

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11178 SENATE JUDICIARY

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 1(JUD)
 (H) Publish Date: 2/14/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title: "An Act relating to stalking and protective BRU: Criminal Division
orders; amending Rules 4 and 65, Alaska Rules of . . ." Component: 1st-4th Judicial Districts; Criminal
 Sponso: Representative Crawford Appeals/Special Litigation
 Requester: House Judiciary Committee Component No: 2198-99;2201/03/61/79

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 ()						
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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 1 would allow a person who believes they are a stalking victim to petition the court to grant a protective order to keep the alleged stalker away from them.

While passage of this bill will create new prosecutions, the Department of Law does not anticipate a significant fiscal impact.

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 Daughettee 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: 2
 Bill Version: CSHB 1(JUD)
 (H) Publish Date: 2/14/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title An act relating to stalking and to violating a BRU AST Detachment
protective order Component AST Detachment
 Sponsor Representative Crawford
 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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
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 4:05 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: 3
 Bill Version: CSHB 1(JUD)
 (H) Publish Date: 2/14/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to stalking... BRU Legal and Advocacy Service
 Component Public Defender Agency
 Sponsor Rep. Crawford
 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						
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CHANGE IN REVENUES ()						
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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 legislation would create a new section in the protective order statutes to provide for the application and issuance of a protective order for victims of the crime of stalking, that is not a crime of domestic violence. Under the proposed legislation, if a person allegedly violates the protective order, they may be prosecuted for the crime of violating a protective order, a class A misdemeanor.

This legislation will likely have a fiscal impact on the Public Defender Agency, because it broadens the scope of the crime of violating a protective order, which will likely result in more cases, handled by the Agency, charging a violation of this crime. However, it is not possible to predict with any certainty 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 9:33 AM
 Approved by: Sharon Barton, Acting Commissioner Date 2/3/2003
 Agency: Department of Administration

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: CSHB 1(JUD)
 (H) Publish Date: 2/14/03

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Stalking Protective Orders BRU Alaska Court System
 Component Trial Courts
 Sponsor Rep. Crawford
 Requester House Judiciary Committee Component No. 768

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						
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CHANGE IN REVENUES ()						
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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)

House Bill 1 establishes new procedures for obtaining protective orders for those petitioners who reasonably believe that they are victims of the crime of stalking but who do not have a relationship with the respondent that would allow them to obtain a domestic violence restraining order. This bill also makes it a crime to violate such an order.

The passage of HB 1 would impact the court system because new crimes and new protective orders will require additional court proceedings. This fiscal note does not contain a specific dollar amount because estimating the number of new crimes likely to be charged and the number of petitions likely to be filed is too speculative at this time. However, if the impact of either change is significant the court system may return to the legislature with a request for additional funding.

Prepared by: Douglas Wonliver, Administrative Attorney Phone 463-4750
 Division: Alaska Court System Date/Time 2/5/03 12:56 PM
 Approved by: Stephanie Cole, Administrative Director Date 2/5/2003
 Agency: Alaska Court System

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

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



January 14, 2003

Representative Harry Crawford
State Capitol
Juneau AK 99801-1182

Dear Representative Crawford:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing House Bill No. 1, an act relating to stalking and to violating a protective order.

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 stalking, without the occurrence having been a crime involving domestic violence or involving a household member. We believe that this proposed legislation will be of benefit to both citizens and law enforcement.

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

Business Manager

Joseph Young
Anchorage

Board of Directors

Leo Brandlen, President
Anchorage

Angella Long, Vice President
Wasilla

Michael Corkill, Past President
Mesa, AZ

Kim Wannamaker, Member
Kenai
Pres. Kenai Chapter

Terry Games, Member
Anchorage
Pres. Anchorage Chapter

Ma Calkin, Member
Palmer
Pres. Mat-Su Chapter

Lonnie Hatman, Member
Fairbanks
Pres. Farthest North Chapter

Jerry Nankervis, Member
Juneau
Pres. Capital City Chapter

Andrea Jacobson, Member
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

**Municipality
of
Anchorage**



P.O. Box 196650
Anchorage, Alaska 99519-6650
Telephone: (907) 343-4250
Fax: (907) 274-6689
<http://www.ci.anchorage.ak.us>

George P. Wuerch, Mayor

DEPARTMENT OF LAW
Office of the Prosecutor
420 L Street, Suite 100

April 18, 2002

Representative Harry Crawford
State Capitol Building, Room 426
Juneau, Alaska 99801

FAX: 907-465-4565
Hard copy will follow by mail.

