

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672
10772 HOUSE JUDICIARY

minimum of 2 years of relevant work experience as determined by the Commission, 3) complete at least 100 home inspections for compensation, or 4) submit proof of full membership in or certification by ASHI or NAHI. Effective July 1, 2002, an applicant for a home inspector license shall: 1) have completed a minimum of 48 hours of an off-site training course, 2) have a high school diploma or its equivalent, 3) have general liability insurance in an amount not less than \$50,000, 4) submit an application sanctioned by the Commission, 5) pay the application fee of \$50 to the Commission. The law also exempts certain professionals from licensure as a home inspector while acting under the scope of their licenses, and provides a reciprocity provision for licensed home inspectors from other states.

For more information, contact the Division of Occupational & Professional Licensing
(410) 230-6165
(410) 333-6314 f
www.dlr.state.md.us/license/occp/rof/reappr.html

To download the law go to: <http://mlis.state.md.us/2001rs/bills/hb/hb0379e.htm>

Massachusetts Licensure (Chapter 146) enacted in 1999. Massachusetts law requires home inspectors and associate home inspectors to be licensed under the Board of Registration of Home Inspectors. The Board is required to: 1) establish the requirements for licensure and for the standards of professional and ethical conduct; 2) establish standards for continuing education; 3) authorize and conduct examinations; 4) grant licenses to qualified applicants; and 5) establish penalties. The law also requires that the Director of Office of Consumer Affairs and Business Regulation publish an informational brochure on home inspections which must be issued to home buyers at the signing of an offer to purchase. Licensed home inspectors must: 1) have successfully completed high school or its equivalent; 2) have been engaged as a licensed associate home inspector for not less than one year and have performed not less than 100 home inspections under the supervision of a licensed home inspector; 3) have passed a written or electronic competency examination; and 4) paid the appropriate fee. A licensed associate home inspector must: 1) have successfully completed high school or its equivalent; 2) have successfully completed a Board-approved training program; 3) have performed not less than 25 home inspections in the presence of a licensed home inspector; 4) have passed a written or electronic competency exam; 5) have an identified supervisor who is a person licensed in good standing as a home inspector; and 6) paid the appropriate fee. Licensees, home inspectors and associate home inspectors must carry errors and omissions insurance in an amount not less than \$250,000. Also, a home inspector or associate home inspector may not attempt to limit liability for negligent or wrongful errors or omissions by use of a clause within a performance contract that limits the cost of damages from negligent or wrongful errors or omissions.

Amendment to Current Law (Ch. 146 of 1999) enacted in 2001. The amended section of the law (Chapter 17 of 2001) extends the time period during which the Board may issue a temporary license to an applicant seeking licensure as a home inspector. The law moves the effective date back to November 1, 2001 from May 1, 2001 and establishes the criteria under which a temporary license may be issued. A temporary license may be issued if: 1) an individual has been engaged in home inspection for not less than three years prior to the effective date and has performed at least 100 inspections for compensation, or 2) an individual has been engaged in the practice of home inspection for not less than one year prior to the effective date, and has performed at least 125 inspections for compensation. Temporary licenses shall terminate in 90 days, or whenever the applicant furnishes proof of having passed a licensing examination approved by the Board, whichever occurs first.

For more information, contact the Board of Registration of Home Inspectors
(617) 727-9921
(617) 727-2197 f
www.state.ma.us/reg/boards/hi/

To download the law go to: www.state.ma.us/legis/laws/seslaw99/s1990146.htm

For Rules/Regulations of the Board go to: <http://www.state.ma.us/reg/boards/hi/cmr.htm>

Mississippi Licensure (Chapter 539) enacted in 2001. Mississippi law requires home inspectors to be licensed by the Mississippi Real Estate Commission (Commission) and given the following powers: 1) receiving and approving applications for licensure and collecting fees, 2) implementing recommendations made by the Home Inspector Advisory Board, 3) adoption of a code of ethics and standards of practice, 4) developing a licensure exam which meets nationally recognized standards, as well as developing applications and licensing forms, 6) adopting rules and regulations for administering the law. The law also created a five person Home Inspector Regulatory Board (Board), members of which are to be licensed inspectors, and appointed by the Governor. The Board serves in an advisory capacity to the Commission, and was given the following duties and powers: 1) responsibility for matters relating to the code of ethics, standards and qualifications, 2) holding hearings and preparing examination specifications for licensure, 3) conducting investigations, 4) further defining regulation, educational and equivalent experience, and recommending suspension or revocation of licenses. To qualify for a license under this law, a person must: 1) have successfully completed high school or attained an equivalency degree, 2) be at least 21 years old, 3) have successfully completed an approved course of study of at least 60 hours, which may include field work as required by the Commission, pass an examination prescribed by the Commission, and 5) provide a certificate of insurance for errors and omissions and general liability. Certain individuals acting under their profession or license are exempted from additional licensure by the Commission for "visual inspections"--specialty and general contractors, architects, engineers, financial institution employee, licensed real estate broker, appraiser or home builder. There is also a three-year limitation included for clients seeking to recover damages from an inspection reciprocity provision, and a grandfather clause included in the act.

For more information, contact the Real Estate Commission (Home Inspector Regulatory Board)
(601) 932-9191
<http://www.mrec.state.ms.us/>

To download the law go to:
<http://billstatus.ls.state.ms.us/documents/2001/html/HB/0800-0899/HB0848SG.htm>

Montana Trade Practice Act (Chapter 14, Title 30) enacted in 1999. Montana law, the Home Inspection Trade Practices Act, prescribes what elements must be identified in a home inspection and defines prohibited activities by a home inspector.

For more information, contact the Office of Building Codes and Inspection
(406) 444-3933
(406) 444-2903 f

To download the law go to: <http://data.opi.state.mt.us/bills/BillHtml/SB0210.htm>

Nevada Certification (Chapter 475) enacted in 1997. Nevada law provides for the certification of home inspectors of structures by the Real Estate Division of the Department of Business and Industry. Applicants must submit proof that they have errors and omissions insurance of at least \$100,000 and general liability insurance of at least \$100,000. The law also provides that a purchaser may not recover damages from a seller on the basis of an error or omission in the disclosure form that was caused by the seller's reliance upon information provided to the seller by a certified inspector of real estate.

For more information, contact the Department of Business and Industry, Real Estate Division
http://red.state.nv.us/inspector/insp_home.htm
(775) 687-4280
(775) 687-4868 f

To download the law go to: www.leg.state.nv.us/nrs/nrs-645d.html and
www.leg.state.nv.us/nac/nac-645d.html

New Jersey Licensure (Chapter 8, Title 45) enacted in 1998. New Jersey's "Home

Inspection Professional Licensing Act," sets specific educational and experience requirements in order to become a licensed home inspector. All home inspectors are required to: 1) complete high school or its equivalent; 2) serve as a licensed associate inspector for at least one year; 3) perform at least 250 inspections; 4) carry \$500,000 in insurance; and 5) pass the ASHI exam. Inspectors do not have to be a member or candidate of ASHI in order to take the exam. In order to become a licensed associate home inspector under the law, an inspector must: 1) perform at least 50 inspections in the presence of a licensed inspector; and 2) pass the ASHI exam. Also, the law provides that home inspectors fail to disclose problems or accept payment from another party in the transaction, they can lose their license. Home inspectors are regulated by a five-member Home Inspection Advisory Committee, housed under the State Board of Professional Engineers and Land Surveyors.

For more information, contact the Department of Law and Public Safety, Office of Consumer Protection
(973) 504-6200
(973) 504-3538 f
www.state.nj.us/lps/ca/nonmed.htm

To download the law go to: <http://www.state.nj.us/lps/ca/pels/histats.htm>

North Carolina Licensure (Chapter 143) enacted in 1993. The North Carolina "Home Inspection Licensure Act" provides for the licensing and regulation of home inspectors through the creation of a Home Inspector Licensure Board within the Department of Insurance. In order to become licensed as a home inspector, an individual must pass the licensing examination prescribed by the Board, have minimum net assets or a bond in an amount determined by the Board (not less than \$5,000 nor more than \$10,000) and meet certain educational conditions, including: 1) have a high school diploma or its equivalent and have been engaged as a licensed associate home inspector for at least one year, and have completed 100 home inspections for compensation; 2) have education and experience the Board considers to be equivalent to that in subpart 1. above; or 3) be licensed as a general contractor, architect, or professional engineer. In order to become licensed as an associate home inspector, an individual must pass a licensing examination prescribed by the Board, have a high school diploma or its equivalent, and be affiliated with or intend to be affiliated with a licensed home inspector and submit a sworn statement by the licensed home inspector with whom the applicant is or intends to be affiliated certifying that the licensed home inspector will actively supervise and train the applicant.

For more information, contact the Inspector License Board
(910) 715-0991
www.ncdoi.com/

Scroll down to Home Inspector Licensure Board

The General Statutes and the Administrative Code are meant to be used together.

To download Chapter 143 go to:
<http://www.ncdoi.com/OSFM/Documents/Engineering/HILB/NCHILBStatutes.PDF>

To download the Administrative Code go to:
www.ncdoi.com/OSFM/Documents/Engineering/HILB/BoardRules2000.PDF

Oklahoma Licensure (Section 858-622 of Title 59) enacted in 2001. The "Oklahoma Home Inspection Licensing Act" provides for the licensing of home inspectors through the State Board of Health, and a newly created Committee of Home Inspector Examiners (Committee). The Committee is charged with advising the Board of Health in establishing rules relating to: 1) qualifications and examinations for licensure, 2) renewal requirements, 3) reinstatement of licenses, 4) continuing education, 5) standards of practice and prohibitions, 6) approval of schools and educational course content for home inspection standards for schools to remain approved to provide courses of instruction, 7) reciprocity agreements, and 8) investigative procedures. In order to take an examination for licensure an applicant must be at least 18 years of age, and successfully complete eighty (80) hours

of home inspection training, or its equivalent, as determined by the Committee. Renewal licenses will be granted provided home inspectors attend five hours of continuing education within the preceding 12 months. A grandfather clause is included as well, with a sunset of January 1, 2002. Under the law, licensed home inspectors will be required to carry no less than \$50,000 of general liability insurance.

For more information, contact the Department of Health
(405) 271-5217

www.health.state.ok.us/

To download the law go to: http://www2.isb.state.ok.us/2001-02SB/sb198_sflr.rtf

Oregon Certification (ORS 701.350, 355) enacted in 1997. The Oregon Home Inspection Certification Law requires individuals who perform home inspections of two or more components to be certified by the Oregon Construction Contractors Board (CCB). An individual must meet minimum training and/or experience requirements to take a comprehensive test, pass the test and complete continuing education courses to renew certification. The Oregon Standards of Practice, Standards of Behavior and Definitions are adopted from the ASHI Standards with Oregon amendments; Oregon acknowledges the assistance of ASHI in developing its standards and definitions. Each certified home inspector must be an owner or employee of a business licensed with the CCB. Businesses that perform home inspections must be licensed with the CCB in categories that require either a \$10,000 or \$15,000 bond and either a \$300,000 or \$500,000 liability insurance policy. **Amendment to current law** (ORS 710.35, Chapter 812). The amendment to current law provides an exemption for a home inspector acting within the scope of his/her certification or licensure, from licensure as a real estate appraiser.

For more information, contact the Construction Contractors Board
(503) 378-4621
(503) 373-2007 f
<http://www.ccb.state.or.us/CCBHome.htm>

To download ORS 701.350 go to: <http://ccbed.ccb.state.or.us/WebPDF/CCB/statutes/hi>

For information on Continuing Education Units go to:
<http://ccbed.ccb.state.or.us/WebPDF/CCB/Publications/hi-ceu.pdf>

For a Summary of the Standards of Practice go to:
<http://ccbed.ccb.state.or.us/WebPDF/CCB/Publications/hi-s-sop.pdf>

For the full text of the Rules of the Board, including the full Standards, go to:
<http://ccbed.ccb.state.or.us/WebPDF/CCB/Publications/hi-s-sop.pdf>

For information on the Oregon Exam go to:
<http://ccbed.ccb.state.or.us/WebPDF/CCB/Publications/HI-AP-P.pdf>

Pennsylvania Trade Practice Act (Act 114 of 2000, Title 68 enacted in 2000). The law provides a uniform definition for the term "home inspection" and for a national home inspection association. It establishes that a home inspector shall conduct their inspection in accordance with the standards of practice set forth by a professional home inspection trade association such as ASHI or the National Association of Home Inspectors. It further outlines consumer remedies as they relate to a home inspection, and establish penalties for misrepresentations of fact in an inspection report. Under the law, home inspectors are required to maintain errors and omissions and general liability insurance coverage of not less than \$100,000 per occurrence and \$500,000 in the aggregate. The law is scheduled to take effect in December 2001.

For more information, contact the Pennsylvania Bureau of Consumer Protection
(717) 787-9707

To download the law go to:

<http://www.legis.state.pa.us/WU01/LI/BI/BT/1999/0/SB1032P2140.HTM>

Rhode Island Trade practice act enacted in 1996. The law in Rhode Island forbids home inspectors, pest control inspectors, and contractors from doing work on property that is inspected prior to real estate sales. The law was passed to help eliminate activities that could present a conflict of interest.

Licensure (Chapter 65.1) enacted in 2000. Rhode Island law creates a home inspector licensing law and requires that all home inspectors be licensed. Home inspectors would be required to maintain \$250,000 of liability insurance and would be required to pass written examinations. This law will take effect on January 1, 2001.

For more information, contact the RI Contractors' Registration Board
(401) 222-1268
(401) 222-2599f
www.crb.state.ri.us/inspectors.htm

To download the law go to:

South Carolina Licensure (Title 40, Chapter 59, Article 3) enacted in 1996. South Carolina law requires any person desiring to be a licensed home inspector to file with the South Carolina Residential Builders Commission. A home inspector must show to the satisfaction of the Commission that he is currently certified as a home inspector by an organization recognized by the Commission, that he has a minimum of one year of experience as a home inspector under the supervision of a licensed inspector, and that he has performed a minimum of fifty residential inspections.

For more information, contact the Department of Labor, Licensing and Regulation

Residential Builders Commission
(803) 896-4363 main
(803) 896-4603 for
Home Inspectors
www.llr.state.sc.us

To download the law go to: <http://www.lpir.state.sc.us/code/t40c059.htm>

South Dakota Licensure (Chapter 3621C) enacted in 2000. The South Dakota law provides for the regulation of home inspectors. The South Dakota Real Estate Commission shall issue and renew certificates to licensed and registered home inspectors pursuant to the provisions of this law. No person may provide a home inspection for compensation unless registered or licensed in the State of South Dakota. Applicants for a license as a home inspector shall meet the following requirements; 1) Good moral character; 2) Completion of high school or equivalency; 3) Employment as a registered home inspector for no less than one year and performance of not less than one hundred home inspections for compensation; 4) Successful completion of licensing exam. Applicants for registration as a home inspector shall meet the following requirements; 1) Good moral character; 2) Completion of high school or equivalency; 3) Successful completion of an approved course of study; 4) Successful completion of registration exam.

For more information, contact the Real Estate Commission
(605) 773-3600
(605) 773-4356 www.state.sd.us/sdrec/ To download the law go to:
<http://www.state.sd.us/sdrec/home%20inspector%20statutes.htm>

Tennessee Certification (Title 62, Chapter 6, Part 3) enacted in 1997. Tennessee law only applies to the inspection of new construction and authorizes such inspections if the inspector is: 1) a licensed contractor; 2) certified by the state as a fire prevention officer building official; 3) certified by the Southern Building Code Congress; 4) certified by the Home Inspectors of Tennessee Association; or 5) certified by ASHI. The law only applies to inspectors in certain counties in Tennessee.

For more information, contact the Department of Commerce, Division of Regulatory Box (615) 741-3449
www.state.in.us/commerce

To download the law go to:
<http://198.187.128.12/tennessee/next.dll?f=templates&fn=fs-main.htm&2.0>

Texas Licensure (Title 113A, Article 6573a, Section 23) enacted in 1991. The Texas licensure law, the Real Estate License Act, provides for the examination of home inspectors and established continuing education requirements. The law also requires home inspectors applicants to work as apprentice inspectors under the supervision of a professional licer home inspector. If an applicant is unable to obtain an apprenticeship, educational course work and an examination can be substituted. Home inspectors are regulated by the Texas Real Estate Licensing Board.

For more information, contact the Texas Real Estate Commission (512) 465-3900
(512) 465-3910 f
www.trec.state.tx.us/

To download the law go to: <http://www.capitol.state.tx.us/statutes/vn/vn00113A.html>

To download the Rules go to:
[info.sos.state.tx.us/pub/plsql/readtac\\$ext.ViewTAC?tac_view=5&ti=22&pt=23&ch=535&](http://info.sos.state.tx.us/pub/plsql/readtac$ext.ViewTAC?tac_view=5&ti=22&pt=23&ch=535&)

Virginia Certification (Chapter 723, adding Chap. 5 of Title 54.1) enacted in 2001. The Virginia certification law provides a voluntary certification program for home inspectors in the state. However, no person may hold him/herself out as a "certified home inspector" without meeting the certification requirements prescribed by the Board. The Board may issue a certificate to practice home inspection to any applicant who has successfully completed: 1) any educational requirements as required by the Board, 2) any experience requirements as required by the Board, and 3) passed any written or electronic examination offered or approved by the Board. The Board may issue a certificate to practice as a certified home inspector to any applicant who is a member of a national or state professional home inspector association approved by the Board, provided that the requirements for the class of membership in such association are equal to or exceed the requirements established by the Board for all applicants. Because the law was enacted recently, the language does not include specific requirements. The Board is undoubtedly working on creating those rules and requirements, in preparation for the law's July 1, 2001 effective date.

For more information, contact Virginia Board for Asbestos, Lead, and Home Inspectors (804) 367-8507
http://www.state.va.us/dpor/asb_main.htm

To download the law go to:
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC5401000000500000000000>

In PDF: http://www.state.va.us/dpor/asb_finalreq.pdf

Wisconsin Certification (Chapter 440.97) enacted in 1998. Under Wisconsin's law, home inspectors must register with the State and pass an examination approved by the Department of Regulation and Licensing. The law instructs the Department to consider the use of an examination modeled after ASHI's examination. The law also requires that a home inspector perform a "reasonably competent and diligent" inspection; however, the inspection is not required to be technically exhaustive. Home inspectors are prohibited from limiting their liability from damages resulting in a failure to conduct a "reasonably competent and diligent" inspection. Also, inspectors are prohibited from performing repairs, maintenance, or improvements to a structure that they have inspected within the last two years.

For more information, contact the Department of Regulation and Licensing

(608) 266-2112

(608) 267-0644 f

<http://www.state.wi.us/agencies/drl/>

or go to: www.drl.state.wi.us/Regulation/applicant_information/dod1200.html

To download the law go to: <http://www.legis.state.wi.us/statutes/99Stat0440.pdf> (see section 440.97)

To download all WS Statutes and Rules pertaining to HI's go to:

http://www.drl.state.wi.us/Regulation/publications/admincode_statutes_h-m.htm#Home

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Final Edition

Anchorage Daily News

Monday, June 17, 2002

ALASKA'S NEWSPAPER

www.adn.com

This house is no home sweet home

■ **UNFIXABLE?** House that passed inspections before purchase has major faults.

By ROSEMARY SHINOHARA
Anchorage Daily News

Spenard resident Hope Prehn got a government-subsidized loan to buy a house that was supposed to have been fully inspected and in good condition. She has learned, too late, that the house is rotting and is probably unfixable.

"The place is not safe, and I don't know what to do," said Prehn, 38, a single mother with two children, and a first-time homebuyer.

"I'm stuck with a home that's con-

demnable."

None of the companies and agencies involved in the purchase think it's their fault.

The bank and a housing agency that signed off on the loan, and the home inspector who indicated major problems had been taken care of, suggest Prehn look elsewhere for help. They say there's nothing they can do about the fact that they helped her purchase a house that cost \$117,000 and could prove to be worthless.

