAIR FRENCH announced he would hold SB 138 in committee.

3:02:48 PM

There being no further business to come before the committee, Chair French adjourned the Senate Judiciary Standing Committee meeting at 3:02 p.m.