Dear Representative Crawford:

I am writing on behalf of the Municipal Department of Law regarding HB 317. You may recall I testified telephonically from Anchorage on March 6, 2002, in support of the bill. We continue to support the bill, as amended, and are pleased it left committee with unanimous support.

While we were able to help Ms. Wells in ultimately resolving the problem, it was only after some delay in process because of the lack of a procedural safeguard which your bill covers. When your bill becomes law, a victim of stalking-type conduct will be able to seek judicial intervention and protection at an earlier phase of the criminal justice process, which provides an additional law enforcement tool and greater victim safety.

Thank you for allowing us to participate and provide input into this issue. If you have any further questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Bruce Roberts', is written over a horizontal line. The signature is stylized and somewhat cursive.

R. Bruce Roberts
Deputy Municipal Attorney
Department of Law
Criminal Division

Jennifer, this is the letter I've been t...t get through. Hard Copy is in the mail.

From: "Bolender, Judy C." <BolenderJC@ci.anchorage.ak.us> 11:49 AM
Subject: Jennifer, this is the letter I've been trying to fax on 4/18 & 4/ 19, but cannot get through. Hard Copy is in the mail.
To: "'jennifer_adzima@legis.state.ak.us'" <Jennifer_Adzima@legis.state.ak.us>

April 18, 2002

Representative Harry Crawford
907-465-4565
State Capitol Building, Room 426
will follow by mail.
Juneau, Alaska 99801

FAX:
Hard copy

Dear Representative Crawford:

I am writing on behalf of the Municipal Department of Law regarding HB 317. You may recall I testified telephonically from Anchorage on March 6, 2002, in support of the bill. We continue to support the bill, as amended, and are pleased it left committee with unanimous support.

While we were able to help Ms. Wells in ultimately resolving the problem, it was only after some delay in process because of the lack of a procedural safeguard which your bill covers. When your bill becomes law, a victim of stalking-type conduct will be able to seek judicial intervention and protection at an earlier phase of the criminal justice process, which provides an additional law enforcement tool and greater victim safety.

Thank you for allowing us to participate and provide input into this issue. If you have any further questions, please do not hesitate to contact me.

Sincerely,

R. Bruce Roberts
Deputy Municipal Attorney
Department of Law
Criminal Division

Thanks,

Judy Bolender
Law Dept/Criminal Division
420 L St., Suite 100
343-6448

THIS COMMUNICATION AND ANY DOCUMENT(S) ACCOMPANYING IT ARE
CONFIDENTIAL ATTORNEY--CLIENT COMMUNICATION(S)

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WITHOUT THE EXPRESS PERMISSION OR UPON THE ADVICE OF AN ATTORNEY IN THE
MUNICIPALITY OF ANCHORAGE DEPARTMENT OF LAW.
DISCLOSURE OF CONFIDENTIAL INFORMATION IS PROHIBITED BY AMC §1.15.180D.

Sec. 18.66.110. Ex parte and emergency protective orders.

(a) A person who is a victim of a crime involving domestic violence may file a petition under AS 18.66.100 (a) and request an ex parte protective order. If the court finds that the petition establishes probable cause that a crime involving domestic violence has occurred, it is necessary to protect the petitioner from domestic violence, and if the petitioner has certified to the court in writing the efforts, if any, that have been made to provide notice to the respondent, the court shall ex parte and without notice to the respondent issue a protective order. An ex parte protective order may grant the protection provided by AS 18.66.100 (c)(1) - (5), (8) - (12), and (16). An ex parte protective order expires 20 days after it is issued unless dissolved earlier by the court at the request of either the petitioner or the respondent and after notice and, if requested, a hearing. If a court issues an ex parte protective order, the court shall have the order delivered to the appropriate local law enforcement agency for expedited service and for entry into the central registry of protective orders under AS 18.65.540 .

Sec. 18.66.120. Modification of protective orders.