However, former owner Rick Anderson has agreed to participate with Prehn in a voluntary mediation session before an official of the Anchorage Board of Realtors. Anderson said he is not aware of the specific problems. "I'm in the dark and know that she's not happy. That's

where we stand."

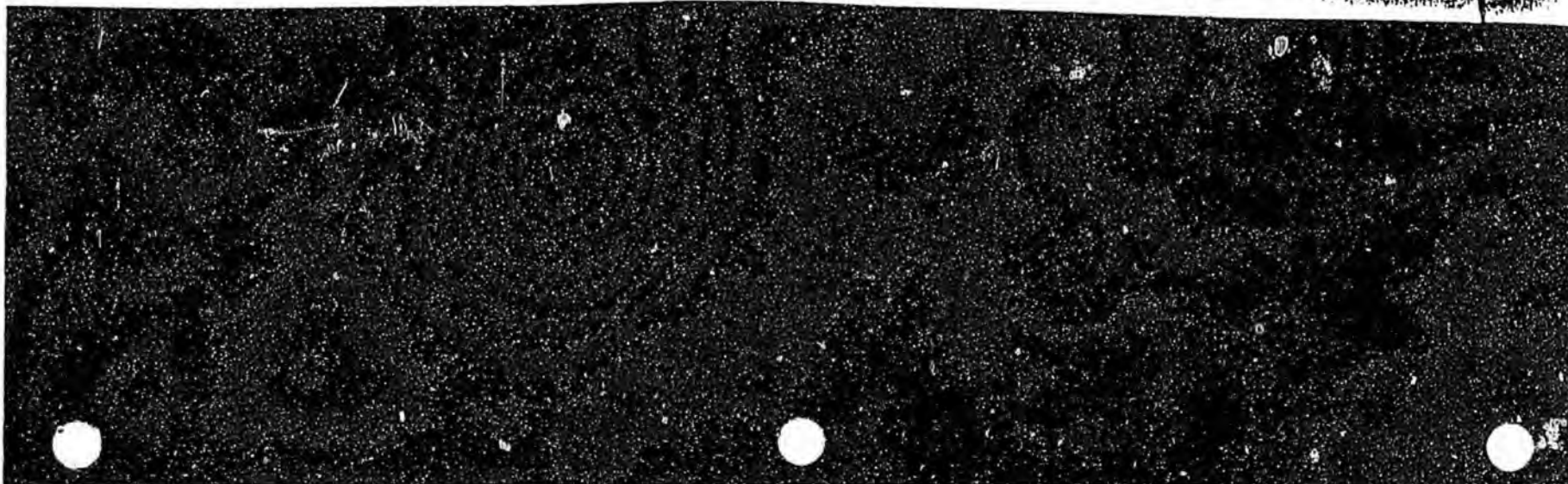
Ironically, Prehn bought the house near Tudor Road and Minnesota Drive through a program aimed at giving low- and moderate-income families a chance to raise their standards of living. AnchorHomes, sponsored by the city and run by the nonprofit Anchorage Neighborhood Housing Services, contributes to the down payment and closing costs, with government money.

When she began looking for a house last year, Prehn thought she'd done everything right. She went to a first-time home buyers class and took to heart the importance of getting a home inspection by an

See Back Page, DEFECTS



Hope Prehn bought a house in Spenard in January with the help of AnchorHomes, a program sponsored by the city and run by the nonprofit Anchorage Neighborhood Housing Services. Two experts have since told her the house is a wreck.



DEFECTS: Owner of rotting home can't find anyone to take responsibility

Continued from A-1

expert.

Houses in her price range were scarce. She knew the Spenard house needed work, but the location was right, not too far from her job as a state social services associate. And she planned to remodel.

The house, blue-green with a peeling white picket fence, was built about 1950. With a swing set in the yard and a black-and-white cat roaming around, it looks cozy.

But in reality it's about as cozy as an electric shock — which someone could get from nailing a picture to one of its walls, with wires strung around instead of through the studs, an inspector said.

Prehn moved in Jan. 12. She pulled off some dark wall panels about two months later and began discovering that both the wooden supports and the foundation are falling apart.

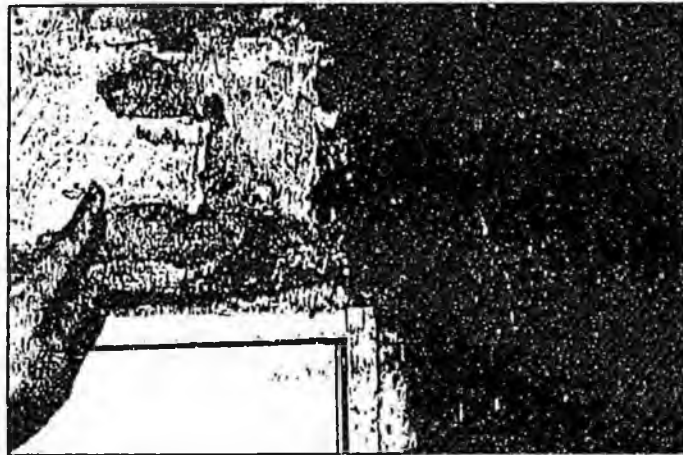
Since she first peered behind the panels, two experts have told her the house is a wreck, and a project manager for Anchorage Neighborhood Housing has confirmed that the wood frame is rotting and the foundation is falling.

General contractor Eric Hawley of Hawleycraft, whom Prehn asked to look at the house and give her some advice, said in an interview that the defects are obvious.

"The foundation is crumbling. The structural members are rotting. It needs to be bulldozed," said Hawley, who specializes in structural work.

"I was there for five minutes, and I could tell right away I would have torn the place down, no questions asked," he said.

A home inspector Prehn hired in April, Christopher Elfigen of Alaska Inspection Center, examined both the house and the documents Prehn accumulated before buying it.



WILL ROTH / Anchorage Daily News

Roger Steber, a construction project manager for Anchorage Neighborhood Housing, said in a written report that he saw "extensive deterioration" of the wood frame around a door where Hope Prehn had removed wood paneling and of wood framing around the foundation.

"I am at a loss to suggest anything," Elfigen wrote in his post-purchase report. "The foundation is subpar. It did not meet the standards of the Building Code where the code was enforced at the time of construction."

It's easy to see that the south wall leans outward at the base, Elfigen said. "The wood supporting the wall on the south addition, and therefore the roof, is rotten. The walls are in the process of rolling off that rotten wood." The south section of the house, added on at least 20 years ago, is unsafe and should be dismantled, he said.

First National Bank of Anchorage, which gave Prehn the home loan, would have sent its own inspector to Prehn's house if the bank were going to keep the loan in its own portfolio, said David Lawer, senior vice president of the bank.

But if it's going to pass the loan along to another investor — which it did in this case — the bank does not make its own inspection, Lawer said.

The bank is concerned primarily with whether the borrower has means to repay the mortgage and not whether the house is worth the money being paid for it, he said.

"The rule traditionally is buyer, beware," he said.

Anchorage Neighborhood Housing provided about \$20,000 for Prehn's down payment. The housing agency requires the buyer to get a home inspection but doesn't inspect houses itself either.

Agency director Mary Jane Michael said in an interview that "for a down payment loan, we tend to rely on the primary mortgage lender," the bank.

Prehn's situation is unfortunate, Michael said. "It makes me think we

should be doing our own inspections, but we're a nonprofit."

The agency did send one of its construction project managers over to examine Prehn's house this spring, at Prehn's request.

The project manager, Roger Steber, said in his written report that he saw "extensive deterioration" of the wood frame around the door, where Prehn had removed the wood paneling, and of wood framing around the foundation.

"We kind of agree with her" that the house has serious problems, Michael said. "We've tried every way we can to figure out what to do about it. My suggestion to her would be to hire an attorney and see if there are flaws in the original home inspection."

A growing concern in Alaska is that there are no standards for home inspectors. Anyone can claim to be one. Home inspectors in Alaska may get certified by the American Society of Home Inspectors if they choose to, says Kevin Jones of Quality Home Inspectors, president of the society's local chapter. Certified inspectors have passed an exam that proves they have a certain level of knowledge and they have committed to continuing education, Jones said.

Rep. Norm Rokeberg, R-Anchorage, has been trying for four years to get a state law enacted requiring home inspectors to be licensed. Over the years, home inspectors have become an ever more important part of real estate transactions, Rokeberg said. His bill died in the Senate when the Legislature adjourned in May.

Christopher Elfigen of Alaska Inspection Center, the inspection firm Prehn hired to examine the house after she bought it, does think the pre-purchase inspection of her house was flawed.

The first inspector missed major

clues to the structural defects, even accounting for the fact that the original inspection was what is called "nondestructive"—based on what the inspector could see and feel without tearing out any walls, floors or other parts, Elfigen said.

But Tanya Bratslavsky of Bratslavsky Consulting Engineers, who performed the initial pre-purchase inspection and a follow-up before Prehn bought the house, said she relied on reports from three contractors that the structural systems were acceptable.

In an April letter to Prehn, Bratslavsky said contractors performed detailed checks of the boiler, water heater, walls, foundation and roof. But she wasn't present when they did it, she said.

"Since all of the contractors' inspections and reports were performed ... before the engineer was invited to the house again, no opportunity was provided to verify their work; and thus the engineer had to rely on the information provided in the reports."

She advised Prehn: "You should look to the seller and his contractors to compensate you for your damages since they made the representations that all the problems had been fixed."

Prehn is fighting to get what she thought she paid for. She hired a lawyer on contingency. She asked the Board of Realtors to set up a mediation session, which it is doing. She has filed claims or complaints whenever she thinks it might do some good.

"I want it either repaired or replaced, or I want all the money back, including the down payment," she said. "I don't think it's fair for me to have to go back and live in an apartment. I was trying to move up in the world, not down."

Reporter Rosemary Shinozaki can be reached at rshinozaki@adn.com and 257-4340.

Inspectors should be bonded; Hope Prehn should get windfall

In response to the Hope Prehn home inspection story, the fault lies squarely on the backs of the home inspection company ("This house is no home sweet home," June 17). This industry as a whole is run by people who have, for the most part, never swung a hammer in their lives. They live off of the referrals generated by the lenders and make sure the value comes in at the requested amount. The truth is most never look at the things they claim.

In a town where you cannot even have a sign too tall or smoke in a restaurant, you would think it would not be too much to ask that these companies be required to purchase a bond. The real pros will not have a problem taking a test and getting bonded if they have nothing to hide. As for the rest, they are just taking advantage of a loophole in the system that allows them to make a fast buck off something they know little or nothing about.

Hope Prehn should get a judgment for the proceeds of an auction of everything this company and all their principals own.

— Warren Weldon
Chugiak

JUNE 21, 2002 ADN



By Rick Jarvis, CRS, CRP
Associated Broker
Re/Max Properties

Should We Care Who the Buyer Chooses to Do a Home Inspection?

Who are those guys who have so much influence on the residential real estate market? Their written reports and recommendations affect the buying and selling of millions of dollars worth of properties each year. But they are NOT state tested for knowledge, or licensed or regulated in any manner. Their reports and their opinions can and often do influence the decision making of buyers, lenders, appraisers, real estate agents, underwriters, contractors, and specialists of all kinds. Yet they are Not regulated in any manner.

Let me ask you a few questions: What is the purpose of a home inspection? What do you know about the background, experience and training of your favorite "home inspector?" Why should we care? As a Buyer's Agent, should we care who the buyer chooses to do a home inspection? As a Seller representative, should we question a home inspection report or depend upon the appraisers and lender to scrutinize these reports? Have you ever asked a home inspector to show you where his recommendations for repairs are supported by code or lender requirements?

Perhaps the most important question to ask a home inspector is: DO YOU HAVE ERRORS AND OMISSIONS INSURANCE? Could this be important information for a buyer, seller or real estate agent to know about? What if the home inspector makes a mistake? A few are trying to hold their liability to only the cost of the home inspection report. One home inspector said the reason he did not have E & O insurance was to avoid being sued. "That way they don't come after me." Gee. I wonder who a disgruntled buyer or seller will look to next?

Now don't get me wrong, and let me make it perfectly clear: I do believe that there is a vital place and purpose for home inspections within the scope of a real estate transaction. In fact I believe that almost every home inspector I have met tries his best to do a thorough and conscientious inspection.

After conducting an informal survey of home inspectors, the following observations were made:

1. *Every home inspector interviewed agreed that some*

form of reasonable and reliable regulation for home inspectors is needed.

2. *Only about half the home inspectors interviewed had Errors and Omission Insurance.*

3. *Three years was about the average time frame a home inspector has been in the business.*

4. *Most thought the American Society of Home Inspectors (ASHI) set the best standards and qualifications for a person to become a home inspector.*

5. *Most every home inspector had a construction, engineering or architectural background.*

6. *On average the home inspectors interviewed conducted between 125-175 home inspections a year.*

The demand for home inspections is ever increasing. Relocation companies are now requiring home inspections on the home purchase by transferee as a requirement for a "buy out" program when the employee is transferred again. Alaska Housing is planning to make home inspections "mandatory" for a buyer to sign. It makes buyers aware of the importance of a home inspection and asks them to indicate whether or not they will be obtaining a home inspection. Indeed, home inspections are becoming a normal routine for most residential transactions.

Let me suggest that all home inspectors organize themselves to become self-regulated. They should set the standards by which all home inspections are conducted and establish the qualifications to become a general home inspector in Alaska. They need to have continuing educational courses. They should have standardized written report forms. They need to have E & O Insurance. They should do this ASAP. And if they cannot organize themselves, then the Real Estate Commission, interested REALTOR® Boards, real estate agents, brokers, appraisers, home inspectors, banks and mortgage companies should create a task force to ask the State Legislature to regulate home inspectors.

In the meantime, what to do? Ask lots of questions -- E&O, background, experience, how report is structured, easy to understand, how long to receive, fees, liability, issues, etc. The Anchorage Board is looking for your input about this process. Please send your comments/recommendations: Fax - 563-8476.

Home-inspection bill would help buyers



CLAIR RAMSEY

Home inspections have become an intricate part of the home-buying process. As the importance of home inspection has increased, so have concerns of regulating this relatively new profession in Alaska. Legislation sponsored by state Rep. Norm Rokeberg, R-Anchorage, has taken on the job.

Rokeberg's proposal — HB207 — calls for state oversight of home inspectors similar to that applied to real estate agents, with licensing, bonding and educational requirements.

With input of local inspectors and the rest of the real estate industry, I hope that this proposal will be the guideline to ensure professional inspections provide adequate consumer protection with a minimal amount of government regulation.

Home inspections have also become a focal point for changes to the Federal Housing Authority's appraisal process. Andrew Cuomo, federal secretary of Housing

Please see Page C-2, RAMSEY

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RAMSEY: Bill would help buyers

Continued from Page C-1

and Urban Development, recently announced an initiative to provide extra protection to the more than 1 million families that obtain FHA-insured loans each year. FHA-insured loans allow buyers who may not qualify under other financing programs to purchase a house using a minimal amount of money up front (a little more than 3 percent of the purchase price).

Key aspects of the Homebuyer Protection Initiative include: 1) Educating consumers about appraisals and inspections; 2) mandatory testing of appraisers to ensure quality appraisals; and 3) uncovering significant hidden defects in houses before purchase by providing a more comprehensive appraisal.

The reason for the change in focus is in response to major defects in houses being sold that are not detected before the sale. A new home buyer who barely qualifies for a loan typically lacks cash to make major repairs. As a result, some buyers defaulted on their mortgages, filed for bankruptcy or both.

The FHA's Homebuyer Protection Initiative encourages buyers to obtain a home inspection and not rely solely on the appraisal. The agency believes the home inspection is so important it even allows the

The Homebuyer Protection Initiative encourages buyers to obtain a home inspection.

areas for deficiencies normally covered under a home inspection. Such areas include health and safety issues; electrical, heating and plumbing systems; the structural condition of the walls, ceilings and foundations, as well as other items.

To eliminate the liability inherent with working outside their area of expertise, one solution may be for appraisers to receive a copy of the home inspection before completing their appraisal. Because the inspection typically occurs before the appraisal, this is easy to do. If for any reason the appraisal is ordered first, the appraisers can complete the investigative work but hold back the appraisal until they can review the inspection report.

In an era of specialization, every aspect of buying a house needs to be dealt with by the proper professional. The lender provides the best financing to fit your needs, the appraiser determines value and the home inspector examines the property for soundness and safety. Doubling up on services is like asking the surgeon or anesthesiologist to do the other person's job. Not

But it wasn't enough. Not nearly. In fact, 1998 was an economic disaster for Bristol Bay salmon catch.

1998	188,818,987	130,583,667	569.3
1995	218,001,719	170,029,388	590.3
1994	181,218,648	174,547,820	593.5
1993	218,071,180	145,328,506	577.5

Expert home inspections useful for buyer and seller



CLAIR
RAMSEY

Previously I discussed licensing of home inspectors (June 27, Page C-1). This time, let's focus on the actual home inspection. After a buyer and seller sign a purchase agreement on a home, defining price and terms, the home inspection occurs. By the time the inspection report and buyer's request for repairs is delivered to the seller, the home typically has been off the market for two weeks.

In many cases the results of the inspection report reopen negotiations between buyer and seller. Negotiating on repairs can delay closing, and it rarely is resolved to the seller's liking. The lender and/or appraiser also may require repairs of major items noted in the inspection before financing the home.

The home inspection report typically groups items between minor ongoing

maintenance and major repairs. Major repairs are of most concern to buyers and sellers alike. Major problem areas frequently include the roof, groundwater, furnaces and decks.

Let's start with the roof. What is the age and condition of the roof? Is the roof ventilated or non ventilated? Does the roof have an ice shield? If the roof is 2 to 3 years old, there should not be a problem. If the roof is 20 years old, per-

haps there are reasons for concern. Non ventilated roofs are subject to condensation problems not always visible on the home's interior. Ice shields help prevent infiltration of water when ice dams form in the winter months. Replacing or repairing a roof can be expensive.

Groundwater problems are a second

Please See Page C-5, RAMSEY

ADN 25 July 1999 p C-1

RAMSEY: Inspections focus on repairs.

Continued from Page C-1

area of concern. Is there evidence of water in the crawl space? How is water removed from the crawl space? Does your home have a sump pump? Does it pump into the city sewer — which is illegal — or to an outside drain? Does the ground outside slope away from the home, or toward it? Ground that slopes toward the house may send water into the crawl space or basement. The crawl space is an area where homeowners rarely look, unless a problem arises. Groundwater problems can also be expensive to repair.

The third problem area is the furnace. What is the condition of the furnace or forced-air heating systems? Does the furnace have a cracked heat exchanger? If it is 10 to 15 years old, it may have. This may necessitate a new furnace if the heat exchanger cannot be economically replaced.

As Anchorage ages, it becomes evident that many homes built in the late '70s and early '80s are not withstanding the test of time gracefully. Decks and bathrooms are typical areas of concern in older homes. Most decks were built with fir, and homeowners did not fully understand the upkeep required. Many of these decks are now rotting and require renovation or even complete replacement.

Bathrooms in older homes may also need

attention. Walls around tubs and showers may be showing evidence of deterioration as water penetrates through the grout between the tile to the sheet rock behind. Removing and replacing select tiles can be difficult, particularly when trying to match older ceramic tile. However, repairing either of these areas prior to putting your home on the market helps demonstrate that your property has been adequately maintained.

Before you sell your home, find out if you have a major problem. Don't worry about small items like ground-fault circuit interrupter outlets (GFCIs), seismic straps or hot water tanks. Focus on the bigger-cost items. If you have any concerns about these types of problems, address them before going on the market. Have your real estate agent recommend an inspector to check specific areas of concern. If you wait, it will be harder to get the buyers to adjust the sales price or participate in repairs after they make an offer. Completing repairs first may allow you to recover some of the expense with an increase in the sales price.

Clair Ramsey, CRE, is a local associate broker specializing in residential real estate. His opinion column appears every fourth Sunday. His e-mail address is ramsey@alaska.net.

