

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

March 15, 2011

2:01 p.m.

**MEMBERS PRESENT**

Senator Dennis Egan, Chair  
Senator Joe Paskvan, Vice Chair  
Senator Linda Menard  
Senator Bettye Davis  
Senator Cathy Giessel

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 81

"An Act establishing as a standard for the procurement of group life and health insurance for retirement systems for certain public employees a requirement that dependent coverage medical benefits provided to the systems' retiree members may not be less than dependent coverage medical benefits provided to the systems' active members."

- MOVED SB 81 OUT OF COMMITTEE

SENATE BILL NO. 40

"An Act prohibiting certain automated telephone solicitations."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 81

SHORT TITLE: PUBLIC RETIREE MED. BENEFITS: DEPENDENTS

SPONSOR(s): SENATOR(s) DAVIS

02/04/11	(S)	READ THE FIRST TIME - REFERRALS
02/04/11	(S)	L&C, FIN
02/22/11	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/22/11	(S)	<Bill Hearing Postponed>
03/08/11	(S)	L&C AT 2:00 PM BELTZ 105 (TSBldg)
03/08/11	(S)	Heard & Held
03/08/11	(S)	MINUTE(L&C)

03/15/11 (S) L&C AT 2:00 PM BELTZ 105 (TSBldg)

BILL: SB 40

SHORT TITLE: USE OF RECORDED MESSAGES

SPONSOR(s): SENATOR(s) MEYER

01/19/11 (S) PREFILE RELEASED 1/14/11

01/19/11 (S) READ THE FIRST TIME - REFERRALS

01/19/11 (S) L&C, JUD

03/15/11 (S) L&C AT 2:00 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

TOM OBERMEYER

Staff to Senator Davis

Alaska State Legislature

Juneau, AK

**POSITION STATEMENT:** Was available for questions on SB 81.

JIM PUCKETT, Acting Director

Division of Retirement and Benefits

Department of Administration (DOA)

Juneau, AK

**POSITION STATEMENT:** Explained benefit plans regarding SB 81.

SENATOR MEYER

Alaska State Legislature

Juneau, AK

**POSITION STATEMENT:** Sponsor of SB 40.

SEAN DAKIN, CEO and founder

Citizens for Civil Discourse

Washington, D.C.

**POSITION STATEMENT:** Commented on SB 40.

CHRISTINE MARASIGAN

Staff to Senator Meyer

Alaska State Legislature

Juneau, AK

**POSITION STATEMENT:** Explained version I of SB 40 for the sponsor.

BRIAN KANE, Attorney

Legislative Legal Services

Legislative Affairs Agency

Alaska State Legislature

Juneau, AK

**POSITION STATEMENT:** Answered legal questions about SB 40.

CYNTHIA DRINKWATER, Attorney  
Consumer Protection Division  
Department of Law (DOL)  
Juneau, AK

**POSITION STATEMENT:** Answered legal questions about SB 40.

JOELLE HALL, Political Director  
Alaska AFL-CIO  
Anchorage, AK

**POSITION STATEMENT:** Commented on SB 40.

JEFFRY MITTMAN  
American Civil Liberties Union (ACLU) Alaska  
Anchorage, AK

**POSITION STATEMENT:** Commented on SB 40 and suggested clarifying language.

RANDY RUEDRICH  
Alaska Republican Party  
Anchorage, AK

**POSITION STATEMENT:** Commented on SB 40.

#### **ACTION NARRATIVE**

[2:01:59 PM](#)

**CHAIR DENNIS EGAN** called the Senate Labor and Commerce Standing Committee meeting to order at 2:01p.m. Present at the call to order were Senators Giessel, Davis, Paskvan, Menard, and Chair Egan.

[2:02:20 PM](#)

#### **SB 81-PUBLIC RETIREE MED. BENEFITS: DEPENDENTS**

CHAIR EGAN announced SB 81 to be up for consideration.

SENATOR GIESSEL recalled previous testimony that this issue didn't coincide with the active employee coverage for dependents and asked if there are there other areas of discord between the benefits of an active employee and a retired employee.

TOM OBERMEYER, staff to Senator Davis, said he wasn't aware of any, but the department might be.

[2:04:07 PM](#)

JIM PUCKETT, Acting Director, Division of Retirement and Benefits, Department of Administration (DOA), said there are some differences between the active plan and the retiree plan. The differences are in deductible, co-pay, and some of the various coverages. The retiree plan is an older plan and has been slower to have changes implemented in it, but the active plan has been better able to keep up with technological changes.