(a) Either the petitioner or the respondent may request modification of a protective order. If a request is made for modification of

(1) an ex parte protective order under AS 18.66.110 (a), the court shall schedule a hearing on three days' notice or on shorter notice as the court may prescribe; the court shall hear and rule on the request in an expeditious manner; or

(2) a protective order after notice and hearing under AS 18.66.100(b), the court shall schedule a hearing within 20 days after the date the request is made, except that if the court finds that the request is meritless on its face, the court may deny the request without further hearing.

(b) If a request for a modification is made under this section and the respondent raises an issue not raised by the petitioner, the court may allow the petitioner additional time to respond.

(c) If the court modifies a protective order under this section, it shall issue a modified order and shall

(1) make reasonable efforts to ensure that the order is understood by the petitioner and by the respondent, if present at the hearing; and

(2) have the order delivered to the appropriate local law enforcement agency for expedited service and for entry into the central registry of protective orders under AS18.65.540.

HB

2


REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

MEMORANDUM

DATE: April 11, 2003

TO: Senator Ralph Seekins
Chairman, Senate Judiciary Committee

FROM: Representative Kevin Meyer 

RE: CS HB 2(JUD)(title am) Civil Statute of Limitation/Sex Offenses

At your earliest convenience, please schedule CS HB 2(JUD)(title am) Civil Statute of Limitation/Sex Offenses for a hearing in the Senate Judiciary Committee.

CS HB 2(JUD)(title am) clarifies which sexual assault crimes have a three-year statute of limitation on civil actions, and which felonies have no statute of limitation on civil actions.

In 2001, the Twenty-second Legislature passed HB 210 Statute of Limitation: Sexual Assault and Sexual Abuse of a Minor. HB 210 was amended on the House Floor and as a result, several statutory inconsistencies pertaining to the civil statute of limitations for misdemeanor sexual assault and sexual abuse crimes were created. CS HB 2(JUD)(title am) cleans up the inconsistencies that were created as a result of the floor amendment.

Thank you for your time and consideration.

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

Sponsor Statement

CS HB 2(JUD)(title am)

“An Act relating to the statute of limitations for certain civil actions relating to acts constituting sexual offenses; and providing for an effective date.”

CS HB 2(JUD)(title am) is a clean-up bill that clarifies which misdemeanors and felonies involving sexual assault and sexual abuse have a three-year statute of limitations on civil actions, and which felonies have no statute of limitations on civil actions.

In 2001, the Twenty-second Legislature passed HB 210 Statute of Limitations: Sexual Assault and Sexual Abuse of a Minor. The original intent of HB 210 was to remove the criminal statute of limitations for felony sexual assault and sexual abuse of a minor. HB 210 was amended on the House floor and, as a result, both the criminal and the civil statute of limitations for all felony sexual assault and felony sexual abuse of a minor were removed. The floor amendment caused several statutory inconsistencies pertaining to civil statute of limitations.

The 2001 floor amendment did not reference “felony sexual abuse of a minor” and “felony sexual assault” to particular sections of the criminal code. The floor amendment did not make clear whether certain felonies included in AS 09.10.060(c) that are not sexual assault or sexual abuse of a minor, are intended to have: 1. No statute of limitations; 2. A two-year statute of limitations; or, 3. A three-year statute of limitations.

Also, the floor amendment did not make a specific provision for misdemeanor sexual abuse or sexual assault crimes. As a consequence, the civil statute of limitations for those crimes dropped to two years, for torts in general. Prior to the floor amendment, the statute of limitations was three years.

CS HB 2(JUD)(title am) establishes the civil statute of limitations at three years for misdemeanor sexual assault, misdemeanor sexual abuse of a minor, incest, and felony indecent exposure. Under CS HB 2(JUD)(title am), unlawful exploitation of a minor, a class B felony, is added to the list of sexual assault crimes in which the civil statute of limitations is removed.

Last Updated: March 31, 2003

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 2(JUD)
 (H) Publish Date: 3/12/2003

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Statute of Limitation for Sex Crimes BRU Alaska Court System
 Component Trial Courts
 Sponsor Representative Meyer
 Requester House Judiciary Component No. 768

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 ()						
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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)

The court system does not anticipate any fiscal impact from the passage of HB 2.