INSPECT THE INSPECTOR: Choosing the Right One Can Help Avoid Costly Mistakes

by Karen Crawford, HouseMaster, 346-9190, hmalaska@pobox.alaska.net

Home buyer horror stories are plentiful: A new home owner finds the roof leaks during the first rain, the circuit breakers blow the first time everything gets plugged in, the furnace malfunctions during the first cold snap.

Buying a home is fraught with perils that are supposed to be eliminated with a professional home inspection. Unfortunately, such new homeowner nightmares can, and do, happen - even when a "professional" home inspector was called in to inspect the prospective home.

Many homebuyers think they are automatically protected against risk and liability when they order a home inspection. But home inspectors, unfortunately, are not all created equal.

There is so much riding on the inspection, yet many homebuyers don't know what qualifications they should be looking for in an inspection firm.

Inspection Industry Unregulated

There is no "official" regulation of the home inspection industry with regard to training, experience or insurance coverage, so credentials and credibility vary widely. It's the 'consumer beware' in this situation.

The home inspection industry grew out of a group of contractors, roofers and plumbers who supplemented their earnings during slow periods with inspections. These "independents" often did not have the complete knowledge of the total workings of a house and their findings were not always impartial.

Along with the boom real estate market in the 80s, the residential home inspection industry grew rapidly. Today, the consumer has the choice of hiring an independent inspector, who may or may not do it as a full-time profession, or go with an inspection company whose sole business is home inspections. These firms run the gamut from small "mom and pop" operations, to companies or franchise offices affiliated with a large national corporation. HouseMaster, with more than 230 offices across the U.S. and Canada, falls into the latter group.

Insurance & Training of Great Importance

Because there is no federal, state or provincial regulation of the home inspection industry, consumers need to know what to look for when hiring an inspector. While everyone - trained or not - is capable of making a mistake, the outcome can vary greatly depending on several key factors. Carrying the necessary insurance - called "Errors and Omissions (E&O)" insurance - is one of these critical factors.

In the event your buyer must bring a lawsuit against an uninsured inspector, chances are he'll simply go out of business and they will never collect the money needed for repairs, even if you win your case in court.

For maximum benefit and liability protection for both buyers and sellers, HouseMaster advises that it is essential to hire a home inspection firm that employs inspectors with all of the following credentials:

* **Training and Technical Support:** training in all aspects of home inspection and ongoing support for questions and changes in residential construction techniques and systems.

* **Certification:** certification by a reputable training institute, which requires re-testing annually, such as The American Society of Home Inspectors (ASHI) or National Institute of Building Inspectors (NIBI).

* **Insurance:** insurance coverage, including general liability, worker's compensation and especially E and O insurance, which is like malpractice insurance

* **Written Guarantee:** a formal, written guarantee, which backs up the inspection findings.

If the inspector is missing any of these important credentials - particularly the E and O insurance - don't hire them. Even if they say they are certified, that does not guarantee that they have all the other credentials.

Large reputable companies have helped set many industry-accepted inspector requirements with their own stringent rules. HouseMaster, for example, requires all its franchise offices to carry Errors and Omissions insurance. It encourages all of its offices to have their inspectors trained and certified.

Engineer Versus General Inspector

Many engineers have been drawn to the inspection field as their industries have changed and scaled down, such as the defense industry or the aerospace industry. Consequently, there has been some confusion about whether to hire an 'engineer' or a 'general inspector'. But licensed engineers - even trained structural engineers - may not know a great deal about heating, plumbing, electrical systems or roofing. Hiring one for a home inspection is just like getting a heart specialist to do a general physical. Consumers should verify specifically what home inspection and experience training they have had in addition to their engineering background.

The biggest misconception is that structural problems can only be detected by a structural engineer. Properly trained inspectors are totally capable of detecting structural deficiencies.

In reality, the incidence of structural problems with resale homes is only around two percent, according to HouseMaster statistics. The highest incidence of problems, however, is with electrical wiring, water penetration, plumbing, heating and roofing, depending on the age of the home.

Is a structural engineer going to be able to find an electrical or heating system deficiency? These are serious and often expensive problems to be concerned with.

(Continued from Page 7)

According to Warren Boroson, co-author with HouseMaster Chairman Kenneth Austin of "The Homebuyer's Inspection Guide" available in bookstores, most homebuyers seem more comfortable dealing with people who have extensive home inspection experience, rather than those who have only advanced degrees. For example, an engineer may have studied aeronautical or chemical engineering, both of which offer no practical expertise in the systems that make a house work.

It's really critical to find a home inspector who is knowledgeable about all the systems within a home, is trained to look for symptoms of problems and keeps up to date on equipment and repair techniques. In the small percentage of cases where a structural condition is detected during an inspection, we may recommend further evaluation by a licensed engineer.

Proper Insurance Coverage Key Factor in the Litigious '90s

Critical to the home inspection is that the inspection firm or inspector carries all the proper insurance coverage. This helps ensure that the buyer is not financially responsible if the inspector makes an error (E&O), falls off the roof (Worker's Comp) or damages the seller's property in some way (General Liability).

Errors and Omissions insurance in real estate is the equivalent of malpractice insurance. This is very difficult insurance for home inspectors to obtain. If your buyers find an inspector who does not carry this type of insurance, it is usually an indication that the inspector has had no formal training, or has a poor track record in the industry.

Because of the cost of E and O insurance and the difficulty in qualifying for it, a small percentage of independent inspectors will carry it.

General liability insurance and worker's compensation is also extremely important. Without such coverage, the homebuyer assumes a large degree of liability for the safety and well being of the inspector while in the employ of the homebuyer during the inspection.

Independent Vs. Large Inspection Firm

There are other advantages to hiring a home inspector who works for an established company. National companies have set requirements for hiring, training, professionalism and insurance coverage; they have credibility and experience; and they can offer special services and technical support to customers and inspectors.

It is also important to ask whether the inspection firm will stand behind its inspection with a formal, written guarantee. HouseMaster, for example, includes in the inspection fee, a complimentary 90-day guarantee on the inspection for most of the major elements in the home that it found to be satisfactory at the time of the inspection.

In addition, its technical information center is available for buyers who want to know more about how to maintain or repair equipment in their home.

Educating homebuyers about the operation and maintenance of their new home is one of our main objectives. We encourage buyers to

(Continued on Page 14)

Finally A Tax Break For Self-Employed MSAs (Medical Savings Accounts) Passed by Congress Signed by President

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For many self-employed, a) and b) combined will cost less than conventional health insurance.

The law is more detailed than we can describe here. For more information on getting a tax-advantaged MSA, call:

Lonnie Crosby
 Phone: 907-248-6348
 Fax: 907-243-7847

3118-297 *Law dictates funding maximums
 Golden Rule® Form # C-3-006J, C-006K Not available in all states

Happy Thanksgiving!

We extend our sincere *Thanks* for your valued business and *Best Wishes* for the holiday.



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(Continued from Page 8)

... along on the inspection, ask questions and call our office afterwards. We also provide printed material and a free instructional videotape on home maintenance and repairs as part of our comprehensive inspection package.

When you consider the potential risk and liability involved with the purchase or sale of a home, it pays to shop for the best - not the cheapest - inspection service available in your area.

The Six Most Important Questions to Ask When Hiring A Home Inspector

1. Is home inspection your only business?

Make certain it is, in order to avoid any potential conflicts of interest. Many independent inspectors do it on a part-time basis to supplement their real businesses as contractors, roofers, etc., and their report findings might be suspect.

2. Do you carry all the necessary insurance, including professional liability (E&O), general liability and worker's compensation?

E&O is the number one priority, says Warren Boroson, co-author of the Homebuyer's Inspection Guide. This malpractice-type insurance protects the inspector (and indirectly the homebuyer and those referring the inspector) against post-inspection legal problems. General liability covers personal liability not covered by the basic E&O policy and worker's compensation covers the safety of the inspector during the inspection.

3. Does the home inspection firm offer a written guarantee on the inspection?

It's best to hire an inspection company that offers a formal, written guarantee along with the inspection, although not many do.

4. How long does the inspection take and can the homebuyer accompany the inspector?

Yes, they should. A professional inspection of the average house takes about two hours. Be skeptical of home inspectors who don't want you to tag along. Inspectors who invite the homebuyer along will often offer valuable maintenance tips.

5. What type of a report will they buyer receive and when will they receive it?

There are various types of reports given by professional inspectors, including typed narrative (sent to the homebuyer within a week), and on-the-spot written reports for those who need or want the information as soon as possible. Don't accept a verbal report without a written backup, since you will have no record of the inspector's findings for future referral.

6. Is the inspector trained or certified in home inspection by a recognizable organization, such as the American Society of Home Inspector's (ASHI)?

With no official government regulation of the home inspection industry required in Alaska, certification by ASHI ensures that the inspector meets strict guidelines set forth by one of the largest and most reputable home inspection organizations.

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*- Katherine Herfindahl
Fortune Properties*

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**Kathleen Kowalczuk
360-1176**

**Anita Bates
243-8777**

State of Alaska

**Residential Real Property Transfer
Disclosure Statement**

Attached two pages, where indicated,
note the use of a home inspection.

* Note

Documentation:

Check the documents for the subject property that the seller has available for review:

- | | | |
|---|---|--|
| <input type="checkbox"/> Current Engineer/Property Inspection Report(s) completed within the last 24 months | <input type="checkbox"/> Written Agreements With Adjacent Property Owners | <input type="checkbox"/> Party Wall Agreement |
| <input type="checkbox"/> Preliminary Title Report | <input type="checkbox"/> Energy Rating Certificate | <input type="checkbox"/> Lease/Rental Agreement |
| <input type="checkbox"/> As-Built Survey | <input type="checkbox"/> Resale Certificate | <input type="checkbox"/> Soils Test |
| | <input type="checkbox"/> Water Rights Certificate | <input type="checkbox"/> Well Log and Water Tests |
| | <input type="checkbox"/> Deed Restrictions | <input type="checkbox"/> Hazardous Materials Test(s) |
| | <input type="checkbox"/> Subdivision Covenants/Restrictions | <input type="checkbox"/> Other _____ |
| | | <input type="checkbox"/> Other _____ |

Additional Information:

Supply information for the following items:

- | | Yes | No |
|---|--------------------------|--------------------------|
| > Drainage: | | |
| • Are you aware of ever having any water in the crawl space, basement, or lower level? | <input type="checkbox"/> | <input type="checkbox"/> |
| • If Yes, how has the problem been resolved? | | |
| <input type="checkbox"/> Sump Pump(s) <input type="checkbox"/> Curtain Drain <input type="checkbox"/> Rain Gutter Extension <input type="checkbox"/> Other _____ | | |
| • When was problem resolved? _____ | | |
| • Location of each sump pump: _____ | | |
| • To where does the water drain after it leaves the sump pump? _____ | | |
| • If gutters, where do downspouts discharge? _____ | | |
| • Is there a floor drain in the structure, including garage? | <input type="checkbox"/> | <input type="checkbox"/> |
| • If Yes, where is it located and where does it drain to? _____ | | |
| > Roof or Other Leakage: | | |
| • Age: _____ years. | | |
| • Type: <input type="checkbox"/> Asphalt/Composition Shingle <input type="checkbox"/> Cedar Shake <input type="checkbox"/> Built-up <input type="checkbox"/> Metal <input type="checkbox"/> Other _____ | | |
| • Are you aware of any ice damming on the roof? | <input type="checkbox"/> | <input type="checkbox"/> |
| • If Yes, provide location. _____ | | |
| • Are you aware of any water leaking into the home? i.e., windows, lights, fireplace, etc. | <input type="checkbox"/> | <input type="checkbox"/> |
| • If Yes, provide location. _____ | | |
| > Fireplace and/or Woodstove: Date chimneys last cleaned? _____ Who cleaned? _____ | | |
| > Heating System(s): | | |
| • Mark all types that apply: <input type="checkbox"/> Hot Water Baseboard <input type="checkbox"/> Forced Air <input type="checkbox"/> Radiant Heat <input type="checkbox"/> Electrical Heat | | |
| <input type="checkbox"/> Wood Stove <input type="checkbox"/> Other _____ | | |
| • Age: _____ years. Last Cleaned: _____ Last Inspected: _____ | | |
| • Source: <input type="checkbox"/> Natural Gas <input type="checkbox"/> Electric <input type="checkbox"/> Oil with _____ gallon storage which is <input type="checkbox"/> Buried <input type="checkbox"/> Above General | | |
| <input type="checkbox"/> Propane Tank <input type="checkbox"/> Wood <input type="checkbox"/> Coal <input type="checkbox"/> Other _____ | | |
| • Age of Tank? _____ years | | |
| > Hot Water Heater: | | |
| • Age: _____ years. Capacity: _____ gallons Type: <input type="checkbox"/> Gas <input type="checkbox"/> Electric <input type="checkbox"/> Other _____ | | |
| > Water Supply: | | |
| • Type: <input type="checkbox"/> Public <input type="checkbox"/> Private <input type="checkbox"/> Community <input type="checkbox"/> Cistern <input type="checkbox"/> Other _____ | | |
| • Have you had any problems with your water supply? | <input type="checkbox"/> | <input type="checkbox"/> |
| • If Private: Well Depth: _____ feet. Flow Rate: _____ gallons per minute. | | |
| • Has the water supply been tested in the past 12 months? | <input type="checkbox"/> | <input type="checkbox"/> |
| • If Yes, attach all documentation from all tests. | | |
| • Has the well failed while you have owned the property? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Have you ever had a well pump problem or failure? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Do you supply water to or receive water from others? | <input type="checkbox"/> | <input type="checkbox"/> |
| • If Yes, is there a recorded agreement? | <input type="checkbox"/> | <input type="checkbox"/> |
| • Do you have a water rights certificate for this property? | <input type="checkbox"/> | <input type="checkbox"/> |

_____/_____/_____ _____ _____ _____/_____/_____ _____/_____/_____ _____

Seller's Initials Date Property Address Buyer's Initials Date

I/We have completed this disclosure statement according to AS 34.70.010 - AS 34.70.200 and these instructions, and the statements are made in good faith and are true and correct to the best of my/our knowledge as of the date signed. I/We authorize any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated transfer of the property or interest in the property.

Seller: _____ Date: _____

Seller: _____ Date: _____

Buyer's Notice and Receipt of Copy

Transferee (Buyer) Awareness Notice: Under AS 34.70.050, Transferee (Buyer) is independently responsible for determining whether a person who has been convicted of a sex offense resides in the vicinity of the property that is the subject of the Transferee's (Buyer's) potential real estate transaction. This information is available at the following locations: Alaska State Trooper Posts, Municipal Police Departments, and on the State of Alaska Information Center Internet site: www.state.ak.us, under Hot Topics for the "Registry/Sex Offenders."

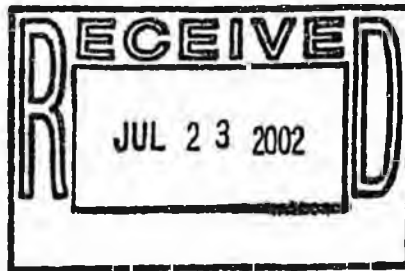
** Note*

The Buyer is urged to inspect the property carefully and to have the property inspected by an expert. Buyer understands that there are aspects of the property of which the Seller may not have knowledge and that this disclosure statement does not encompass those aspects. Buyer also acknowledges that he/she has read and received a signed copy of this statement from the Seller or the Seller's agent.

Buyer: _____ Date: _____

Buyer: _____ Date: _____

Seller's Initials _____ Date _____ Property Address _____ Buyer's Initials _____ Date _____



Richard F. Gaver
3050 Lore Road, C2
Anchorage, AK 99507
July 22, 2002

Representative Norman Rokeberg
716 West 4th Avenue, Suite 640
Anchorage, AK 99501-2133

Re: Home inspector licensing

Dear Sir:

From an Anchorage Daily News article by Rosemary Shinohara (This house is no home sweet home) published last month, I learned of your efforts to enact a state law requiring home inspectors to be licensed. I am rather surprised this is not already required of inspectors, and firmly believe anybody involved in the home buying process ought to be licensed and regulated.

As evidenced by Ms. Shinohara's story about Hope Prehn, I think it irrefutable there is plenty of fault and blame in this pitiful and woeful situation, in which all these "experts" failed, collectively and selfishly, to provide this poor woman even a modicum of fairness and decency. How could so many participants be involved in this abomination without even one putting a stop to it? I would object to anyone involved being referred to as a professional.

As Ms. Prehn did, I also attended a first-time home buyers class. It did not prepare me for what was to come. I came through the process much better than she did, but it all left me disgusted and quite angry at all I endured to get through it. Deceit, lies, misinformation, obfuscation and condescension were my experience. I've used this opportunity to convey my thoughts on the subject to AHFC, sponsor of Home Choice, the first-time home buyers class I went to (and still endorse). The class ought to begin with "caveat emptor" (let the buyer beware).

Sincerely,

Richard F. Gaver

Enclosure: letter to AHFC



ALASKA ASSOCIATION OF REALTORS, INC.
741 Sesame Street, Suite 100 • Anchorage, Alaska 99503
Telephone 907-563-7133 • Fax 907-563-8476

January 24, 2003

Representative Rokeberg
State Capitol
Juneau, Alaska 99801-1182

RE: Relating to the licensing of home inspectors

Dear Representative Rokeberg,

The Alaska Association of REALTORS with over 1,100 members statewide supports House Bill 9 relating to the licensing of home inspectors.

We agree that there should be some minimum standards set forth in this bill to protect the consumer. Minimum standards should include but are not limited to testing, education and the forming of a home inspector board.

The Association encourages the passage of HB 9 during this first session. We are available as a resource to pass this bill. Please feel free to contact the Alaska Association at (907) 563-7133.

Sincerely,

A handwritten signature in cursive script that reads 'Carole Winton'.

Carole Winton
President





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January 24, 2003

Representative Rokeberg
State Capitol
Juneau, Alaska 99801-1182

RE: HB 9 – Relating to the licensing of home inspectors

Dear Representative Rokeberg,

The Anchorage Board of REALTORS with over 600 members statewide supports House Bill 9 relating to the licensing of home inspector.

The Anchorage Board is in agreement with the Alaska Association of REALTORS that there should be minimum standards set forth for home inspectors to protect the consumer.

The Board encourages the passage of HB 9.

Sincerely,

Bert Dozark, CRS, GRI
President



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LAWYERS - LLC

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SUITE 400
JUNEAU, ALASKA 99801-1186

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COLBY J. SMITH

TELEPHONE: (907) 586-5912
FACSIMILE: (907) 463-3020
E-MAIL: lw@gdn.net

February 2, 2001

Representative Norman Rokeberg
State Capitol
Juneau, Alaska 99801-1182

FEB 02 2001

Re: CSHB 27

Dear Representative Rokeberg:

I am writing to you on behalf of State Farm Insurance Companies. State Farm insures roughly 75,000 homes in Alaska. Creating a board of home inspectors and requiring licensure, registration and oversight of home inspectors will in a variety of ways only benefit home owners, prospective home purchasers, qualified home inspectors and the public in general. State Farm supports CSHB 27 and encourages its passage.

Sincerely,

LESSMEIER & WINTERS

By: 
Sheldon E. Winters



WARD
Development
& Construction Management
INCORPORATED

April 18, 2002

Tom
Dear Legislator:

It is my understanding that HB 27, licensing of home inspectors, will be heard on the House Floor today.

I would like to urge my support for this bill, given it's broad support within the affected industries. This piece of legislation has been in the works for several years and the version you see today is the product of hard work and compromise by the many parties involved.

Some may ask; is this a union issue? It is not. Labor should not be affected.

Others may ask; how will this affect the Third Party Alternative Inspector ordinance that is being introduced at the Anchorage Assembly? It will enhance it. If the Anchorage ordinance were adopted, those inspectors would be licensed and certified, which is good public policy.

I would be available to answer any questions on my cell phone at 229-8403.

Thank you for your support!