SENATOR GIESSEL asked if they are likely to see other changes to retiree benefits and if they wait for people to complain before making changes.

MR. PUCKETT replied one way to change the benefits is to bring a bill forward like now.

SENATOR PASKVAN said his inference in the way he presented the retirement plan is that it is better than the current plan. The question is about the materiality of the differences.

MR. PUCKETT replied it depends on perspective. The retiree plan has lower deductibles and co-pays and lower cost to the members. It doesn't have as many preventive services as in the active plan. It's an older plan that because of some previous court cases makes it harder to change due to Article XII, Section 7, of the State Constitution. Both plans have strengths and weaknesses.

SENATOR PASKVAN asked if enacting SB 81 avoids a lawsuit that is highly likely if dependents up to age 26 are not covered in the retiree plan.

MR. PUCKETT answered that Legislative Legal has opined that the state should provide it. Other opinions say differently.

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SENATOR PASKVAN said the National Association of Insurance Commissioners says that federal law mandates coverage if dependent coverage is available up to age 26, and asked if he agreed with that.

MR. PUCKETT answered that he didn't know if they were addressing a governmental plan or not. There is a difference between private insurance and a grandfathered retiree plan such as Alaska's.

SENATOR PASKVAN asked if passing SB 81 avoids a lawsuit being filed.

MR. PUCKETT replied that he didn't know if it would make a difference or not.

SENATOR DAVIS remarked that she believes if this bill does not pass the opportunity to file a suit would present itself.

SENATOR PASKVAN moved to report SB 81 from committee with individual recommendations and attached fiscal note(s). There were no objections and it was so ordered.

[2:10:05 PM](#)

At ease from 2:10 to 2:20.

[2:12:06 PM](#)

**SB 40-USE OF RECORDED MESSAGES**

CHAIR EGAN announced SB 40 to be up for consideration.

SENATOR PASKVAN moved to bring CSSB 40( ), labeled 27-LS0374\I, before the committee.

CHAIR EGAN objected for discussion purposes.

SENATOR MEYER, sponsor of SB 40, said [version I] would prohibit some kinds of "robocalls." Several constituents, and one neighbor in particular complained to him about the excessive number of robocalls they had received during the last election process, and he said you have to agree that these calls interrupt the tranquility of people's homes. SB 40 limits robocalls but doesn't prohibit all of them - just the ones that offer goods or services for things like refinancing a mortgage or getting a cheaper insurance rate. It prohibits gathering data or promoting a political campaign.

Should SB 40 pass, a person receiving the call can get information on something that has been purchased; for instance its availability and delivery schedule. A robocall could still be used if the caller initiated an inquiry or needs to receive public safety information - like a school district notifying people of a snow day. This bill would allow people to make robocalls as long as the person obtains permission of the called party by a live operator before the recorded message is made. The last portion of the bill imposes a penalty. Other states vary from a fine of \$500 in Indiana to \$1500 in Montana to 30 days in jail in North Carolina. Some states have done this

successfully; Wyoming and Arkansas don't allow them at all. About a dozen states have passed bills similar to this one.

SENATOR MEYER pointed out that one can filter unwanted e-mail advertisements, but for some reason the phone companies have not allowed filters to be set up to filter unwanted robocalls. He said that the election process should be a time of excitement, civil debate and positive encouragement to get out and vote. Instead, people are annoyed and while they may not prevent them from voting, these calls leave "a bad taste in their mouth about the whole election process."

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SEAN DAKIN, CEO and founder, Citizens for Civil Discourse, a non-profit organization, Washington, D.C., said they run the National Do Not Call Registry. He said voters on both sides of the aisle and those in-between are impacted by this issue, and while they don't support specific legislative remedies, they are very encouraged by SB 40. These calls are annoying, but they also can have a big impact. A young mother wrote that she has a one-year old daughter, and the phone rings when she puts her to bed, the worst possible time. Another e-mail came from a person whose Mom had a stroke and doesn't understand that they are automated calls. They have received many e-mails from seniors who live in fear of a health emergency occurring while robocalls come in and not being able to call their doctor as their phone line is tied up. The attorney general from North Carolina once testified that an entire phone system in a hospital was shut down by political robocalls because the computer system decided to call every single phone line there.