Prepared by: Douglas Wooliver, Administrative Attorney
 Division Alaska Court System
 Approved by: Stephanie Cole, Administrative Director
 Agency Alaska Court System

Phone 463-4750
 Date/Time 3/12/03 2:26 PM
 Date 3/12/2003

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 2(JUD)
(H) Publish Date: 3/12/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title "An Act relating to the statute of limitations for BRU Civil Division
certain civil actions; . . ." Component Special Litigation
Sponsor Representative Meyer
Requester House Judiciary Committee Component No. 2213

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 OPEATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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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)

This bill removes the statute of limitations for when a person may bring a civil action for unlawful exploitation of a minor, and extends the statute of limitations for other civil actions stemming from certain criminal conduct.

This bill concerns private rights of action against perpetrators of specified criminal conduct, and will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson
Division: Attorney General's Office
Approved by: Kathryn Daughhettee for Gregg D. Renkes, Attorney General
Agency: Department of Law

Phone (907) 465-5370
Date/Time 3/10/03 11:28 AM
Date 3/10/2003

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA


(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 10, 2003

SUBJECT: HB 2 (Work Order No. 23-LS0008\A); Civil Statute of Limitations for sex offenses

TO: Represent  Devin Meyer

FROM: Pam Finley 
Revisor of Statutes

You have asked for a sectional analysis of HB 2.

Bill section 1. This section amends AS 09.10.065 by adding unlawful exploitation of a minor to the list of sex offenses that do not have a civil statute of limitations. The amendment also clarifies that (1) it is the defendant's conduct, not a criminal conviction, that makes the section apply, and (2) for the purposes of this section, the defendant's conduct is to be judged according to the elements of the offenses as they existed at the time of the offense (not, for example, at the time the civil lawsuit is filed.)

Bill section 2. This bill section establishes a three year civil statute of limitations for conduct constituting misdemeanor sexual abuse of a minor, misdemeanor sexual assault, incest, and felony indecent exposure. Currently, acts described by these offenses would have a two year civil statute of limitations under AS 09.10.070.

Bill section 3. This bill section amends AS 09.10.140(b) to conform to the fact that conduct covered by AS 09.10.065(a) ---in bill section 1--- no longer has a statute of limitations. It is essentially a technical amendment.

Bill section 4. This bill section makes bill sections 1-3 retroactive to October 1, 2001, which was the effective date of sec. 1, ch. 86, SLA 2001. Section 1, ch. 86, SLA 2001, eliminated the civil statute of limitations for felony sexual abuse of a minor and felony sexual assault and also indirectly changed the civil statute of limitations for unlawful exploitation of a minor, misdemeanor sexual abuse of a minor, misdemeanor sexual assault, incest, and felony indecent exposure from three years to two years. Based on discussions of last year's revisor's bill, it appears that the legislature did not intend the indirect change from three years to two years. To reflect the legislature's intent in restoring the three year civil statute of limitations, this bill is made retroactive. (The addition of unlawful exploitation of a minor to those offenses that have no civil statute of limitations is also retroactive, as is the technical amendment in bill section 3.) While I do

not believe that this provision creates any constitutional problems, the bill does limit retroactivity "to the extent permitted by the state and federal constitutions."¹

Bill section 5. This bill section gives the bill an immediate effective date.

Because it may be helpful to see the statutes to which this bill relates, I have set out below AS 09.10.070 (the two year statute of limitations for torts in general), AS 09.55.650 (referred to in sec. 3), and the current versions of related criminal statutes. I am also attaching copies of the former statutes referred to in AS 09.55.650(c), as they existed at the time of their repeal in 1980.

AS 09.10.070. (general statute of limitations for torts):

Sec. 09.10.070. Actions for torts, for injury to personal property, for certain statutory liabilities, and against peace officers and coroners to be brought in two years.

(a) Except as otherwise provided by law, a person may not bring an action (1) for libel, slander, assault, battery, seduction, or false imprisonment, (2) for personal injury or death, or injury to the rights of another not arising on contract and not specifically provided otherwise; (3) for taking, detaining, or injuring personal property, including an action for its specific recovery; (4) upon a statute for a forfeiture or penalty to the state; or (5) upon a liability created by statute, other than a penalty or forfeiture; unless the action is commenced within two years of the accrual of the cause of action.