Robin

Robin E. Ward

Approved

Date: 3/19/02

Submitted by: Assemblymembers Von Gemmingen,
Tesche, Taylor, Van Etten, Traini
Prepared by: Department of Assembly
For reading: March 19, 2002

**ANCHORAGE, ALASKA
AR NO. 2002-93**

A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY SUPPORTING CS FOR HOUSE BILL NO. 27(JUD), "AN ACT RELATING TO THE LICENSURE AND REGISTRATION OF INDIVIDUALS WHO PERFORM HOME INSPECTIONS; RELATING TO HOME INSPECTION REQUIREMENTS FOR RESIDENTIAL LOANS PURCHASED OR APPROVED BY THE ALASKA HOUSING FINANCE CORPORATION; RELATING TO CIVIL ACTIONS BY AND AGAINST HOME INSPECTORS; AND PROVIDING FOR AN EFFECTIVE DATE."

WHEREAS, currently there is no State agency that oversees the home inspector industry and anyone can determine that he/she is a home inspector; and

WHEREAS, consumers throughout the State of Alaska desire and should have assurance that the home inspector they hire is competent, and that they have recourse against inspectors who are not; and

WHEREAS, faulty inspections could have serious consequences for consumers when purchasing or selling a home, and inspectors should and must be held accountable for their work; and

WHEREAS, representatives within the industry agree licensure for home inspectors is a worthwhile goal to establish a competency level that will protect the name of the profession and protect consumers from faulty inspections; and

WHEREAS, CSHB 27 (JUD) accomplishes this by establishing licensing qualifications such as registration, insurance, and proof of competency through the administration of a written and practical examination.

NOW, THEREFORE, the Anchorage Assembly resolves:

Section 1: That the Anchorage Assembly supports and urges passage of CSHB 27 (JUD) which will provide protection to consumers and the home inspection industry.

Section 2: That copies of this resolution be forwarded to the Governor and the Alaska State Legislature immediately upon passage and approval.

PASSED AND APPROVED by the Anchorage Assembly this _____ day of _____, 2002.

Chair

ATTEST:

Municipal Clerk

MAR 21 2002

Subject: House Bill 27 - Home Inspection Licensing

Date: Mon, 06 May 2002 16:14:53 -0800

From: Karen Crawford <housemaster@alaska.com>

Organization: HouseMaster

To: Representative Norman Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>

Representative Rokeberg:

As an active ASHI member and a long term home inspector I wish to add my encouragement for the passage of HB 27. We have waited too long to provide for inspector certification by the state. While the vocal minority will always find something in the bill to complain about it is my feeling that we must proceed with passage of the bill and work out the kinks should any arise. State certification is ongoing throughout the rest of the country and sooner or later will encompass the entire 50 states.

Only through a well thought out certification bill will we be able to achieve minimum standards for those people calling themselves home inspectors and thereby provide the home buying public with assurance of professional inspections.

The following ASHI members/ candidates support the passage of this legislation.

Don Sheppard Owner/President HouseMaster Home Inspection Service
ASHI #118913, NIBI #65495RT, ICBO#0865225-55

Frank Sobottka Inspector ASHI #204775, NIBI135700RT, ICBO#5071485-55
Mark Crawford Inspector ASHI Candidate, NIBI #141601RT

Gregg Russo Inspector ASHI Candidate

Sincerely,

Don Sheppard

Subject: HB27

Date: Tue, 7 May 2002 02:33:01 EDT

From: Qualhome@aol.com

To: Representative_Norman_Rokeberg@legis.state.ak.us

Representative Rokeburg,

My name is Kevin Jones and I am the owner operator of Quality Home Inspection Service in Anchorage. I wish to express my support for HB27 and would ask for your assistance and support in getting this very important consumer protection bill into law. It appears that only the negative responses are reaching the senates ears when the majority of home inspectors are supportive of this bill.

Currently in Alaska anyone with a 50 dollar business license can advertise themselves as home inspectors to the buying public, without any background or experience in the principles of construction and building safety. I am a member of the American Society of Home Inspectors and currently hold the position of Alaska ASHI President. I am also a Certified Combination Dwelling Inspector through the International Conference of Building Officials (ICBO). In the state we have 19 members or candidates in the local Alaska ASHI chapter. Our organization requires passing the national home inspectors examination and having performed at least 250 fee paid inspections that conform to the Standards and Practice set forth by the organization. Additionally membership requires 20 continuing education credits for renewal every year. Certification from the ICBO required passing an examination on the knowledge of the Uniform Building Code, Uniform Mechanical Code, Uniform Plumbing Code, National Electric Code, International Residential Code, International Mechanical Code and the International Plumbing Code. The ICBO requires recertification by examination every three years.

As you can see the knowledge required to adequately and responsibly perform home inspections cannot be obtained with a 50 dollar bill and a business license. Home purchasing will likely be the single most important and costly decision the majority of consumers will ever make. In that regard the homebuying public deserves to have qualified and knowledgeable individuals representing them in the process of their home buying experience. With the price of homes today few people can ill afford to find costly defects existed after the fact, when a professional inspector could identify them prior to moving into the new home and allow the homebuyer to make knowledged decisions. It is only natural then that some sort of protection be in place to ensure that the individuals performing the inspections meet some established minimum standard/requirement of knowledge and experience.

This is where HB27 comes into effect. This bill has been around for almost two years and provides the consumer protection that everyone is entitled to. Again I would appreciate your help and support in gaining passage of this bill during the 2nd session. Thanks so much for your time.

Sincerely,

Kevin D Jones
Quality Home Inspection Service
333-1719
Owner

[Fwd: hb27 reply]

Subject: [Fwd: hb27 reply]

Date: Tue, 30 Apr 2002 10:12:08 -0800

From: Heather Nobrega <Heather_Nobrega@legis.state.ak.us>

Organization: Representative Norman Rokeberg, Alaska State House

To: Janet Seitz <Janet_Seitz@legis.state.ak.us>

Ryan wrote:

> Dear Mr. Rokeberg,
> I am a former professional builder, former consultant on code; and
> energy codes in Wash, state. I am currently living in Homer, Alaska and
> have become aware of hb27 and would like to give some feedback, as I'm
> disabled and can't go to the phone office. Thank you so much for this
> bill, a real necessity in the "assumed wild west." People are coming
> into the State at record numbers, all thinking they can do anything they
> want to, "they've got money". Inspectors and appraisers have for years
> merely provided the reports that the person paying them requires. There
> has been a total disregard for our energy codes, state building codes,
> or federal law. Inspectors are telling sellers they have a choice
> whether to disclose anything at all. We recently saw an example where
> the seller paid for the inspection, didn't like it, hired another
> inspector, didn't like that one and hired another. Inspectors need to be
> hired by the borough, or state or totally private and independent. If
> reports are truly written to meet the needs of the highest bidder, then
> what's the use of a law. The bill addresses much of this and is really a
> good bill, in my thinking. I do feel though that the criminal side of
> this kind of "bait and switch" is not addressed adequately, penalties
> need to be higher, liability carried should be much higher. The limits
> you proposed would not cover errors that could literally be in the
> hundreds of thousands. The home I mentioned is a good example, the older
> folks buying it were gullible and too believing, but the owner when
> asked why they didn't disclose, simply stated, "they didn't ask". They
> shouldn't have to. They would have purchased the home, then discovered
> how much did not meet code, needed to be repaired or completely rebuilt
> . I know your bill is intended to address this, just thank you so much
> from all in Alaska. I think this will be a very good bill for the people
> of this state.
> If I can be of any further help or provide you any other feedback,
> please write back. Thank you again.
> Jerry Migdal
> Homer, Alaska 99603

Committee Aide Alaska State House Judiciary Committee

F. Venuti, P. O. Box # 3652, Homer, Alaska 99603
 telephone (907) 235-7480 or 399-1550
fcvenuti@xyz.net

January 31, 2003

Representative Tom Anderson
 Vice Chair, House Judiciary Committee
 House of Representatives
 State Capital, Juneau, Alaska 99801-1182

Dear Representative Anderson,

Please allow me to introduce myself. I am a certified International Conference of Building Officials - Combination Dwelling Inspector (ICBO # 865284-55) who works on the Kenai Peninsula. I am also a FHA / HUD Compliance Inspector (FHA # 3516), and I serve as the Veterans Administration Compliance Inspector on the Kenai Peninsula (VA # 1004). I hold these positions as a result of examination and appointment, as well as continuing education, which involves becoming re-certified by examination every three years. I also am a certified (by examination) HUD 203K Renovation Loan Consultant (HUD #S0127). Further, I bring to these positions more than thirty years of experience in the building construction industry. I have served as an inspector for the past eleven years. I have inspected thousands of new and existing properties worth many millions of dollars. I love my job and feel that I am very good at what I do. You are welcome to contact the following references from within the homebuilding, banking and real estate industries:

Connie Alderfer	Alderfer Group Realtors, 235-5232
Angie Newby	Homer Real Estate Associates, 235-5294
Terry Yaeger	Remax of Homer, 235-7733
Annie Whitnay	Coastal Realty, 235-7700
Sam Beachy	Beachy Construction, Inc., 235-8876
Clint Hall	Hall Quality Builders, 283-7007
Bruce Petska	Big Mountain Builders, 299-0421
Mike Dye	First National Bank Of Alaska, Homer branch manager, 235-5800
Julie Woodward	Wells Fargo Bank, Homer branch manager, 235-8151

A hearing will be held regarding House Bill 9 in the House Judiciary Committee on Wednesday, February 5 2003 at 1:00 PM. I would like to provide the following testimony on that proposed Bill. As I read the proposed bill (which is version 23-LS00291A), I would like to raise the following issues:

On Section 7. AS 08.18.022. page #4. Lines 23 thru 24

Contrary to a statement made by the sponsor of this bill at a public hearing (House Labor & Commerce) on January 29, 2003, the inclusion of courses & examination offered by the American Society of Home Inspectors would require that the inspector actually join that society. I would like to add that ASHI is a for-profit organization, not some noble fraternal order. This would add an additional \$ 350. to the cost of doing business, which would be beyond the cost of the license, bond, and insurance. Most experienced inspectors within in the business consider ASHI membership as something that can easily be purchased from the back of a book of matches and do not hold membership within that organization in very high regard. Reference to ASHI examinations or courses should be removed from this bill.

Also in the same **Sec.7 page 5 line 6-8** where any individual who is the subject of an unresolved complaint is restricted from doing business as an inspector.

My question is: What if the complaint is unfounded ?

On section 7, page #5, Lines 21 thru 31 and page #6 Lines 1 thru 10.

re: pre-inspection reports This procedure is specific to existing home inspections only.

Often on new construction, I never meet the homeowner(s). My contract is with the builder.

There is no need for a written report. This procedure is outlined in the Construction Inspection Guidelines which published on the AHFC website (www.ahfc.state.ak.us click on the construction link).

The only paperwork involved is the signed-off Summary of Inspections (AHFC form PUR 102).

The assembly or component either meets or fails to meet the code and is either signed off or not.

The signed PUR 102 then stays with the property until the property no longer exists, so the six-month validity of a report as outlined in this bill is not valid. My point is that existing & new inspections are not the same process and the writers of this bill apparently do not understand that fact.

Further, it has been my experience that 90% of all inspections on existing homes are performed at the request of the buyer, not the seller as suggested by the sponsor of this bill on January 29th.

On section 9, AS 08.18.031, page #6, Lines 17 thru 31

re: continuing competency. The determination as to what constitutes continuing competency should be clearly spelled out within the bill and not left to the whims of an individual or entity that may not clearly understand the Alaskan new & existing home inspection process. As it currently stands, any inspector who holds any form of ICBO (International Conference of Building Officials) certification must be re-certified every three years; that is because the codes also change every three years.

If the intent of this bill is (as stated on page #1) to regulate inspectors on projects relating to Alaska Housing Finance Corporation, then AHFC should dictate what constitutes continuing competency, not ASHI, or the University of Alaska.

Also, why is this bill limited to AHFC insured mortgages ?

AHFC mortgages are not the only type of mortgage financing available in Alaska.

On section 30, AS 08.18.156, (8) page #15 Lines 31

re: exemptions for energy raters. This effectively eliminates Energy Raters from the provisions of this bill. Energy Ratings are an essential part of the inspection process for AHFC loan packages. Just as the signed-off AHFC Summary of Inspections (PUR 102) becomes part of the legal documentation of a property at closing, so does the energy rating (PUR 101).

This proposed bill should also regulate energy raters.

re: exemptions for engineers

In that same section, on line 13-18 which allows engineers to perform inspections, the presumption seems to be that engineers are somehow infallible.

I can assure you that based upon my experience in the field; there are good engineers, as well as bad engineers, just as there are good and bad inspectors.

Any entity that inspects a property should be held to the same standard of responsibility and exposed to the same liability as the rest of us. I might add that engineers are not required to have insurance.

This section of the Bill sets up two classes of inspectors and is not fair to the consumer.

On section 30, lines 26-28 of page 15

This section which permits general contractors to inspect and perform work on the same project is in conflict with Sec. 30 page 14 lines 5-7 which prohibits working on a job that you have inspected.

On section 43, page #22, Lines 16 & 17

re: proposed required examinations. Most existing inspectors who perform inspections on AHFC properties hold the ICBO Combination Dwelling Inspector certification. This certification requires a higher degree of knowledge than the Building Inspector or Property Maintenance and Housing Inspector examinations listed in this requirement. The Combination Dwelling Inspector certification should be an adequate certification for issuing a joint registration certificate. The cost of taking these redundant and lesser examinations adds an additional unnecessary cost to the process and will dilute the quality of the inspector pool.

Within this bill, why is there no discussion about a requirement for experience ?

I know of three individuals who work in this field who have never built a thing and I cringe when I see those magazine advertisements that state, "Make Big money as a Home Inspector !"

Before being issued a license, inspectors should be made to prove some documented experience within the building industry.

What ever happened to the Residential Property Disclosure statement ?

That statute (AS 34.70.010) was intended to provide honest information about a property to a buyer. There are provisions in that statute for failing to comply. Does anyone know if this rule is has ever become enforceable ? Often, when I read one of these statements and compare it to the actual property that I am inspecting, I feel as if I am at the wrong address. In essence, that statue has really failed to provide any measure of protection for homebuyers and I wonder if this current bill will be of any additional value.

AK Statute AS 18.56.300 (c) limits the liability of inspectors unless the action is for damages caused by gross negligence or intentional misconduct. The International Residential Code is the present code in effect within Alaska for dwellings. Section R104.8 of this code also limits the liability of inspectors. Both of these regulations recognize that the inspector is placed in a perilous position and provide a measure of protection so that the inspector can make independent decisions and not be harassed by frivolous lawsuits. As the law stands now, if the inspector is grossly negligent or participates in misconduct, the inspector can be held liable. **This is as it should be.**

If as stated by the sponsor of this bill, one of the driving issues behind this bill is that gross negligence or intentional misconduct by inspectors is hard to prove, I would like to suggest that if this bill passes, those very same standards would still need to be met in any court of law before an inspector is held liable and in spite of this bill, will be just as difficult to prove. **From that viewpoint, this bill is a futile exercise.**

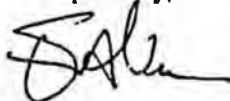
As an experienced professional working within the industry, it is my opinion that this proposed bill is seriously flawed. Many of us working within the industry feel that if it passes, it will quickly become open season on inspectors. It is unfortunate that impetus for this bill is not coming from the Inspection industry. It comes from the Real Estate industry and appears to be an attempt to shift liability to inspectors.

I have been tracking the progress of this bill in its many forms for the past three years. In all of the committee teleconferenced hearings on this proposed bill that i have monitored over the past two years, I have never heard one inspector testify in favor of this bill and the added costs involved which would inevitably find its way to the consumer.

I respectfully request that this bill not be passed.

Thank you for taking the time to read this testimony, and thank you for serving our great state.

Respectfully,



F. Venuti
Homer, Alaska

HB

12

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. John Coghill
Rep. Jim Holm
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Letter of Intent CSHB 12 (JUD)

It is the intent of the House Judiciary Committee that the term "electronic communication," as it is used in AS 11.61.120(a), amended by CSHB 12 (JUD), means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by, but not limited to, the following forms of direct communication: electronic mail and text messages displayed by cellular, cordless, or digital telephones, or other electronic media. It is the intent of this committee to provide the most reasonable and common sense definition of "electronic communication" as it pertains to methods of harassment. As computer technologies evolve, communication will advance as well. By declining to limit and narrowly define methods of "electronic communication," this body is allowing for future methods of technology to be incorporated into the definition.

A handwritten signature in black ink, appearing to read "Lesil McGuire", written over a horizontal line.

Representative Lesil McGuire
Chair

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. John Coghill
Rep. Jim Holm
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: February 7, 2003
Re: CS Draft Request

Please create a House Judiciary Committee Substitute for work order # 23-LS0050\ND incorporating the attached amendment.

If you have any questions, please call me at 4990. Thank you!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

AMENDMENT # 1

OFFERED IN THE HOUSE

TO: HB 12

Page 1, lines 11 - 13:

Delete all material and insert:

“(4) makes an anonymous or obscene telephone call, **obscene electronic communication**, or a telephone call **or electronic communication** that threatens physical injury; or”

23-LS0050VD
Luckhaupt
1/22/03

CS FOR HOUSE BILL NO. 12()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION**

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES MEYER, Heinze, Dahlstrom

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the crime of harassment committed by use of electronic
2 communication."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 11.61.120(a) is amended to read:

5 (a) A person commits the crime of harassment if, with intent to harass or
6 annoy another person, that person

7 (1) insults, taunts, or challenges another person in a manner likely to
8 provoke an immediate violent response;

9 (2) telephones another and fails to terminate the connection with intent
10 to impair the ability of that person to place or receive telephone calls;

11 (3) makes repeated telephone calls at extremely inconvenient hours;

12 (4) makes an anonymous or obscene telephone call or electronic
13 communication or a telephone call or electronic communication that threatens
14 physical injury; or

1

(5) subjects another person to offensive physical contact.

HB 12 Harassment by Electronic Communication
House Judiciary Committee: February 7, 2003

1. Name: Leo Brandlen
Affiliation: President, Alaska Peace Officers Association
Phone number: 907-564-4541

2. Name: Lieutenant Matt Leveque
Affiliation: Field Operations Coordinator, Alaska State Troopers
Phone number: 907-269-0390

3. Name: Sergeant Curt Harris
Affiliation: White Collar Crime Section, Alaska State Troopers
Phone number: 907-269-0390




REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

MEMORANDUM

DATE: January 30, 2003

TO: Representative Lesil McGuire
Chair, House Judiciary Committee

FROM: Representative Kevin Meyer 

RE: Hearing Request for HB 12

At your earliest convenience, please schedule HB 12 Harassment by Electronic Communication for a hearing in the House Judiciary Committee.

Under HB 12, the list of methods of harassment under AS 11.61.120 is amended to include the sending of anonymous or obscene electronic communications, or sending electronic communications that threaten physical injury.

Per your suggestion, I am providing a blank committee substitute that includes the changes in the title that we discussed.

Thank you for your time and consideration.



REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

Sponsor Statement

HB 12

"An Act relating to harassment"

Under HB 12, the list of methods of harassment under AS 11.61.120 will be expanded to include the sending of anonymous or obscene electronic communications, or sending electronic communications that threaten physical injury.

The Internet and other telecommunication technologies are advancing every aspect of society. Unfortunately, many of the attributes of this technology - low cost, ease of use, and anonymous nature - make it an attractive medium for a new concern known as electronic communications, or email, harassment. As the online population has soared to an estimated 80 million users, the real-world crime of harassment has moved into cyberspace, causing annoyance and fear for victims.

Law enforcement agencies throughout Alaska have seen a rise in reported electronic harassment crimes. As the Internet becomes a more integral part of personal and professional lives, individuals can take advantage of the ease of communications as well as increased access to personal information and the benefit of anonymity. Whereas an individual may be unwilling or unable to confront a victim in person or on the telephone, he or she may have little hesitation sending harassing or threatening electronic communications to a victim.