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MR. DAKIN said it's a huge problem nationally as well as in Alaska. In 2006, according to the non-partisan, non-profit, Pew Research Center, nearly two-thirds of registered voters received calls; that's approximately 90 million voters. In 2007, they followed up and found a clear escalation in the use of robocalls. In Iowa, 81 percent of voters received robocalls; in New Hampshire and South Carolina, the percentages were 68 and 40 percent respectively. His members represent a fraction of the millions of voters who receive hundreds of millions of robocalls each election cycle.

MR. DAKIN quoted others of their 200,000 members around the country who have been harassed and get woken up consistently by either automated or in-person calls for political reasons. One was from a person who couldn't be reached by someone in the

hospital because his phone was busy with calls; another from a gentleman who worked at night and received five to seven calls a day asking him for his vote while he was trying to sleep and he is worried about losing his job because of it.

Of course, automated phone messages are annoying, he said. It's phone harassment, and being automated you can't tell them to stop calling. The caller ID reads zeros and you can't call them back. He has rarely met anyone who likes receiving robocalls unless it happens to be a robocall vendor.

SENATOR PASKVAN asked if the Do Not Call Registry is a national registry, so someone could call from Alaska and effectively keep their number from being used by national robocalls.

MR. DAKIN replied that the Federal Do Not Call Registry is a national registry and you get there by going to "donotcall.gov;". Registering prevents commercial robocalls from calling citizens.

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SENATOR PASKVAN asked if someone in Alaska calls that registry, will that solve this problem.

MR. DAKIN replied it only solves the problem if this bill passes. The federal legislation specifically exempts three categories of calls: market research, non-profit and charitable and political calls. That is why there are a number of state regulations, and this would be in addition to that.

SENATOR PASKVAN asked if SB 40 applies to calls from outside the state as well as from within.

MR. DAKAN replied that he isn't a lawyer, but a similar law exists in Indiana that has successfully stopped inter and intra state robocalls; it makes no difference if they are political, commercial or charitable. He didn't know the specific legal language.

[2:29:21 PM](#)

SENATOR MENARD said when she was on the school board there was a lot of controversy over robocalls and asked if the Matsu school district could still put out a call that a dance has been cancelled or the weather is too bad.

SENATOR MEYER answered that is correct.

SENATOR MENARD congratulated him for bringing this bill forward.

SENATOR GIESSEL asked who gets fined.

SENATOR MEYER answered whoever is making the call or whoever's name is getting advertised.

SENATOR GIESSEL asked if the company making those calls is out of state, would Alaska level fines across state lines.

SENATOR MEYER replied that fine would be levied on whoever authorized the call, himself for instance. So, whoever is hired to do it should know it's against the law in Alaska, but if they are still willing to do it, he would be the responsible one.

SENATOR GIESSEL asked if this would also cover automated text messages.

SENATOR MEYER answered no, but they would be coming soon to cell phones and texting.

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CHAIR EGAN asked him to explain the differences in the version I CS.

CHRISTINE MARASIGAN, staff to Senator Meyer, explained that the version I committee substitute has three main changes from version M. The first and second changes are because the drafter found that a section was repealed in 2004 and things got renumbered. So, the applicable sections 2 and 3 (lines 12-24 and lines 26-30 on page 2, respectively) that referred to those numbers had to be changed. The third, and substantive, change is the addition of a penalty on page 3, line 15, and for this they looked at what other states do.

2:34:01 PM

CHAIR EGAN asked if the \$500 fine is per call.

SENATOR MEYER replied his intent is to apply it to each occurrence. One robocall made a thousand times would get the \$500 fine. He said they started with the minimum of \$500, but the committee could change that.

CHAIR EGAN stated that paying a \$500 fine would be a small price to pay for making a state-wide robocall.

MS. MARASIGAN said the penalty seems miniscule in looking at the number of companies that make these calls. She had asked the drafter what kind of penalty there is if this section weren't put in and was told that all a person could do would be complain to the attorney general (AG).

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SENATOR MENARD said she thought the fine should be more.

SENATOR MEYER replied they thought long and hard about the size of the fine. If you're running a campaign, it would be breaking the law, and he didn't think anyone would want to be caught doing that while campaigning.

[2:39:21 PM](#)

BRIAN KANE, Legislative Legal Attorney, Legislative Affairs Agency, Alaska State Legislature, explained that currently the applicable statute, AS 45.54.075(a)(1)(2)(3), has no fine. There is a possibility for an attorney general's investigation and an option for civil penalties if a private person brings an action against the person making the prohibited calls, but no automatic fine.