(b) A person may not bring an action against a peace officer or coroner upon a liability incurred by the doing of an act in an official capacity or by the omission of an official duty, including the nonpayment of money collected upon an execution, unless brought within two years. This subsection does not apply to an action for an escape.

AS 09.55.650 (referred to in sec. 3):

Sec. 09.55.650. Claim based on sexual abuse to a minor under 16 years of age.

(a) A person who, as a minor under 16 years of age, was the victim of sexual abuse may maintain an action for recovery of damages against the perpetrator of the act

¹ Normally, a civil statute of limitations may be extended before it has expired. Assuming that HB 2 takes effect before October 1, 2003, the statute of limitations for all acts occurring after ch. 86, SLA 2001 took effect will not have expired. However, there may be acts that occurred while the statute of limitations was three years (e.g., in 2000), but which would have been barred in 2002 under a two year statute of limitations. There are some cases in some jurisdictions that suggest that a defendant may have a vested, constitutionally protected right not to be sued once the statute of limitations has expired. See discussion at 51 AM JUR 2d, Limitation of Actions §§ 4, 49, 50, and 51. While these may be distinguishable from the situations covered by HB 2, and while Alaska's Supreme Court has not ruled on this issue, I thought it prudent to indicate that even if the constitution prevents HB 2 from being applied retroactively to some cases, it should be applied retroactively to those cases for which there is no constitutional impediment.

or acts of sexual abuse based on the perpetrator's intentional conduct for an injury or condition suffered as a result of the sexual abuse.

(b) If the defendant committed more than one act of sexual abuse on the plaintiff, the plaintiff is not required to prove which specific act caused the injury.

(c) In this section, "sexual abuse" means an act committed by the defendant against the plaintiff maintaining the cause of action if the defendant's conduct would have violated a provision of AS 11.41.410 - 11.41.440 or 11.41.450 - 11.41.458, former AS 11.15.120, 11.15.134, or 11.15.160, or former AS 11.40.110 at the time it was committed.

AS 11.41.410 - 11.41.458

Sec. 11.41.410. Sexual assault in the first degree.

(a) An offender commits the crime of sexual assault in the first degree if

(1) the offender engages in sexual penetration with another person without consent of that person;

(2) the offender attempts to engage in sexual penetration with another person without consent of that person and causes serious physical injury to that person;

(3) the offender engages in sexual penetration with another person

(A) who the offender knows is mentally incapable; and

(B) who is in the offender's care

(i) by authority of law; or

(ii) in a facility or program that is required by law to be licensed by the state; or

(4) the offender engages in sexual penetration with a person who the offender knows is unaware that a sexual act is being committed and

(A) the offender is a health care worker; and

(B) the offense takes place during the course of professional treatment of the victim.

(b) Sexual assault in the first degree is an unclassified felony and is punishable as provided in AS 12.55.

Sec. 11.41.420. Sexual assault in the second degree.

(a) An offender commits the crime of sexual assault in the second degree if

(1) the offender engages in sexual contact with another person without consent of that person;

(2) the offender engages in sexual contact with a person

(A) who the offender knows is mentally incapable; and

(B) who is in the offender's care

(i) by authority of law; or

(ii) in a facility or program that is required by law to be licensed by the state;

(3) the offender engages in sexual penetration with a person who the offender knows is

(A) mentally incapable;

(B) incapacitated; or

(C) unaware that a sexual act is being committed; or

- (4) the offender engages in sexual contact with a person who the offender knows is unaware that a sexual act is being committed and
 - (A) the offender is a health care worker; and
 - (B) the offense takes place during the course of professional treatment of the victim.
- (b) Sexual assault in the second degree is a class B felony.

Sec. 11.41.425. Sexual assault in the third degree.

- (a) An offender commits the crime of sexual assault in the third degree if the offender
 - (1) engages in sexual contact with a person who the offender knows is
 - (A) mentally incapable;
 - (B) incapacitated; or
 - (C) unaware that a sexual act is being committed;
 - (2) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, engages in sexual penetration with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment; or
 - (3) engages in sexual penetration with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of the person.
- (b) Sexual assault in the third degree is a class C felony.