The fact that email harassment does not involve physical contact creates the misconception that it is more benign than physical harassment or stalking. However, law enforcement agencies recognize the serious nature and extent of email harassment and are beginning to take aggressive action. In response to the growing number of reported email harassment claims, special units have been developed to investigate and prosecute email harassment and other computer related crimes. HB 12 would provide these agencies with a significant tool to protect and prosecute on behalf of Alaskans.

Last Updated: 1/30/2003

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355



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Lonnie Hatman, Member
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Jerry Nankervis, Member
Juneau
Pres. Capital City Chapter

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Ketchikan
Pres. First City Chapter

James See, Member
Craig
Pres. Prince of Wales Chapter

John Lucking, Jr., Member
Unalaska
Pres. Aleutian Islands Chapter

Jeff Odom, Member
Wrangell
Pres. Wrangell Chapter

January 14, 2003

Representative Kevin Meyer
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Meyer:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing House Bill No. 12, an act relating to harassment.

The APOA State Board of Directors recently met and after discussing this proposed legislation, decided to unanimously support this bill.

Your legislative amendment will help to close the gap on those who are victims of harassment by means of electronic communication. In our ever-changing world of telecommunications we need legislation like yours to cover all methods and modes of communication involving the crime of harassment. We believe that this proposed legislation will be of benefit to both citizens and law enforcement of Alaska.

Please contact the APOA office in Anchorage at 277-0515 if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

Leo J. Brandlen
State President

Mike Messick
1520 N. Aspen Place
Wasilla, AK. 99654
(907) 373-4858

RE: HB 12

To Whom It May Concern:

It is with great anticipation and relief that I am writing this letter of support for Representative Meyer's bill to amend AS 11.61.120(a). Due to the nature of my job duties for the past 6 years, I have had the opportunity to provide technical assistance to municipal, state, and federal authorities for numerous computer-related investigations pertaining to harassment and other crimes committed or assisted by the use of a computer.

On many occasions, criminal charges could not be brought against a perpetrator simply because he (or she) had used a computer in the commission of the crime. Had the perpetrator used a telephone or other "conventional" means to commit the same type of crime, a violation of AS 11.61.120(a) would have been committed, and appropriate prosecutorial action taken.

AS 11.61.120(a) currently only contains language pertaining to harassment by telephone, physical, and verbal contact. Given the proliferation of internet-connected computers, especially in Alaska, this statute needs to be expanded to also cover harassment by electronic communications. This proposed expansion of coverage does not change the intent of the statute in the least, but rather reinforces it by including one of the most common means of communication in use today.

Simply put, this bill would empower municipal and state law enforcement officials to more adequately carry out the intentions of the legislature. As many law enforcement officials investigating cyber-harassment will attest, the current law is insufficient; therefore, I ask for your support of this amendment.

Thank you for your consideration in this matter.

Sincerely,

Mike Messick
Information Security Architect
ConocoPhillips

RECEIVED

FEB 06 2003

Detective Richard Rhea
Anchorage Police Department
4501 S. Bragaw
Anchorage, AK 99507
(970) 786-2637

RE: HB 12

To Representative Meyer and Committee members:

I am a Detective with the Anchorage Police Department. I have been a police officer for eleven years and a Detective for about two years. While on uniformed patrol, I handled hundreds of domestic violence related calls. As a Detective, I have worked as a general investigator, a Detective in the crimes against children unit and am now assigned to the computer crime unit.

I have handled Internet questions involving harassment before and I now have an actual case before me involving an ex-boyfriend who has posted personal information and photos of his ex-girlfriend. The victim, at one time had a restraining order on her violent boyfriend that the victim was eventually talked into dropping. The victim, as of a few weeks ago, has left state to get away from her ex. Since then, the victim has started to receive numerous e-mails. Some of the photos taken of the victim are of a compromising nature. The personal information posted by the suspect contains various items but specifically the phone number of the victim's out of state mother and the victim's e-mail address. The victim realized something was amiss when she started receiving e-mail about wanting more photos, dates etc. There were also lewd comments about her photos. The victim feels totally violated and humiliated. The victim would like this to stop.

I am assisting the victim and have told her that there are Municipal ordinances that cover this. Although we have those ordinances here in Anchorage, the nature of the World Wide Web (Internet) has made occurrences of computer crimes more than just a local phenomenon. These crimes may also have an Anchorage connection but suspect and victim may live out of Anchorage. In some cases, state charges add more bite to criminal justice system. The Municipality of Anchorage has recognized this and has amended their harassment/illegal use of telephone ordinances several years ago. This proposed legislation makes city and state laws more consistent and provides additional tools to law enforcement to combat this crime and assist victims.

Based on current state law, the victim would need to pursue civil means to address this (these incidents) and at what personal and financial cost? No one deserves to be harassed in any way either in person or electronically. With the dawning of a new century and Homeland Security, Alaska needs to become savvier with computer crimes. Alaska has the highest per capita computer users of any state in the union. We also, as of the writing of this letter, have two Anchorage Police Detectives that investigate computer crimes full time. There is also an Alaska State Trooper Sergeant white-collar crime supervisor that handles computer crimes in addition to his other duties. Neither of our organizations have an adequate budget for computer investigations so, any help we can get to make life easier for the victims and add additional law enforcement tools, is very much wanted and appreciated.

Thank you for your consideration in this matter,

Richard Rhea



1999 REPORT ON CYBERSTALKING: A NEW CHALLENGE FOR LAW ENFORCEMENT AND INDUSTRY



**Cyberstalking:
A New Challenge for Law Enforcement and Industry**

**A Report from the Attorney General to the Vice President
August 1999**

Introduction

The new millennium is fast approaching, and the information superhighway is undergoing rapid growth. The Internet and other telecommunications technologies are promoting advances in virtually every aspect of society and every corner of the globe: fostering commerce, improving education and health care, promoting participatory democracy in the United States and abroad, and facilitating communications among family and friends, whether across the street or around the world. Unfortunately, many of the attributes of this technology -

low cost, ease of use, and anonymous nature, among others - make it an attractive medium for fraudulent scams, child sexual exploitation, and increasingly, a new concern known as "cyberstalking."

"Make no mistake: this kind of harassment can be as frightening and as real as being followed and watched in your neighborhood or in your home."

Vice President Al Gore

Recognizing this emerging problem, Vice President Al Gore asked the Attorney General on February 26, 1999, to study the problem and to report back with recommendations on how to protect people from this threat. Responding to this request, this report explores the nature and extent of cyberstalking; surveys the steps law enforcement, industry, victims groups, and others currently are taking to address the problem; analyzes the adequacy of current federal and state laws; and provides recommendations on how to improve efforts to combat this growing problem.

As discussed below, the nature and extent of the cyberstalking problem is difficult to quantify. In addition, while some law enforcement agencies are responding aggressively, others are not fully aware of the problem and lack the expertise and resources to pursue cyberstalking cases. Similarly, while some Internet Service Providers (ISPs) have taken affirmative steps to crack down on cyberstalking, others have not, and there is a great deal more that industry can and should do to empower individuals to protect themselves against cyberstalking and other online threats.

Indeed, current trends and evidence suggest that cyberstalking is a serious problem that will grow in scope and complexity as more people take advantage of the Internet and other telecommunications technologies. The analysis and recommendations contained in this report offer a framework for an initial response to the problem. These recommendations, however, are only a first step. Important advances can be made if industry, law enforcement, victims service providers and support groups, and others work together to develop a more comprehensive and effective response to this problem. Ultimately, however, the first line of defense will involve industry efforts that educate and empower individuals to protect themselves against cyberstalking and other online threats, along with prompt reporting to law enforcement agencies trained and equipped to respond to cyberstalking incidents.

What Is Cyberstalking?

Although there is no universally accepted definition of cyberstalking, the term is used in this report to refer to the use of the Internet, e-mail, or other electronic communications devices to stalk another person. Stalking generally involves harassing or threatening behavior that an individual engages in repeatedly, such as following a person, appearing at a person's home or place of business, making harassing phone calls, leaving written messages or objects, or vandalizing a person's property. Most stalking laws require that the perpetrator make a credible threat of violence against the victim; others include threats against the victim's immediate family; and still others require only that the alleged stalker's course of conduct constitute an implied threat.⁽¹⁾ While some conduct involving annoying or menacing behavior

might fall short of illegal stalking, such behavior may be a prelude to stalking and violence and should be treated seriously.

Protecting Children from On-Line Dangers

Although the Internet and other forms of electronic communication offer new and exciting opportunities for children, they also expose children to new threats. For example, Federal law enforcement agencies have encountered numerous instances in which adult pedophiles have made contact with minors through online chat rooms, established a relationship with the child, and later made contact for the purpose of engaging in criminal sexual activities.

Federal, state, and local law enforcement agencies have responded aggressively to protect children from online sexual predators. For example, in 1995, the Federal Bureau of Investigation launched an undercover initiative, dubbed Innocent Images, to combat the exploitation of children via commercial online services. Based in Calverton, Maryland, "Innocent Images" is the central operation and case management system for all FBI undercover online child pornography and child sexual exploitation investigations. As of December 31, 1998, the initiative has resulted in 232 convictions. Similarly, the U.S. Customs Service's CyberSmuggling Center, based in Sterling, Virginia, plays an important role in combating sexual exploitation of children via the Internet and other online communications media. The Center develops leads and tips for law enforcement investigation, receives complaints via the U.S. Customs Service website, and coordinates undercover operations against international child pornography and child sexual exploitation rings. The National Center for Missing and Exploited Children unveiled a new CyberTipline in March 1998 to serve as a national online clearinghouse for tips and leads about child sexual exploitation. (www.cybertipline.com)

The Department of Justice, through the Office of Juvenile Justice and Delinquency Prevention's Missing and Exploited Children Program (MECP), provides funding to state and local law enforcement agencies to create multijurisdictional responses to prevent and combat Internet crimes against children. In 1998, ten state and local agencies received grants under MECP; an additional eight task forces will be funded in 1999.

There are steps parents and others can take to protect children from online dangers. Parents should teach their children to follow the common-sense "rules of the road" for the Internet, including the need to protect their privacy in the online world. The FBI, for example, has prepared an online "Parent's Guide to Internet Safety." (www.fbi.gov) Moreover, individuals should report inappropriate behavior to their Internet Service Provider (ISP) or, if it involves potentially illegal conduct, to appropriate law enforcement agencies. Law enforcement agencies need to establish and/or improve programs that train their personnel to recognize the seriousness of online child sexual exploitation and how to investigate this new form of criminal conduct. They also need to work closely with ISPs and others to facilitate communication and cooperation. Finally, private companies, including ISPs, need to provide parents and children with effective tools to protect children from online exploitation, including filtering technology, parental controls, and other efforts. ISPs also need to establish clear policies that prohibit online solicitation or exploitation of children and to take appropriate action when such incidents come to their attention.

children and to take appropriate action when such incidents come to their attention, as is now required under federal law. See U.S.C. 13032.

Nature and Extent of Cyberstalking

An existing problem aggravated by new technology

Although online harassment and threats can take many forms, cyberstalking shares important characteristics with offline stalking. Many stalkers - online or off - are motivated by a desire to exert control over their victims and engage in similar types of behavior to accomplish this end. As with offline stalking, the available evidence (which is largely anecdotal) suggests that the majority of cyberstalkers are men and the majority of their victims are women, although there have been reported cases of women cyberstalking men and of same-sex cyberstalking. In many cases, the cyberstalker and the victim had a prior relationship, and the cyberstalking begins when the victim attempts to break off the relationship. However, there also have been many instances of cyberstalking by strangers. Given the enormous amount of personal information available through the Internet, a cyberstalker can easily locate private information about a potential victim with a few mouse clicks or key strokes.

The fact that cyberstalking does not involve physical contact may create the misperception that it is more benign than physical stalking. This is not necessarily true. As the Internet becomes an ever more integral part of our personal and professional lives, stalkers can take advantage of the ease of communications as well as increased access to personal information. In addition, the ease of use and non-confrontational, impersonal, and sometimes anonymous nature of Internet communications may remove disincentives to cyberstalking. Put another way, whereas a potential stalker may be unwilling or unable to confront a victim in person or on the telephone, he or she may have little hesitation sending harassing or threatening electronic communications to a victim. Finally, as with physical stalking, online harassment and threats may be a prelude to more serious behavior, including physical violence.

Offline vs. Online Stalking -- A Comparison⁽²⁾

Major Similarities

Majority of cases involve stalking by former intimates, although stranger stalking occurs in the real world and in cyberspace.

Most victims are women; most stalkers are men.

Stalkers are generally motivated by the desire to control the victim.

Major Differences

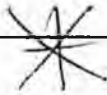
Offline stalking generally requires the perpetrator and the victim to be located in the same geographic area; cyberstalkers may be located across the street or across the country.

Electronic communications technologies make it much easier for a cyberstalker to encourage third parties to harass and/or threaten a victim (e.g., impersonating the victim and posting inflammatory messages to bulletin boards and in chat rooms, causing viewers of that message to send threatening messages back to the victim "author.")

Electronic communications technologies also lower the barriers to harassment and threats; a cyberstalker does not need to physically confront the victim.

While there are many similarities between offline and online stalking, the Internet and other communications technologies provide new avenues for stalkers to pursue their victims.

A cyberstalker may send repeated, threatening, or harassing messages by the simple push of a button; more sophisticated cyberstalkers use programs to send messages at regular or random intervals without being physically present at the computer terminal. California law enforcement authorities say they have encountered situations where a victim repeatedly receives the message "187" on their pagers - the section of the California Penal Code for murder. In addition, a cyberstalker can dupe other Internet users into harassing or threatening a victim by utilizing Internet bulletin boards or chat rooms. For example, a stalker may post a controversial or enticing message on the board under the name, phone number, or e-mail address of the victim, resulting in subsequent responses being sent to the victim. Each message -- whether from the actual cyberstalker or others -- will have the intended effect on the victim, but the cyberstalker's effort is minimal and the lack of direct contact between the cyberstalker and the victim can make it difficult for law enforcement to identify, locate, and arrest the offender.



Actual Cyberstalking Incidents

In the first successful prosecution under California's new cyberstalking law, prosecutors in the Los Angeles District Attorney's Office obtained a guilty plea from a 50-year-old former security guard who used the Internet to solicit the rape of a woman who rejected his romantic advances. The defendant terrorized his 28-year-old victim by impersonating her in various Internet chat rooms and online bulletin boards, where he posted, along with her telephone number and address, messages that she fantasized of being raped. On at least six occasions, sometimes in the middle of the night, men knocked on the woman's door saying they wanted to rape her. The former security guard pleaded guilty in April 1999 to one count of stalking and three counts of solicitation of sexual assault. He faces up to six years in prison.

A local prosecutor's office in Massachusetts charged a man who, utilizing anonymous remailers, allegedly engaged in a systematic pattern of harassment of a co-worker, which culminated in an attempt to extort sexual favors from the victim under threat of disclosing past sexual activities to the victim's new husband.

An honors graduate from the University of San Diego terrorized five female university students over the Internet for more than a year. The victims received hundreds of violent and threatening e-mails, sometimes receiving four or five messages a day. The graduate student, who has entered a guilty plea and faces up to six years in prison, told police he committed the crimes because he thought the women were laughing at him and causing others to ridicule him. In fact, the victims had never met him.

The anonymity of the Internet also provides new opportunities for would-be cyberstalkers. A cyberstalker's true identity can be concealed by using different ISPs and/or by adopting different screen names. More experienced stalkers can use anonymous remailers that make it all-but-impossible to determine the true identity of the source of an e-mail or other electronic communication. A number of law enforcement agencies report they currently are confronting cyberstalking cases involving the use of anonymous remailers.

Anonymity leaves the cyberstalker in an advantageous position. Unbeknownst to the target, the perpetrator could be in another state, around the corner, or in the next cubicle at work. The perpetrator could be a former friend or lover, a total stranger met in a chat room, or simply a teenager playing a practical joke. The inability to identify the source of the harassment or threats could be particularly ominous to a cyberstalking victim, and the veil of anonymity might encourage the perpetrator to continue these acts. In addition, some perpetrators, armed with the knowledge that their identity is unknown, might be more willing to pursue the victim at work or home, and the Internet can provide substantial information to this end. Numerous websites will provide personal information, including unlisted telephone numbers and detailed directions to a home or office. For a fee, other websites promise to provide social security numbers, financial data, and other personal information.

Evidence suggests cyberstalking is a growing problem

Although there is no comprehensive, nationwide data on the extent of cyberstalking in the United States, some ISPs compile statistics on the number and types of complaints of harassment and/or threats involving their subscribers, and individual law enforcement agencies have compiled helpful statistics. There is, moreover, a growing amount of anecdotal

and informal evidence on the nature and extent of cyberstalking.

First, data on offline stalking may provide some insight into the scope of the cyberstalking problem. According to the most recent National Violence Against Women Survey, which defines stalking as referring to instances where the victim felt a high level of fear:⁽³⁾

- In the United States, one out of every 12 women (8.2 million) and one out of every 45 men (2 million) have been stalked at some time in their lives.
- One percent of all women and 0.4 percent of all men were stalked during the preceding 12 months.
- Women are far more likely to be the victims of stalking than men - nearly four out of five stalking victims are women. Men are far more likely to be stalkers - 87 percent of the stalkers identified by victims in the survey were men.
- Women are twice as likely as men to be victims of stalking by strangers and eight times as likely to be victims of stalking by intimates.

In the United States, there are currently more than 80 million adults and 10 million children with access to the Internet. Assuming the proportion of cyberstalking victims is even a fraction of the proportion of persons who have been the victims of offline stalking within the preceding 12 months, there may be potentially tens or even hundreds of thousands of victims of recent cyberstalking incidents in the United States.⁽⁴⁾ Although such a "back of the envelope" calculation is inherently uncertain and speculative (given that it rests on an assumption about very different populations), it does give a rough sense of the potential magnitude of the problem.

Second, anecdotal evidence from law enforcement agencies indicates that cyberstalking is a serious - and growing - problem. At the federal level, several dozen matters have been referred (usually by the FBI) to U.S. Attorney's Offices for possible action. A number of these cases have been referred to state and local law enforcement agencies because the conduct does not appear to violate federal law.

In addition, some local law enforcement agencies are beginning to see cases of cyberstalking. For example, the Los Angeles District Attorney's Office estimates that e-mail or other electronic communications were a factor in approximately 20 percent of the roughly 600 cases handled by its Stalking and Threat Assessment Unit. The chief of the Sex Crimes Unit in the Manhattan District Attorney's Office also estimates that about 20 percent of the cases handled by the unit involve cyberstalking. The Computer Investigations and Technology Unit of the New York City Police Department estimates that almost 40 percent of the caseload in the unit involves electronic threats and harassment -- and virtually all of these have occurred in the past three or four years.

Third, ISPs also are receiving a growing number of complaints about harassing and threatening behavior online. One major ISP receives approximately 15 complaints per month of cyberstalking, in comparison to virtually no complaints of cyberstalking just one or two years ago.

Finally, as part of a large study on sexual victimization of college women, researchers at the University of Cincinnati conducted a national telephone survey of 4,446 randomly selected women attending two- and four-year institutions of higher education. The survey was conducted during the 1996-97 academic year. In this survey, a stalking incident was defined as

a case in which a respondent answered positively when asked if someone had "repeatedly followed you, watched you, phoned, written, e-mailed, or communicated with you in other ways that seemed obsessive and made you afraid or concerned for your safety." The study found that 581 women (13.1 percent) were stalked and reported a total of 696 stalking incidents; the latter figure exceeds the number of victims because 15 percent of the women experienced more than one case of stalking during the survey period. Of these 696 stalking incidents, 166 (24.7 percent) involved e-mail. Thus, 25 percent of stalking incidents among college women could be classified as involving cyberstalking.⁽⁵⁾

Current Efforts to Address Cyberstalking

The law enforcement response

Cyberstalking is a relatively new challenge for most law enforcement agencies. The first traditional stalking law was enacted by the state of California in 1990 - less than a decade ago. Since that time, some law enforcement agencies have trained their personnel on stalking and/or established specialized units to handle stalking cases. Nonetheless, many agencies are still developing the expertise and resources to investigate and prosecute traditional stalking cases; only a handful of agencies throughout the country have focused attention or resources specifically on the cyberstalking problem.⁽⁶⁾

Law enforcement response: awareness and training are key factors

Based on recent informal surveys of law enforcement agencies, it appears that the majority of agencies have not investigated or prosecuted any cyberstalking cases. However, some agencies - particularly those with units dedicated to stalking or computer crime offenses - have large cyberstalking caseloads. As noted above, the New York Police Department's Computer Investigation and Technology Unit and the Los Angeles District Attorney's Stalking and Threat Assessment Team estimate that 40 and 20 percent of their caseloads, respectively, involve cyberstalking-type cases.