SENATOR PASKVAN asked if a violation of (a)(4) [lines 1-4, page 2], includes those penalties plus the potential of a \$500 fine.

MR. KANE replied that it is in addition to "any other penalties provided by the chapter."

[2:41:30 PM](#)

CYNTHIA DRINKWATER, Consumer Protection Division, Department of Law (DOL), Juneau, AK, said her understanding of how the penalty provision in subsections (a)(1)(2)(3) of SB 40 would work is that it would apply to the Consumer Protection Act (CPA). And if the AG brought a lawsuit, they could obtain a minimum penalty of \$1000 up to \$25,000 per violation. The CPA also has a private right of action and that would allow private parties to obtain treble damages or \$500, whichever is greater, per violation.

SENATOR PASKVAN asked what type of enforcement has been made in the last six years relative to those sections.

MS. DRINKWATER replied that the DOL gets about 400 consumer complaints per year. Typically, they send a letter with the complaint to the business or industry the complaint is about and ask for their response. Once the response is received, they evaluate whether or not a violation has occurred or if more

information is needed before making that determination. The department looks for patterns or practices of illegal conduct, because they can't access private attorneys for all complaints and they can't even investigate every complaint that they get. They get a fair number of telemarketing complaints. It seems like most of them have focused on the auto warranty industry and the debt settlement industry (where people are offered to lower their interest rates by signing up for a debt settlement). Those complaints have fallen off a little in the last few years, because the FCC has started to aggressively enforce the applicable federal law, but that doesn't pertain to political or charitable calls.

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SENATOR PASKVAN asked if Alaska's Consumer Protection Act applies to political campaign messages.

MS. DRINKWATER answered no.

SENATOR GIESSEL said the language in SB 40 refers to a "person" who violates this law, and asked if that would apply to organizations as well.

SENATOR MEYER answered yes.

SENATOR GIESSEL commented that these are sometimes multi-million dollar organizations, and this fine would be negligible for them.

[2:48:29 PM](#)

JOELLE HALL, Political Director, Alaska AFL-CIO, asked if SB 40 envisions covering robocalls originated by membership groups to their membership on political issues.

MS. MARASIGAN replied no. It says specifically that a person is not liable for a violation of this section if they use the robocalls for "(A) informing purchasers of the receipt, availability for delivery, delay in delivery, or other pertinent information on the status of any purchased goods or services" on page 3 (h). She explained that to her, that means a membership organization whose members pay a fee could provide services to their group.

MS. HALL said she wants to make sure their right to communicate with their members, whether it's through a robocall or a live call or through the mail, is protected. Other advocacy groups and potentially political parties will have gone through the

work of collecting the phone numbers and have a donor pool, and have basically opted in. She asked that language on page 3, (h)(1)(a) be more explicit about the rights of membership groups who use this method to communicate with their members. She wanted it clear to the public that membership groups would be empowered to use robocalls to dispense or share political information.

[2:52:08 PM](#)

SENATOR MEYER said it is his intent that groups can do robocalls within their memberships.

[2:53:00 PM](#)

JEFFRY MITTMAN, American Civil Liberties Union (ACLU) Alaska, said the ACLU, with respect to any constitutional civil liberties issues, doesn't take a position with regard to the substance of the bill, but is working with the sponsor on a minor technical issue on page 2, lines 3-11(e). Because the First Amendment generally provides fairly robust protections for political speech and because of the way the legislation is currently drafted, it specifically includes political speech as a prohibited communication. They recommend deleting the language on lines 3-11 on page 2, so the bill would essentially ban all robo-communications and exempt things like membership organizations, public safety announcements, etc.

CHAIR EGAN said he had to leave the meeting and handed the gavel to Vice-Chair Paskvan to continue.

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RANDY RUEDRICH, representing himself and the Alaska Republican Party, said that the characterization of automated calls being offensive is highly overstated. He has gathered data for years on these types of calls and found that in some cases the principle complaint was, "I wish the individual would have called me personally." and that others were simply ill-timed and a result of "poor management." Calls made to Alaskans before 6 in the morning generate more activity. He said this is a great device for communicating with citizens, and he wanted to encourage anyone using these calls to make them succinct, meaningful, targeted, and timely.

[2:59:14 PM](#)

VICE-CHAIR PASKVAN closed public testimony and held CSSB 40 in committee. Finding no further business to come before the committee, he adjourned the meeting at 2:59 p.m.