Sec. 11.41.427. Sexual assault in the fourth degree.

- (a) An offender commits the crime of sexual assault in the fourth degree if
 - (1) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, the offender engages in sexual contact with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment; or
 - (2) the offender engages in sexual contact with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of the person.
- (b) Sexual assault in the fourth degree is a class A misdemeanor.

Sec. 11.41.432. Defenses.

- (a) It is a defense to a crime charged under AS 11.41.410(a)(3), 11.41.420(a)(2), 11.41.420(a)(3), or 11.41.425 that the offender is
 - (1) mentally incapable; or
 - (2) married to the person and neither party has filed with the court for a separation, divorce, or dissolution of the marriage.
- (b) Except as provided in (a) of this section, in a prosecution under AS 11.41.410 or 11.41.420, it is not a defense that the victim was, at the time of the alleged offense, the legal spouse of the defendant.

Sec. 11.41.434. Sexual abuse of a minor in the first degree.

(a) An offender commits the crime of sexual abuse of a minor in the first degree if

(1) being 16 years of age or older, the offender engages in sexual penetration with a person who is under 13 years of age or aids, induces, causes, or encourages a person who is under 13 years of age to engage in sexual penetration with another person;

(2) being 18 years of age or older, the offender engages in sexual penetration with a person who is under 18 years of age, and the offender is the victim's natural parent, stepparent, adopted parent, or legal guardian; or

(3) being 18 years of age or older, the offender engages in sexual penetration with a person who is under 16 years of age, and

(A) the victim at the time of the offense is residing in the same household as the offender and the offender has authority over the victim; or

(B) the offender occupies a position of authority in relation to the victim.

(b) Sexual abuse of a minor in the first degree is an unclassified felony and is punishable as provided in AS 12.55.

Sec. 11.41.436. Sexual abuse of a minor in the second degree.

(a) An offender commits the crime of sexual abuse of a minor in the second degree if

(1) being 16 years of age or older, the offender engages in sexual penetration with a person who is 13, 14, or 15 years of age and at least three years younger than the offender, or aids, induces, causes or encourages a person who is 13, 14, or 15 years of age and at least three years younger than the offender to engage in sexual penetration with another person;

(2) being 16 years of age or older, the offender engages in sexual contact with a person who is under 13 years of age or aids, induces, causes, or encourages a person under 13 years of age to engage in sexual contact with another person;

(3) being 18 years of age or older, the offender engages in sexual contact with a person who is under 18 years of age, and the offender is the victim's natural parent, stepparent, adopted parent, or legal guardian;

(4) being 16 years of age or older, the offender aids, induces, causes, or encourages a person who is under 16 years of age to engage in conduct described in AS 11.41.455(a)(2) - (6); or

(5) being 18 years of age or older, the offender engages in sexual contact with a person who is under 16 years of age, and

(A) the victim at the time of the offense is residing in the same household as the offender and the offender has authority over the victim; or

(B) the offender occupies a position of authority in relation to the victim.

(b) Sexual abuse of a minor in the second degree is a class B felony.

Sec. 11.41.438. Sexual abuse of a minor in the third degree.

(a) An offender commits the crime of sexual abuse of a minor in the third degree if

(1) being 16 years of age or older, the offender engages in sexual contact with a person who is 13, 14, or 15 years of age and at least three years younger than the offender; or

(2) being 18 years of age or older, the offender engages in sexual penetration with a person who is 16 or 17 years of age and at least three years younger than the offender, and the offender occupies a position of authority in relation to the victim.

(b) Sexual abuse of a minor in the third degree is a class C felony.

Sec. 11.41.440. Sexual abuse of a minor in the fourth degree.

(a) An offender commits the crime of sexual abuse of a minor in the fourth degree if

(1) being under 16 years of age, the offender engages in sexual penetration or sexual contact with a person who is under 13 years of age and at least three years younger than the offender; or

(2) being 18 years of age or older, the offender engages in sexual contact with a person who is 16 or 17 years of age and at least three years younger than the offender, and the offender occupies a position of authority in relation to the victim.

(b) Sexual abuse of a minor in the fourth degree is a class A misdemeanor.

Sec. 11.41.445. General provisions.