"Cyberspace has become a fertile field for illegal activity. By the use of new technology and equipment which cannot be policed by traditional methods, cyberstalking has replaced traditional methods of stalking and harassment. In addition, cyberstalking has led to offline incidents of violent crime. Police and prosecutors need to be aware of the escalating numbers of these events and devise strategies to resolve these problems through the criminal justice system."

Linda Fairstein

Chief of Sex Crimes Prosecution Unit

Manhattan District Attorney's Office

The disparity in the activity level among law enforcement agencies can be attributed to a number of factors. First, it appears that the majority of cyberstalking victims do not report the conduct to law enforcement, either because they feel that the conduct has not reached the point of being a criminal offense or that law enforcement will not take them seriously. Second, most law enforcement agencies have not had the training to recognize the serious nature of

cyberstalking and to investigate such offenses. Unfortunately, some victims have reported that rather than open an investigation, a law enforcement agency has advised them to come back if the cyberstalkers confront or threaten them offline. In several instances, victims have been told by law enforcement simply to turn off their computers.

Law Enforcement: Lack of Training and Expertise Can Frustrate Victims, Hinder Response

A recent incident demonstrates how the lack of law enforcement training and expertise can frustrate cyberstalking victims: A woman complained to a local police agency that a man had been posting information on the web claiming that her nine-year-old daughter was available for sex. The web posting included their home phone number with instructions to call 24 hours a day. They received numerous calls. The couple reported the problem to the local police agency on numerous occasions, but the agency simply advised the couple to change their home phone number. Subsequently, the couple contacted the FBI, which opened an investigation. It was discovered that the local police agency did not have a computer expert, and the investigative officer had never been on the Internet. The local agency's lack of familiarity and resources may have resulted in a failure to understand the seriousness of the problem and the options available to law enforcement to respond to such problems.

Another indication that many law enforcement agencies underestimate the magnitude of the cyberstalking problem is the wide disparity in reported cases in different jurisdictions across the country. For example, one state attorney general's office in a midwestern state indicated that it received approximately one inquiry a week regarding cyberstalking cases and that it is aware of approximately a dozen prosecutions last year alone. In contrast, the state attorney general's offices in neighboring states indicated they have never received an inquiry into this type of behavior. Although one would generally expect some disparity in differing jurisdictions, the size of the disparity suggests that some law enforcement agencies do not have the training or expertise to recognize the magnitude of the problem in their jurisdictions.

Law enforcement response: jurisdictional and statutory limitations may frustrate some agencies

Some state and local law enforcement agencies also have been frustrated by jurisdictional limitations. In many instances, the cyberstalker may be located in a different city or state than the victim making it more difficult (and, in some cases, all but impossible) for the local authority to investigate the incident. Even if a law enforcement agency is willing to pursue a case across state lines, it may be difficult to obtain assistance from out-of-state agencies when the conduct is limited to harassing e-mail messages and no actual violence has occurred. A number of matters have been referred to the FBI and/or U.S. Attorney's offices because the victim and suspect were located in different states and the local agency was not able to pursue the investigation.

The lack of adequate statutory authority also can limit law enforcement's response to cyberstalking incidents. At least 16 states have stalking statutes that explicitly cover electronic communications,⁽⁷⁾ and cyberstalking may be covered under general stalking statutes in other states. It may not, however, meet the statutory definition of stalking in the remainder. In many

cases, cyberstalking will involve threats to kill, kidnap, or injure the person, reputation, or property of another, either on or offline and, as such, may be prosecuted under other federal or state laws that do not relate directly to stalking.

Finally, federal law may limit the ability of law enforcement agencies to track down stalkers and other criminals in cyberspace. In particular, the Cable Communications Policy Act of 1984 (CCPA) prohibits the disclosure of cable subscriber records to law enforcement agencies without a court order and advance notice to the subscriber. See 47 U.S.C. 551(c), (h). As more and more individuals turn to cable companies as their ISPs, the CCPA is posing a significant obstacle to the investigation of cybercrimes, including cyberstalking. For example, under the CCPA, a law enforcement agency investigating a cyberstalker who uses a cable company for Internet access would have to provide the individual notice that the agency has requested his/her subscriber records, thereby jeopardizing the criminal investigation. While it is appropriate to prohibit the indiscriminate disclosure of cable records to law enforcement agencies, the better approach would be to harmonize federal law by providing law enforcement access to cable subscriber records under the same privacy safeguards that currently govern law enforcement access to records of electronic mail subscribers under 18 U.S.C. 2703. Moreover, special provisions could be drafted to protect against the inappropriate disclosure of records that would reveal a customer's viewing habits.

Law enforcement response: the challenge of anonymity

Another complication for law enforcement is the presence of services that provide anonymous communications over the Internet. To be sure, anonymity provides important benefits, including protecting the privacy of Internet users. Unfortunately, cyberstalkers and other cybercriminals can exploit the anonymity available on the Internet to avoid accountability for their conduct.

Anonymous services on the Internet come in one of two forms: the first allows individuals to create a free electronic mailbox through a web site. While most entities that provide this service request identifying information from users, such services almost never authenticate or otherwise confirm this information. For these services, payment is typically made in advance through the use of a money order or other non-traceable form of payment. As long as payment is received in advance by the ISP, the service is provided to the unknown account holder. The second form comprises mail servers that purposefully strip identifying information and transport headers from electronic mail. By forwarding mails through several of these services serially, a stalker can nearly perfectly anonymize the message. The presence of both such services makes it relatively simple to send anonymous communications, while making it difficult for victims, providers, and law enforcement to identify the person or persons responsible for transmitting harassing or threatening communications over the Internet.

Law enforcement response: specialized units show promise in combating cyberstalking

A growing number of law enforcement agencies are recognizing the serious nature and extent of cyberstalking and taking aggressive action to respond. Some larger metropolitan areas, such as Los Angeles and New York, have seen numerous incidents of cyberstalking and have specialized units available to investigate and prosecute these cases. For example, Los Angeles has developed the Stalking and Threat Assessment Team. This team combines special sections of the police department and district attorney's office to ensure properly trained investigators and prosecutors are available when cyberstalking cases arise. In addition, this specialized unit

is given proper resources, such as adequate computer hardware and advanced training, which is essential in investigating and prosecuting these technical cases. Similarly, the New York City Police Department created the Computer Investigation and Technology Unit. This unit provides regular training for police officers and prosecutors regarding the intricacies of cyberstalking investigations and prosecutions. The training includes understanding how chat rooms operate, how to obtain and preserve electronic evidence, and how to draft search warrants and subpoenas.

The programs in New York and Los Angeles both ensure that enforcement personnel receive proper training and have adequate resources to combat cyberstalking. Other jurisdictions are also taking steps to combat cyberstalking. One of the critical steps is learning how to trace communications sent over computers and the Internet. Traditional law enforcement techniques for surveillance, investigation, and evidence gathering require modification for use on computer networks and often require the use of unfamiliar legal processes. Law enforcement at all levels must be properly trained to use network investigative techniques and legal process while protecting the privacy of legitimate users of the Internet. These techniques are similar to those used in investigating other types of computer crime. Just as a burglar might leave fingerprints at the scene of a crime, a cyberstalker can leave an "electronic trail" on the web that properly trained law enforcement can follow back to the source. Thus, technological proficiency among both investigators and prosecutors is essential.

At present, there are numerous efforts at the federal and state levels that focus solely on high technology crimes. These units do not focus on cyberstalking alone, but they have the necessary expertise in computers and the Internet to assist in the investigation of cyberstalking when it arises. For example, the Federal Bureau of Investigation (FBI) has Computer Crime Squads throughout the country, as well as the National Infrastructure Protection Center in Washington, to ensure cybercrimes are properly investigated. Additionally, they have Computer Analysis and Response Teams to conduct forensics examinations on seized magnetic media. Similarly, in 1996 the Justice Department established the Computer Crime and Intellectual Property Section within the Criminal Division. These units have highly trained personnel who remain on the cutting edge of new technology and investigative techniques. In addition, each U.S. Attorney's office contains experienced computer crime prosecutors. These individuals -- Computer and Telecommunications Coordinators -- assist in the investigation and prosecution of a wide variety of computer crimes, including cyberstalking. In addition, at the state level, several attorneys general have established special divisions that focus on computer crimes.

Although high-tech expertise is essential, police and prosecutors have developed other strategies for helping victims of cyberstalking. An Assistant U.S. Attorney reported that in two recent cases of e-mail harassment, he asked an FBI agent to confront the would-be harasser. The agent advised that such behavior might constitute a criminal offense. In both instances, the harassment stopped. Such strategies, however, are no substitute for prosecution under federal or state law in the appropriate circumstances.

A critical step in combating cyberstalking is understanding stalking in general. In many instances, cyberstalking is simply another phase in an overall stalking pattern, or it is regular stalking behavior using new, high-technology tools. Thus, strategies and techniques that have been developed to combat stalking in general often can be adapted to cyberstalking situations. Fortunately, many state and local law enforcement agencies have begun to focus on stalking, and some have developed special task forces to deal with this problem. In addition, the

Attorney General submits an annual report to Congress entitled "Stalking and Domestic Violence." This report compiles valuable information about what the Department of Justice has learned about stalking and stalkers and is a valuable resource for law enforcement agencies and others.⁽⁸⁾

Cyberstalking is expected to increase as computers and the Internet become more popular. Accordingly, law enforcement at all levels must become more sensitive to cyberstalking complaints and devote the necessary training and resources to allow proper investigation and prosecution. By becoming technologically proficient and understanding stalking in general, agencies will be better prepared to respond to cyberstalking incidents in their jurisdictions. In addition, state and local agencies can turn to their local FBI or U.S. Attorney's office for additional technical assistance. Also, computer crime units and domestic violence units should share information and expertise, since many cyberstalking cases will include elements of both computer crime and domestic violence. Finally, law enforcement must become more sensitive to the fear and frustration experienced by cyberstalking victims. Proper training should help in this regard, but law enforcement at all levels should take the next step and place special emphasis on this problem. Computers and the Internet are becoming indispensable parts of America's culture, and cyberstalking is a growing threat. Responding to a victim's complaint by saying "just turn off your computer" is not acceptable.

Industry efforts

Although the Internet industry has tried to combat abusive electronic communications overall, the industry as a whole has not addressed cyberstalking in particular. According to a review conducted as part of the preparation of the report, most major ISPs have established an address to which complaints of abusive or harassing electronic mail can be sent (generally, this address is "abuse@[the ISP's domain]" -- for example, "abuse@aol.com"). In addition, these providers almost uniformly have provisions in their online agreements specifically prohibiting abusive or harassing conduct through their service and providing that violations of the policy will result in termination of the account.

In practice, however, ISPs have focused more on assisting their customers in avoiding annoying online behavior, such as receiving unsolicited commercial electronic mail ("spamming") or large amounts of electronic mail intentionally sent to an individual ("mail-bombing"); relatively less attention has been paid to helping victims of cyberstalking or other electronic threats. For some ISPs, the procedures for lodging complaints of online harassment or threats were difficult to locate, and their policies about what does or does not constitute a violation of service agreements were generally unhelpful. In addition, many ISPs do not inform their customers about what steps, if any, the ISP has taken to follow-up on their customer's complaint. These problems -- hard-to-locate complaint procedures, vague policies about what does and does not constitute prohibited harassment, and inadequate follow-up on complaints -- may pose serious obstacles to cyberstalking victims who need help.

Online industry associations respond that providing such protection to their customers is costly and difficult. Although they recognize that larger ISPs have begun to commit resources to dealing with harassment online, they caution that the costs of imposing additional reporting or response obligations upon ISPs may make it difficult for small or entrepreneurial ISPs to continue providing service at competitive rates. For example, the Commercial Internet Exchange, whose members carry approximately 75 percent of U.S. backbone traffic, cautions that no attempt to impose reporting requirements should be made unless fully justified by the

record. However, according to the same group, the decentralized nature of the Internet would make it difficult for providers to collect and submit such data. Accordingly, the evidence of the scope of the cyberstalking problem is likely to remain for the foreseeable future defined primarily by anecdotal evidence, with no basis to determine whether the phenomenon is growing, static, or declining.

Industry efforts: educating and protecting consumers

Despite the difficulty in fully defining the scope of the cyberstalking problem, however, industry has made notable efforts to inform consumers about ways to protect themselves online. Such information is principally focused on protecting children and consumers on the Internet. For example, since 1996, the Internet Alliance, one of the key Internet industry groups, has worked with the Federal Trade Commission and government agencies on Project OPEN (Online Public Education Network). Project OPEN provides information about fraud, parental controls, and protecting privacy.⁽⁹⁾ Although this information is not specifically relevant to cyberstalking, much of the advice about protecting children and safeguarding privacy while online may be of assistance to individuals who want to use the Internet while protecting against potential cyberstalkers. More recently, a number of industry organizations have joined together to develop, GetNetWise.Com - a single, comprehensive online resource to help parents and children use the Internet in a safe and educational manner.

Other similar industry efforts have recently been announced to address other aspects of computer-related crime. For example, the Department of Justice and the Information Technology Association of America (ITAA) announced the Cybercitizen Partnership in March 1999. This partnership is intended to boost cooperation between industry and government, expand public awareness of computer crime issues among children and adolescents, and provide resources for government to draw upon in addressing computer crime. The industry has also responded to the complaints of parents who are worried about the content available to their children over the Internet by announcing the "One Click Away" initiative to give parents important information about protecting their children in a central location. Similar education and outreach efforts, approached through cooperation between industry and government, may educate individuals concerned about these issues and therefore mitigate some of the dangers of cyberstalking.

In addition, other Internet industry sectors have begun to address aspects of the cyberstalking problem. Many of these solutions focus on the ability of individuals to protect themselves against unwanted communications. For example, most Internet "chat" facilities offer users the ability to block, squelch, or ignore chat messages or "paging" from individuals who are attempting to annoy or threaten them. Similarly, many e-mail users have tools which allow the users to block e-mail from individuals who are attempting to harass or annoy them. Such a solution may be useful in situations where the communications are merely annoying. Unfortunately, such a solution is less appropriate when threatening communications are received, because a victim who never "receives" the threat may not know they are being stalked, and may be alerted, for the first time, when the stalker shows up to act on the threat.

In another type of response, providers have begun to set up "gated communities" for individuals, families, and children. The techniques used by such communities are still in developmental stages, but they range from specialized servers, which allow potentially objectionable content to be filtered at the server, to designated areas for children and teens, which place restrictions on the amount or types of personal information that will be provided

to others. Individuals who are concerned about being stalked may find refuge in such communities.

While these efforts all reflect important initiatives for self-protection, both industry and government representatives agree that a key component of addressing the cyberstalking problem is education and empowerment: If individuals are given clear direction about how to protect themselves against threatening or harassing communications, and how to report incidents when they do occur, both industry and law enforcement will be in a position to cooperate to conduct investigations.

Industry efforts: cooperation with law enforcement

Both industry and law enforcement benefit when crime over the Internet is reduced. In particular, the Internet industry benefits significantly whenever citizen and consumer confidence and trust in the Internet is increased. Accordingly, both industry and law enforcement recognize the need to cooperate more fully with one another in this area. Industry representatives have noted that contact between industry and law enforcement -- particularly in the area of harassment -- is sporadic and episodic. Industry representatives, who were consulted as part of the preparation of this report, indicated their willingness to participate in training efforts for law enforcement. Law enforcement -- particularly on the state and local level, who will often be first responders to cyberstalking complaints -- should be willing to engage industry in dialogue and take advantage of the expertise offered by industry in designing training programs. Moreover, closer cooperation between law enforcement and industry will help to ensure that law enforcement officers know who at the ISPs to call and how to proceed when they receive a complaint, and ISPs have a contact in law enforcement when they receive a complaint that warrants intervention by law enforcement.

Victims and support organizations

Because cyberstalking is a relatively new criminal phenomenon, very little public attention and resources have been committed to addressing this crime. Consequently, victims of online harassment and threats, often in collaboration with victim service providers and advocates, have had to step in to fill the void by developing their own informal support networks and informational web sites to exchange information about how to respond to these crimes effectively.

Victim service providers report that the Internet is rapidly becoming another weapon used by batterers against their victims. Just as in real life, abused women can be followed in cyberspace by their batterers, who may surreptitiously place their target under surveillance without her knowledge and use the information to threaten her or discredit her by putting misinformation on the Internet. Victim service providers recommend that victims make copies of all e-mails sent by the batterer as evidence of his stalking and advise a victim to let the stalker know that she does not want to have any further contact with him. SAFE House, a domestic violence victim service provider in Michigan, suggests that victims change their passwords often; refrain from telling anyone what the password is; do not use a password or other identifying information that the batterer/stalker can guess; set up a program that requires a password even to get on the computer; be sure to clear out the history information if programs such as ICQ, AOL Communicator, and Excite PAL, are used; remember that many chat rooms have archives that can be accessed later on by anyone; be careful about what is said in chat rooms and use an alias that is only known to good friends; be aware that if the

screen name of the assailant is known, he can be blocked from tracking victims through a buddy list on AOL; and, consult the ISP about the best way to secure their account.

A focus group convened on October 30, 1998, by the Office for Victims of Crime, a component within the U.S. Department of Justice, sought to identify the needs of stalking victims, including victims whose stalkers used the Internet to track and to harass their victims. The victims at the focus group emphasized that although the response of law enforcement and victim service providers is important, stalking victims need a wide range of services from doctors, mental health providers, day care providers, welfare and child protection workers, school staff, and employers. In addition, the focus group participants indicated that community awareness and understanding of what constitutes stalking behavior is critical to the support and well-being of stalking victims. Finally, all of the stalking victims reported that the consequences of not being believed or supported, or having their fears viewed as exaggerated or unrealistic, can be devastating. Some victims feel isolated and alone, are made to believe that the stalking is their fault, lose primary relationships, or fear losing their jobs. These issues are just as relevant to cyberstalking victims as they are to victims of offline stalking.

Adequacy of Existing Laws

Although stalking has been a problem for many years, only in this decade has it received significant attention from lawmakers, policy officials, and law enforcement agencies. In 1990, California became the first state to enact a specific stalking law. Since that time, all 50 states and the District of Columbia have enacted stalking laws.

State cyberstalking laws

Less than one third of the states have anti-stalking laws that explicitly cover stalking via the Internet, e-mail, pagers, or other electronic communications. California, for example, only recently amended its stalking statute to cover cyberstalking. This law was used in the prosecution of a 50-year-old former security guard who pleaded guilty on April 28, 1999, to one count of stalking and three counts of solicitation of sexual assault after using the Internet to solicit the rape of a woman who rejected his romantic advances. While the general stalking statutes in some states may cover cyberstalking, all states should review their laws to ensure they prohibit and provide appropriate punishment for stalking via the Internet and other electronic communications.

Federal cyberstalking laws

Federal law provides a number of important tools that are available to combat cyberstalking. Under 18 U.S.C. 875(c), it is a federal crime, punishable by up to five years in prison and a fine of up to \$250,000, to transmit any communication in interstate or foreign commerce containing a threat to injure the person of another. Section 875(c) applies to any communication actually transmitted in interstate or foreign commerce - thus it includes threats transmitted in interstate or foreign commerce via the telephone, e-mail, beepers, or the Internet.

Although 18 U.S.C. 875 is an important tool, it is not an all-purpose anti-cyberstalking statute. First, it applies only to communications of actual threats. Thus, it would not apply in a situation where a cyberstalker engaged in a pattern of conduct intended to harass or annoy

another (absent some threat). Also, it is not clear that it would apply to situations where a person harasses or terrorizes another by posting messages on a bulletin board or in a chat room encouraging others to harass or annoy another person (as in the California case, discussed *infra*).

Certain forms of cyberstalking also may be prosecuted under 47 U.S.C. 223. One provision of this statute makes it a federal crime, punishable by up to two years in prison, to use a telephone or telecommunications device to annoy, abuse, harass, or threaten any person at the called number.⁽¹⁰⁾ The statute also requires that the perpetrator not reveal his or her name. See 47 U.S.C. 223(a)(1)(C). Although this statute is broader than 18 U.S.C. 875 -- in that it covers both threats and harassment -- Section 223 applies only to direct communications between the perpetrator and the victim. Thus, it would not reach a cyberstalking situation where a person harasses or terrorizes another person by posting messages on a bulletin board or in a chat room encouraging others to harass or annoy another person. Moreover, Section 223 is only a misdemeanor, punishable by not more than two years in prison.

The Interstate Stalking Act, signed into law by President Clinton in 1996, makes it a crime for any person to travel across state lines with the intent to injure or harass another person and, in the course thereof, places that person or a member of that person's family in a reasonable fear of death or serious bodily injury. See 18 U.S.C. 2261A. Although a number of serious stalking cases have been prosecuted under Section 2261A, the requirement that the stalker physically travel across state lines makes it largely inapplicable to cyberstalking cases.

Finally, President Clinton signed a bill into law in October 1998 that protects children against online stalking. The statute, 18 U.S.C. 2425, makes it a federal crime to use any means of interstate or foreign commerce (such as a telephone line or the Internet) to knowingly communicate with any person with intent to solicit or entice a child into unlawful sexual activity. While this new statute provides important protections for children, it does not reach harassing phone calls to minors absent a showing of intent to entice or solicit the child for illicit sexual purposes.

Thus, although current statutes address some forms of cyberstalking, there are gaps in current federal and state law. As outlined in the Recommendations below, States should review their existing stalking and other statutes to determine whether they address cyberstalking and, if not, expeditiously enact laws that prohibit cyberstalking.

Federal legislation also is needed to fill the gaps in current law. While most cyberstalking cases will fall within the jurisdiction of state and local authorities, there are instances - such as serious cyberharassment directed at a victim in another state or involving communications intended to encourage third parties to engage in harassment or threats - where state law is inadequate or where state or local agencies do not have the expertise or the resources to investigate and/or prosecute a sophisticated cyberstalking case. Therefore, federal law should be amended to prohibit the transmission of any communication in interstate or foreign commerce with intent to threaten or harass another person, where such communication places another person in fear of death or bodily injury to themselves or another person. Because of the increased vulnerability of children, the statute should provide for enhanced penalties where the victim is a minor. Such targeted, technology-neutral legislation would fill existing gaps in current federal law, without displacing the primary law enforcement role of state and local authorities and without infringing on First Amendment-protected speech.

First Amendment and Other Legal Considerations

All 50 States, the District of Columbia, and the federal government have passed laws that criminalize stalking to address the serious harms and dangers that result from stalking, including the fear of violence and loss of privacy and control suffered by the victim. In addition to the direct harms caused by stalking, stalking is also frequently a precursor to physical violence against the victim. By its nature, however, stalking is not a crime that can be defined with a particularized, discrete set of acts. Frequently stalking consists of a course of conduct that may involve a broad range of harassing, intimidating, and threatening behavior directed at a victim. The conduct can be as varied as the stalker's imagination and ability to take actions that harass, threaten, and force himself or herself into the life and consciousness of the victim. As new technologies become available, stalkers adapt those technologies to new ways of stalking victims, as is the case with the Internet and cyberstalking.

As a result of the breadth of conduct potentially involved in stalking, anti-stalking statutes need to be relatively broad to be effective. At the same time, however, because of that breadth and because stalking can involve expressive conduct and speech, anti-stalking statutes must be carefully formulated and enforced so as not to impinge upon speech that is protected by the First Amendment. This is particularly true with regard to cyberstalking laws, which frequently will involve speech over the Internet. The Internet, moreover, has been recognized as an important tool for protected speech activities. See, e.g., *Reno v. American Civil Liberties Union*, 521 U.S. 844, 850-52, 870 (1997); *American Civil Liberties Union v. Reno*, 31 F.Supp.2d 473, 476, 493 (E.D. Pa. 1999).

The fact that stalking behavior (including cyberstalking) may implicate important issues of free speech, however, does not eliminate the significant public interest in its criminal regulation or suggest that any criminal regulation would be prohibited by the freedom of speech guarantees of the First Amendment. The First Amendment does not prohibit any and all regulation that may involve or have an impact on speech. Of particular relevance to stalking, the Supreme Court has recognized that governments may criminalize true threats without violating the First Amendment. See, e.g., *Watts v. United States*, 394 U.S. 705 (1969) (per curiam). As discussed in the Introduction of this report, stalking (as well as cyberstalking) generally involves conduct reasonably understood to constitute a threat of violence, and such threats may be criminalized consistent with the First Amendment.

One of the recommendations in this report calls on states to review and update their statutes, where necessary, to cover electronic communications within their stalking laws. Care must be taken in drafting cyberstalking statutes to ensure that they are not so broad that they risk chilling constitutionally protected speech, such as political protest and other legitimate conduct. A carefully drafted statute can provide broad protections against cyberstalking without running afoul of the First Amendment.

Recommendations

General recommendations

- The law enforcement community, private industry, victims assistance providers, and individuals must recognize that cyberstalking is a serious problem -- not only as a potential precursor to offline threats and violence, but also as a serious invasion of an increasingly important aspect of people's everyday lives. At the same time, it is

important to note that many forms of annoying and menacing activity on the Internet do not rise to the level of illegal activity and are properly addressed by individuals and service providers without recourse to law enforcement channels.

- The lack of comprehensive data on the nature and extent of cyberstalking makes it difficult to develop effective response strategies. Future surveys and research studies on stalking should, where possible, include specific information on cyberstalking. Industry organizations can and should play a role not only in increasing the amount of data on the cyberstalking problem, but also ensuring that the data can be analyzed in a meaningful way.

Legislative recommendations

- States should review their existing stalking and other statutes to determine whether they address cyberstalking and, if not, promptly expand such laws to address cyberstalking.
- Although State and local law enforcement agencies should retain primary jurisdiction over cyberstalking cases, federal law should be amended to address gaps in existing law where the conduct involves interstate or foreign communications. Such legislation should prohibit the transmission of any communication in interstate or foreign commerce with intent to threaten or harass another person where such communication places another in reasonable fear of death or bodily injury. Enhanced penalties should be available where the victim is a minor. Such legislation should be technology neutral and should apply to all forms of communication technologies.
- Federal law also should be amended to make it easier to track down stalkers and other criminals in cyberspace while maintaining safeguards for privacy. In particular, the Cable Communications Policy Act should be amended to provide access to the same type of subscriber records, and under the same standards and privacy safeguards, as those for electronic mail subscribers under 18 U.S.C. 2703 (while maintaining strict limits on access to records that reveal customer viewing habits).

Recommendations for law enforcement and criminal justice officials

- Law enforcement agencies and courts need to recognize the serious nature of cyberstalking, including the close links between offline and online stalking.
- Law enforcement agencies need training on the nature and extent of the cyberstalking problem, including specific training on the legal tools available to address the problem, the need for, and effectiveness of, prompt action by law enforcement agencies, the most effective techniques to investigate and prosecute cyberstalking crimes, and the resources available to cyberstalking victims.
- Law enforcement agencies with existing stalking or computer crime units should consider expanding the mission of such units to include cyberstalking, and law enforcement agencies that do not presently have a stalking section should consider expanding their capabilities to address this issue. At the least, law enforcement agencies should understand the patterns underlying stalking in general and be prepared to respond and intercede on behalf of cyberstalking victims.
- Law enforcement agencies should use mechanisms for quickly and reliably sharing

information about cyberstalking incidents with other law enforcement agencies, thereby making it less likely that a cyberstalker can continue threatening behavior simply because neither the jurisdiction of the sender nor the jurisdiction of the victim believes that it can prosecute the offender.

- U.S. Attorneys' Offices, in consultation with other federal, state and local agencies, should examine the available resources and networks of investigators and prosecutors with the expertise to handle cyberstalking investigations. These include violent crime specialists, computer crime investigators and prosecutors, computer forensic specialists, and victim-witness coordinators, among others. The Law Enforcement Coordinating Committees, which have been established in each U.S. Attorneys' Office and are designed to foster coordination among law enforcement agencies, would be an appropriate body for addressing these issues.
- Law enforcement agencies should work more closely with victim groups to identify cyberstalking patterns and victims' experiences and to encourage cyberstalking victims to report incidents to law enforcement authorities.

Recommendations for the Internet and electronic communications industry

The Internet and electronic communications industry should --

- Create an industry-supported website containing information about cyberstalking and what to do if confronted with this problem. Contact information for the major ISPs should be included so that Internet users can easily report cyberstalking cases after visiting this centralized resource. This recommendation could be implemented by expanding the "One Click Away" initiative or through a complementary but separate initiative focused on cyberstalking.
- Develop additional means to empower individuals to protect themselves against cyberstalking. Such means might include more accessible and effective filtering and blocking options. While some major ISPs already allow such options, others do not.
- Develop training materials designed specifically to assist law enforcement in the investigation and prosecution of cyberstalking and related crimes. For example, a short training video could be developed to increase awareness of the cyberstalking problem and to provide law enforcement officers with essential information on how to work with ISPs and others in the investigation of cyberstalking cases.
- Cooperate fully with law enforcement when investigating cyberstalking complaints. The industry can do this, for example, by immediately freezing and retaining data for law enforcement use on any potential cyberstalking case.
- Establish best business practices to address illicit activity by terminating holders of fraudulent accounts.
- Sponsor an Internet Security and Law Enforcement Council of ISPs and other members of the Internet community to develop and promote industry best business practices relating to security and law enforcement issues (including cyberstalking), develop and distribute training materials for law enforcement on the investigation and prosecution of Internet crime, and promote more effective communication and cooperation between

industry and law enforcement in combating online criminal activity.

- Establish and enforce clear policies that prohibit cyberstalking and related behaviors, including the termination of accounts for persons who violate such policies. While it appears that most of the larger ISPs have such policies, some smaller ISPs do not. Representatives from the Internet industry should consider establishing an industry-wide code of conduct that encourages all ISPs to adopt such procedures.
- Establish clear and understandable procedures for individuals - both customers and non-customers - to register complaints about individuals using the company's service to engage in cyberstalking. Such procedures should be easily accessible to individuals.
- Develop and widely disseminate educational materials to customers and others on how to protect themselves online.

Recommendations for victim service providers and advocates

Victim service providers and advocates should --

- Provide direct services and referrals to available resources that are specifically designed to assist victims of cyberstalking, or stalking in general where cyberstalking services are not available, and work to ensure that cyberstalking services are expanded to meet the needs of victims and enhance their safety;
- Train domestic violence and other victim service providers and advocates on Internet technology, the tactics used by cyberstalkers, and how to respond to the specific needs of cyberstalking victims;
- Name the behavior as cyberstalking and validate that a crime is occurring when working with individual victims;
- Serve as catalysts in community efforts to form partnerships among law enforcement, prosecution, the judiciary, the medical community and other community allies to address the specific safety needs of cyberstalking victims and hold offenders accountable for their actions;
- Raise public awareness about the devastating impact on cyberstalking victims of the tactics used by cyberstalkers and the steps that can be taken to prevent and combat this crime; and
- Inform public policy decision making.

**Appendix I:
Cyberstalking Resources Online**

CyberAngels: Non-profit group devoted to assisting victims of online harassment and threats, including cyberstalking. www.cyberangels.org.

GetNetWise: Online resource for families and caregivers to help kids use the Internet in a safe and educational manner. Includes a guide to online safety, a directory of online safety tools, and directions for reporting online trouble. www.getnetwise.org.

International Association of Computer Investigative Specialists: IACIS is an international volunteer non-profit corporation composed of law enforcement professionals dedicated to education in the field of forensic computer science. IACIS offers professional training to law enforcement agencies in a wide range of computer crime investigative techniques, provides an opportunity to network with other law enforcement officers trained in

computer forensics, and promotes research and development of specialized hardware and software to assist computer forensic professionals. www.iacis.com.

National Center for Victims of Crime: The National Center for Victims of Crime (formerly known as the National Victim Center) provides referrals and advocacy services to victims through its toll-free national hotline. Through the hotline, victims are referred to the nearest, appropriate services in their community, including crisis intervention, assistance with the criminal justice process, and counseling and support groups. The National Center publishes bulletins on a number of topics, including domestic violence, sexual assault, and stalking. www.ncvc.org.

National Cybercrime Training Partnership: This interagency, federal/state/local partnership, led by the Department of Justice with extensive support from the Office of Justice Programs and the National White Collar Crime Center, is developing and delivering training to federal, state and local law enforcement agencies on the investigation and prosecution of computer crime. Information about the partnership can be found through the NWCCC website: www.cybercrime.org.

Privacy Rights Clearinghouse: Nonprofit consumer information and advocacy program that offers consumers a unique opportunity to learn how to protect their personal privacy. PRC's services include a hotline for consumers to report privacy abuses and request information on ways to protect their privacy, fact sheets on privacy issues, including one entitled "Are You Being Stalked? Tips For Your Protection." www.privacvrightrights.org.

Search Group, Inc.: SEARCH, the National Consortium for Justice Information and Statistics, provides assistance to state and local criminal justice agencies on a wide variety of information technology issues. SEARCH, through its National Technical Assistance and Training Program, provides comprehensive, hands-on training on computer crime investigations at its headquarters in Sacramento, CA, and at regional training sites around the country. www.search.org.

Women Halting Online Abuse (WHOA): Founded by women to educate the Internet community about online harassment, WHOA empowers victims of online

harassment and develops voluntary policies that systems administrators can adopt to create an environment free of online harassment. WHOA educates the online community by developing website resources, including the creation of a safe-site and unsafe-site list to enable users to make informed decisions, and providing information about how users can protect themselves against harassment.
whoa.femail.com.

**Appendix II:
How You Can Protect Against Cyberstalking -
And What To Do If You Are A Victim**

Prevention Tips

- * Do not share personal information in public spaces anywhere online, nor give it to strangers, including in e-mail or chat rooms. Do not use your real name or nickname as your screen name or user ID. Pick a name that is gender- and age-neutral. And do not post personal information as part of any user profiles.
- * Be extremely cautious about meeting online acquaintances in person. If you choose to meet, do so in a public place and take along a friend.
- * Make sure that your ISP and Internet Relay Chat (IRC) network have an acceptable use policy that prohibits cyberstalking. And if your network fails to respond to your complaints, consider switching to a provider that is more responsive to user complaints.
- * If a situation online becomes hostile, log off or surf elsewhere. If a situation places you in fear, contact a local law enforcement agency.

What To Do If You Are Being Cyberstalked

- * If you are receiving unwanted contact, make clear to that person that you would like him or her not to contact you again.
- * Save all communications for evidence. Do not edit or alter them in any way. Also, keep a record of your contacts with Internet system administrators or law enforcement officials.
- * You may want to consider blocking or filtering messages from the harasser. Many e-mail programs such as Eudora and Microsoft Outlook have a filter feature, and software can be easily obtained that will automatically delete e-mails from a particular e-mail address or that contain offensive words. Chat room contact can be blocked as well. Although formats differ, a common chat room command to block someone would be to type: /ignore <person's screen name> (without the brackets). However, in some circumstances (such as threats of violence), it may be more appropriate to save the information and contact law enforcement authorities.
- * If harassment continues after you have asked the person to stop, contact the harasser's Internet Service Provider (ISP). Most ISP's have clear policies prohibiting the use of their services to abuse another person. Often, an ISP can try to stop the

conduct by direct contact with the stalker or by closing their account. If you receive abusive e-mails, identify the domain (after the "@" sign) and contact that ISP. Most ISP's have an e-mail address such as abuse@(domain name) or postmaster@(domain name) that can be used for complaints. If the ISP has a website, visit it for information on how to file a complaint.

* Contact your local police department and inform them of the situation in as much detail as possible. In appropriate cases, they may refer the matter to state or federal authorities. If you are afraid of taking action, there are resources available to help you, Contact either:

-The National Domestic Violence Hotline, 800-799-SAFE (phone); 800-787-3224 (TDD)

-A local women's shelter for advice and support.

1. Statutes that require a showing of a "credible threat" may be problematic in the prosecution of stalking. Stalkers often do not threaten their victims overtly or in person; rather, they engage in conduct that, when taken in context, would cause a reasonable person to fear violence. In the context of cyberstalking, a credible threat requirement would be even more problematic because the stalker, sometimes unbeknownst to the victim, may be located a great distance away and, therefore, the threat might not be considered credible. The better approach, codified in the federal interstate stalking statute, 18 U.S.C. 2261A, is to prohibit conduct that places a person in reasonable fear of death or bodily injury.

2. Comparisons based on data currently available. The data for cyberstalking, as noted in the text of this report, is largely anecdotal and informal.

3. "Stalking in America: Findings from the National Violence Against Women Survey," U.S. Department of Justice, Office of Justice Programs, and Department of Health and Human Services, Center for Disease Control and Prevention, April 1998 (available at www.usdoj.gov/ojp).

4. The CyberAngels, a not-for-profit organization that assists victims of cybercrimes, including cyberstalking, using statistics from unspecified sources, estimates there are approximately 63,000 Internet stalkers and 474,000 victims worldwide. For additional information about this estimate, see the CyberAngels website at www.cyberangels.org.

5. Fisher, B. S., F. T. Cullen, J. Belknap, and M. G. Turner, "Being Pursued: Stalking Victimization in a National Study of College Women." (From a forthcoming report on sexual violence against college women funded by the US Department of Justice, National Institute of Justice).

6. The information gathered on the issue of cyberstalking is largely anecdotal. It was gathered through informal surveys of state Attorneys General, U.S. Attorneys' Offices, and, to a lesser extent, local prosecutors' offices. Victim accounts were given voluntarily through outreach conducted by the Violence Against Women Office of the U.S. Department of Justice. In addition, the American Prosecutors Research Institute of the National District Attorneys' Association compiled a report with background information on cyberstalking, which provided valuable information on current law enforcement efforts.

7. These states are Alabama, Alaska, Arizona, California, Connecticut, Delaware, Hawaii, Illinois, Indiana, Maine, Massachusetts, Michigan, New Hampshire, New York, Oklahoma,

and Wyoming. Arkansas and Maryland have enacted statutes that cover harassment via electronic communications outside their stalking statutes.

8. Copies of "Stalking and Domestic Violence: The Third Annual Report to Congress Under the Violence Against Women Act" can be obtained by contacting the National Criminal Justice Reference Service, Box 6000, Rockville, MD 20849-6000--(800) 851-3420.

9. Other resources available to individuals wishing to protect themselves against cyberstalking are listed in Appendix I, *infra*.

10. The definition of the term "telecommunications device" in that section excludes "interactive computer services." The intent of the exclusion is to insulate the service provider from liability, but not to insulate an individual user from liability for his or her criminal behavior. Accordingly, the Department of Justice has taken the position and successfully argued that a modem was a telecommunications device within the meaning of the statute. Therefore, an individual who used a modem to connect to the Internet and harass an individual is likely to fall within the terms of the statute. See *American Civil Liberties Union v. Reno*, 929 F.Supp. 824, 829 n.5 (E.D. Penn. 1996), *aff'd*, 521 U.S. 844 (1997); *Apollonia Corporation v. Reno*, 19 F.Supp.2d 1081 (N.D. Cal. 1998), *aff'd*, --- U.S. ---, 119 S.Ct. 1450 (U.S. Apr. 19, 1999).

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As stalkers go online, new state laws try to catch up

One of the first trials for 'cyberstalking' in the US opens in Illinois this week.

By Terry Costlow | Special to The Christian Science Monitor

CHICAGO - Angela Moubray used to love her hobby of chatting about wrestling and soap operas with others in an Internet chat room at night. Then, one day, a regular participant sent her a menacing e-mail. And then another. Soon, she says, he barraged her with a stream of threats such as "I hope you get raped."

Over nearly two years, the Virginia resident received unrelenting messages from a person whom she had never met, culminating in the missive: "I will kill you Ang, I mean it."

Angela Moubray is one of a growing number of people who have become a victim of an emerging new crime - cyberstalking. Upwards of 100 new cases are reported each week of someone using the Internet to intimidate another person.

"Probably two-thirds of the cases involve revenge; someone loses an argument or is turned down romantically," says Colin Hatcher, president of SafetyEd, one of a handful of private groups that help victims of Internet stalking.

Despite the prevalence of such incidents, arrests are rare. This week, however, one of the first cases of cyberstalking in the US will be played out in a suburban Chicago courtroom. The trial offers a window into how difficult such cases are to prosecute, but also signals that authorities are beginning to take the crime seriously.

All but six states have cyberstalking statutes on the books, but the Illinois case is "one of very few arrests I've heard of," says Jayne Hitchcock, president of Working to Halt Online Abuse (WHOA).

Legislators and policemen acknowledge the seriousness of the problem, but more pressing offenses often force them to overlook a crime that can be time-consuming to prosecute. Not to mention difficult. The global nature of the Internet means that the culprit could live in another state or country, and is unlikely to be extradited for what's usually a misdemeanor.

The Illinois case is the state's first arrest for cyberstalking since a statute was passed a year ago. Profirios Liapis scheduled to go on trial this week for allegedly e-mailing death threats to another man. Police say that Mr. Liapis - who could face three years in prison if convicted - is a former boyfriend of the victim's ex-wife. He is accused of sending threatening e-mails under the pseudonym of "MYSALLY17" to the victim at his workplace. Liapis also allegedly mailed the victim photos of his house and car to prove he was watching him.

In many instances, those who are threatened by e-mail have little idea whether their Internet stalker will make good on a threat.

In Ms. Moubray's case, the warnings she received terrorized her so much that she had to take safety into her own hands. "I started carrying pepper spray, and I wouldn't go anywhere alone. My Dad bought me a gun," she says.

More often than not, police don't want to get involved in cases of Internet harassment until a physical crime occurs. Most cyberstalking laws, however, allow for prosecution if someone receives repeated e-mails threatening violence.

Even so, "the majority of police departments, district attorneys, and attorneys do not understand this, and the laws do not really protect you from this type of problem," says Mr. Hatcher.

Today, educating Internet users and lawmakers is the primary focus of groups like SafetyEd, WHOA and WiredPatrol. Each site has advice such as recommending use of a free e-mail account in chat rooms and a private address for friends.

Stalkers often stop once police or private agencies come to them with evidence that ties them to the threatening messages. In Moubray's case, the perpetrator lived in another state, so WHOA linked her up with a policeman in the stalker's hometown. One visit ended the Internet stalking.

"People can be very cool while they sit at their computer. Traditional stalkers have to be very angry to get close and threaten the victim, since there's a chance they will get punched in the nose," said Susan Catherine Herring, a fellow at Indiana University's Center for research on Learning & Technology.

Antistalking activists also say that for every case they take to police, scores more fail to meet the legal definition of cyberstalking. "One woman I know is getting 20,000 e-mails per day that say 'I love you'.... but there's no threat, so it's not a crime," Hatcher says.

While many cyberstalkers fit the profile of loners with low-level jobs, the crime can be committed by anyone who lets an obsession take over part of his or her life. "You'd be surprised who does this; it's often doctors or lawyers," Hitchcock says. She adds that "only a handful" persist after being contacted by authorities.

For most victims, including Moubray, an end to the harassment is usually enough. "A big part of me is relieved; I will go places by myself now," she says. But, she adds, "I still carry my pepper spray."

[Full HTML version of this story which may include photos, graphics, and related links](#)

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CYBERSTALKING AND ELECTRONIC HARASSMENT

• Introduction

• What kinds of harassment can happen online?

• What should you do if you are getting harassed or cyberstalked?

• How can you minimize the risk of being electronically harassed or cyberstalked?

Introduction

Cyberspace is not naturally a "warm" environment. It is an emotionless electronic communication system. All the warmth and emotion that is created online has to be created by human beings working hard sitting at their keyboards. The other person you are chatting with appears online as an electronic connection number with a nickname. You can't hear them or see their face when they speak to you. In such a soulless environment it is easy to forget that at the other end of the terminal is another human being with all the same range of powerful emotions as you have.

Sometimes things go wrong in cyberspace, usually in places where people meet and chat with strangers, like chat rooms or discussion groups. Someone may start harassing or stalking you for a number of reasons. Sometimes people get into arguments that become vicious. They make enemies who don't forget what was said and who come back again next day to get revenge. Other times they meet a friend online in a chat room who falls in love with them and becomes obsessional, pestering them with messages and emails, and becoming furious when their attentions are not appreciated. Or you may simply meet a bully type online, who likes to push people around and send abusive messages and who enjoys terrorizing you.

Cyberspace is a place of lowered inhibitions. It encourages people to say things they might not have said if they were face to face with you. This is partly because people are anonymous online (you don't know who is talking to you) and also because people talking to one another online are far away from each other physically. Anonymity and physical distance mean that people online are protected from the immediate consequences of their actions. A person can type words to you that if they said them face to face might provoke you to slap their face!

Face to face, people are careful how they talk to strangers because they don't know what offends them. So usually when two strangers meet there is a period of "feeling out", where both parties are very respectful and cautious, as they establish how they each like to be spoken to. In online chat this element is often missing. Online people are often very direct with strangers regardless, because after all, "so what if I make a mistake and offend the other person? What is that person going to do?"

Women looking for friendship or even romance with men online will often find themselves

engaged in conversations that rapidly become very directly (and often crudely) sexually oriented, at a pace much faster than would ever happen in real life. You might find yourself asking "How can he SAY that to me when he has only just met me?" The answer to your question is that this is online chat.

The wise approach to avoid offending people and making enemies fast is to treat everyone ONLINE exactly the same as you would OFFLINE. Try to treat them as if you were chatting face to face with them. Because in fact there ARE consequences of being rude and offending people online. But bear in mind that you may do nothing wrong and still get targeted for harassment or stalking online.

Harassment is a repetitive form of abuse, deliberately aimed at you, with the purpose of causing you distress. Under U.S. law "stalking" means that you are being both followed around, and threatened with physical harm.

What kinds of harassment can happen online?

When it starts you may just ignore it and hope it goes away. But what if it doesn't? What if you have become the target of a malicious and obsessive abuser? What kind of things might happen to you online?

- You may get sent abusive communications via chat or email, or you may get sent obscene or disgusting pictures.
- You may get threatened with death or bodily harm.
- You may get followed around like a lovesick puppy and pestered over a prolonged period of time by someone who tells you they are in love with you.
- You may experience a series of electronic attacks on your internet connection, disconnecting you over and over again.
- You may get sent electronic viruses to try to cause problems on your computer.
- You may see nasty, cruel or defamatory things written about you on someone's web site or in a post they make to a discussion group.

What should you do if you are getting harassed or cyberstalked?

If ignoring the harasser isn't working, consider the following good advice:

- Contact SafetyEd International and ask us for help.

SafetyEd has expert staff who can advise you about electronic harassment at all levels. When they receive your request for help they will email you a questionnaire to assist them in advising you how to proceed. They will be able to offer you advice about identifying the harasser, protecting your privacy online, reporting abuse to internet service providers, and legal information on stalking and harassment.

- Don't delete the communications (emails, chat logs, posts etc). SafetyEd may need more information about them to identify who is doing this to you.

- Try not to panic.
- If you feel in any immediate physical danger of bodily harm, call your local police.

How can you minimize the risk of being electronically harassed or cyberstalked?

- Avoid getting into huge arguments online in chat or discussion areas with other users. It's really not worth it. Remember, you do NOT have to respond to public messages or private ones that are sexually suggestive, obscene, aggressive, threatening, or make you feel uncomfortable in any way. If you respond by "flaming" (being really rude) you may start a "flame war" which means major harassment that could involve others and could also spread to your email.
- Remember that all other internet users are strangers. You do not know who you are chatting with. So be careful and polite. Treat others online as you would wish to be treated.
- Be extremely careful about how you share personal information about yourself online.
- Choose your chatting nickname carefully so as not to offend others.
- Learn your technology. Most targets of electronic harassment are unskilled internet users or beginners. The more you learn about how to use this technology the better able you will be to avoid online harassment problems.

One last thing: try to remember that electronic harassers and cyberstalkers are a minority. Try not to let them spoil your online fun!

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 12
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act relating to harassment." BRU Criminal Division
 Component All
 Sponsor Representative Meyer
 Requester House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type—Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 12 adds "electronic communication" as a means of harassment under AS 11.61.120(a). Harassment is a class B misdemeanor.

While this bill would create a new crime, the Department of Law does not believe there will be many new cases, and does not anticipate a fiscal impact from passage of this legislation.

Prepared by: Joan M. Kasson Phone (907) 465-5370
 Division Attorney General's Office Date/Time 2/5/03 8:50 AM
 Approved by: Kathryn Daughhetea for Gregg D. Renkes, Attorney General Date 2/5/2003
 Agency Department of Law

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 12
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title An act relating to harassment. BRU AST Detachment
 Component AST Detachment
 Sponsor Representative Meyer
 Requester House Judiciary Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Lieutenant Matthew Leveque Phone 907 269-0390
 Division Alaska State Troopers Date/Time 2/5/03 4:08 PM
 Approved by: William Tandeske, Commissioner Date 2/5/2003
 Agency Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 12
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to harrasment. BRU Legal and Advocacy Service
 Component Public Defender Agency
 Sponsor Representative Meyer
 Requester (H) Judiciary Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	*	*	*	*	*	*
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	*	*	*	*	*	*
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2003) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This proposed legislation broadens the crime of harrasment to include anonymous or obscene email or email that threatens physical injury. While the Agency doesn't handle a significant number of harrasment cases under the current statute, this proposed broadening of the crime to include any anonymous or obscene email sent with the intent to annoy will likely have a fiscal impact on the Public Defender Agency because it will result in more cases handled by the Agency. It is not possible to predict with any certainty, however, the number of new cases this bill will generate, therefore, an indeterminate fiscal note is submitted.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)-334-4416
 Division Public Defender Agency Date/Time 2/3/03 9:35 AM
 Approved by: Sharon Barton, Acting Commissioner Date 2/3/2003
 Agency Department of Administration

HB

13

ALASKA STATE LEGISLATURE
House of Representatives

COMMITTEE ASSIGNMENTS:

RULES COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
LEGISLATIVE ETHICS COMMITTEE, MEMBER

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Representative Norman Rokeberg

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us

MEMORANDUM

TO: Representative Lesil McGuire, Chair
House Judiciary Committee

FROM: Representative Norman Rokeberg *HNR/HMN*

DATE: April 2, 2003

RE: Request to hear HB 13

I respectfully request that HB 13, Successor Liability for Product Liability, be scheduled for a hearing. I have attached the following for your information:

1. HB 13
2. Sponsor Statement
3. *Savage Arms, Inc. v. Western Auto Supply Co.*
4. Alaska Bar Rag article
5. Restatement 3rd of Torts

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

RULES COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
LEGISLATIVE ETHICS COMMITTEE, MEMBER

website: <http://www.akrepublicans.org/rokeberg/>



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Representative Norman Rokeberg

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SPONSOR STATEMENT FOR HB 13

BY: Representative Norman Rokeberg

It is vitally important to Alaska commerce and business that a corporation, partnership or other entity that purchases assets from another company or business not be held legally responsible for the liabilities of the selling business, unless expressly agreed to by the purchasing company. However, the Alaska Supreme Court, in an interim ruling last year in *Savage Arms, Inc v. Western Auto Supply Co.*, 18 P.3d 49 (Alaska 2001), held otherwise under the doctrine of successor liability as it relates to products liability, and remanded the case to trial consistent with its opinion.

Generally, when one company sells all its assets to another, the acquiring corporation or company is not liable for the debts and liabilities of the selling company. Contrary to this rule, the Alaska Supreme Court adopted two theories of successor liability in cases of products liability, "mere continuation" and "continuity of enterprise." These theories are exceptions to the general rule, and allow a purchasing company to be held responsible for the product liabilities of the selling company, including those that may have been unknown at the time of the sale. While the "mere continuation" theory is a commonly recognized exception, the Supreme Court acknowledged that "continuity of enterprise" has been rejected by the *American Law Institute: Restatement (Third) of Torts*, and a vast majority of courts that have decided the issue.

The Supreme Court stated it was deciding the issue of successor liability because "...neither this court nor the Alaska state legislature has resolved the successor liability questions presented in this case..." We seek to respond to the invitation of the Supreme Court by filling the legislative void and declaring the law of Alaska on this subject.

HB 13 specifically addresses successor liability as it relates to products liability. The bill expressly rejects the continuity of enterprise exception adopted by the Supreme Court and adopts the generally recognized exceptions to the doctrine of successor liability as listed in the Restatement of Torts. Those four exceptions are: (1) the successor expressly assumed the liability; (2) the transfer was a fraudulent conveyance; (3) the transfer constituted a consolidation or merger; or (4) the transfer was a mere continuation of the predecessor.

This legislation will prevent inequities that will otherwise occur to the purchaser of assets who would be exposed to liabilities they did not anticipate and to sellers of assets who may receive less than fair market value if the purchaser must discount the purchase price to factor in unknown and unwanted liabilities.

Please join me in endorsing and passing HB 13.

ED 1: 2/25/03

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statute of limitations has run, it is allowable if it "relates back" to the date of a timely original pleading.²⁴

Civil Rule 15(c) sets out the circumstances under which an amended pleading will relate back to the original pleading:

Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against the party to be brought in by amendment, that party (1) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.²⁵

According to this standard, Hebert's second amended complaint will relate back to her timely November 1995 complaint against Honest Bingo if (1) the claim asserted against FDA arises out of the same transaction or occurrence set forth in the initial complaint; (2) FDA received sufficient notice such that it would not be prejudiced in maintaining its defense on the merits; (3) FDA knew or should have known that it would have been included as a party in the original complaint but for a mistake concerning its identity; and (4) FDA received notice and

24. See *Stenton v. Rumpfelt*, 25 P.2d 896, 898-99 (Alaska 1992).

25. Alaska R. Civ. P. 15(c).

26. See generally *West v. Buchanan*, 981 P.2d 1065, 1068-71 (Alaska 1999). Several federal courts have held that amendments in which a plaintiff replaces a "John Doe" defendant with a named defendant are considered amendments to add new parties and will relate back only when the conditions of Rule 15(c) are satisfied. See 6A Wright & Miller, *supra* § 1498, at 105-06; see also *Craig v. United States*, 413 F.2d 854 (9th Cir.1969).

knew or should have known that, but for a mistake concerning its identity, it would have been included as a party within "the period provided by law for commencing the action against" it.²⁶

Given the fact-intensive nature of the Rule 15(c) "relation back" test, FDA can prevail on its Rule 12(c) motion only if the undisputed facts on the face of the pleadings clearly show that Hebert's second amended complaint cannot possibly relate back to her earlier timely complaint against Honest Bingo. But the relation back issue presents the following disputed fact questions, which prevent resolution on a motion for judgment on the pleadings: whether FDA received sufficient notice of Hebert's lawsuit within the limitations period and whether FDA knew or should have known that, but for a mistake concerning identity, it would have been included as a party within the applicable period.²⁷

It is not clear from the pleadings whether FDA did or did not receive sufficient notice of Hebert's claim within the limitations period. Hebert's complaint asserted that the nature of the named business entities was unknown. It also included the permittee of the bingo game as a John Doe defendant. Hebert's amended complaint states that FDA "is one of the three permittees jointly operating Honest Bingo" and that FDA "was in fact receiving the benefits of the operation of the bingo game at the time and place in question." This statement alleges the existence of a close business relationship between Honest Bingo and FDA, or possibly a joint venture or partnership.²⁸ While admitting that

27. The parties do not dispute that the first requirement—that the claim against FDA arise out of the same basic claim in the complaint against Honest Bingo—is satisfied.

28. Hebert may have available to her a second avenue for relief. If she can demonstrate that Honest Bingo was a partnership or a joint venture of which Monroe Foundation and FDA were partners or joint venturers, it may not be necessary for the second amended complaint to relate back to the original complaint since service of the timely original complaint on Honest Bingo or the Monroe Foundation may be found sufficient to constitute service on FDA. See Alaska R. Civ. P. 4(d)(5); *Coleman v. Lafgren*, 593 P.2d 632, 634 (Alaska 1979).

it is a permittee for bingo games, FDA denied the allegations of jointly operating Honest Bingo and of receipt of benefits of the operation. Viewing the facts in the light most favorable to Hebert, as we must for the purposes of the motion, it is clear that the existence of some type of close business relationship is alleged.

A fact question also exists as to whether FDA knew or should have known that but for a mistake in identity, it would have been named as a party within the applicable limitations period. As an organization under whose permit the Honest Bingo game was run, FDA may have had notice of the complaint filed against Honest Bingo and the Monroe Foundation and consequently may or should have known that it was one of the "John Does" referred to in the initial complaint against Honest Bingo. Similarly, without further evidence, we are unable to determine whether FDA either knew or should have known that it was intended as a party in the suit prior to March 27, 1996, the one hundred twentieth day after filing of the original complaint.²⁹

The pleadings on their face cannot reveal whether Hebert's second amended complaint relates back to the initial timely complaint filed against Honest Bingo. And determining whether FDA meets the standard for relation back involves a triable issue of fact. We therefore cannot affirm the granting of FDA's Rule 12(c) motion.³⁰

[13] "The court either may consider a motion for judgment on the pleadings at a preliminary hearing as provided by Rule 12(d) or may postpone its determination until trial."³¹ We conclude that where appropriate and when a motion for judgment on the pleadings is brought on the basis of the affirmative defense of statute of limitations,

29. See Alaska R. Civ. P. 4(j) (allowing 120 days after filing for service of process). The record shows that by October 31, 1996, FDA had refused to participate in settlement negotiations, but the record is silent as to how long before that time FDA was aware of Hebert's claims.

30. A Civil Rule 12(c) motion can be converted into a Rule 56 motion for summary judgment when the trial judge considers materials outside the pleadings. See Alaska R. Civ. P. 12(c). However, here the superior court explicitly stated that

the interests of justice are best served if the trial court considers the motion at a preliminary hearing instead of waiting until trial.

V. CONCLUSION

Because fact questions exist as to whether Hebert's second amended complaint bringing FDA into the lawsuit related back to her initial complaint against Honest Bingo, FDA was not entitled to judgment on the pleadings under Rule 12(c). We therefore REVERSE the decision of the superior court and REMAND for proceedings consistent with this opinion.



SAVAGE ARMS, INC., Petitioner,

v.

WESTERN AUTO SUPPLY
CO., Respondent.

Nos. 8612, 8721, 8611.

Supreme Court of Alaska.

March 2, 2001.

Rehearing Denied April 4, 2001.

Father brought products liability action against manufacturer and distributor of allegedly defective rifle, seeking recovery for injuries sustained by his minor son when rifle misfired. Distributor filed third-party complaint seeking indemnification from manufacturer's successor. The Superior Court, Third Judicial District, Kenai, Jonathan H. Link, J., concluded that law of Alaska governed suc-

it did not consider matters outside the pleadings. Even if this court were to consider the additional materials contained in the record, it is still unclear whether FDA had notice of Hebert's lawsuit and knew or should have known that it would have been initially included as a defendant if Hebert had been aware of its identity.

31. 5A Wright & Miller § 1367, at 517. See *Pedersen v. Zielski*, 822 P.2d 903, 907 n. 4 (Alaska 1991).