(a) In a prosecution under AS 11.41.434 - 11.41.440 it is an affirmative defense that, at the time of the alleged offense, the victim was the legal spouse of the defendant unless the offense was committed without the consent of the victim.

(b) In a prosecution under AS 11.41.410 - 11.41.440, whenever a provision of law defining an offense depends upon a victim's being under a certain age, it is an affirmative defense that, at the time of the alleged offense, the defendant

(1) reasonably believed the victim to be that age or older; and

(2) undertook reasonable measures to verify that the victim was that age or older.

Sec. 11.41.450. Incest.

(a) A person commits the crime of incest if, being 18 years of age or older, that person engages in sexual penetration with another who is related, either legitimately or illegitimately, as

(1) an ancestor or descendant of the whole or half blood;

(2) a brother or sister of the whole or half blood; or

(3) an uncle, aunt, nephew, or niece by blood.

(b) Incest is a class C felony.

Sec. 11.41.455. Unlawful exploitation of a minor.

(a) A person commits the crime of unlawful exploitation of a minor if, in the state and with the intent of producing a live performance, film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts the conduct listed in (1) - (7) of this subsection, the person knowingly induces or employs a child under 18 years of age to

engage in, or photographs, films, records, or televises a child under 18 years of age engaged in, the following actual or simulated conduct:

- (1) sexual penetration;
- (2) the lewd touching of another person's genitals, anus, or breast;
- (3) the lewd touching by another person of the child's genitals, anus, or breast;
- (4) masturbation;
- (5) bestiality;
- (6) the lewd exhibition of the child's genitals; or
- (7) sexual masochism or sadism.

(b) A parent, legal guardian, or person having custody or control of a child under 18 years of age commits the crime of unlawful exploitation of a minor if, in the state, the person permits the child to engage in conduct described in (a) of this section knowing that the conduct is intended to be used in producing a live performance, film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts the conduct.

(c) Unlawful exploitation of a minor is a class B felony.

(d) In this section, "audio recording" means a nonbook prerecorded item without a visual component, and includes a record, tape, cassette, and compact disc.

Sec. 11.41.458. Indecent exposure in the first degree.

(a) An offender commits the crime of indecent exposure in the first degree if

(1) the offender violates AS 11.41.460(a);

(2) while committing the act constituting the offense, the offender knowingly masturbates; and

(3) the offense occurs within the observation of a person under 16 years of age.

(b) Indecent exposure in the first degree is a class C felony.

PF:lmb
03-025.lmb

Enclosure:

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

MEMORANDUM

DATE: May 1, 2003

TO: Senate Judiciary Committee *Ki* members

FROM: Representative Kevin Meyer *Ki*

RE: CS HB 2 (JUD)(title am) Civil Statute of Limitation/Sex Offenses

Following the April 28, 2003 committee hearing on CS HB 2(JUD)(title am), I contacted Pam Finley, Revisor of Statutes. I asked her to prepare a memorandum addressing Senator Ogan's questions and concerns pertaining to Section 4 of the bill. I have attached the memo I have received pertaining to the retroactivity provisions of this legislation.

Thank you for your time and consideration.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

May 1, 2003

SUBJECT: Retroactivity Clause in CSHB 2 (JUD)

TO: Representative Kevin Meyer
Attn: Suzanne

FROM: Pam Finley *MF*
Revisor of Statutes

You have asked the following two questions about the retroactivity provisions of section 4 of CSHB 2(JUD):

1. Will the phrase "To the extent permitted by the state and federal constitutions" encourage lawsuits? Could the phrase be dropped? I suspect that most lawyers would consider the constitutionality of retroactivity, even if the bill section did not mention it. However, it is likely that even if the phrase were deleted the courts would apply the retroactive provision in those cases where it was constitutional to do so and would not apply the retroactive provision in those cases where it would be unconstitutional to do so. If the phrase is to be deleted, it should be made clear that deleting the phrase is done only to avoid encouraging constitutional challenges.

2. What would be the effect if section 4 were deleted? If CSHB 2 (JUD) were not retroactive, a defendant could argue that from October 1, 2001 until the effective date of CSHB 2 (JUD), the statute of limitations for civil actions based on unlawful exploitation of a minor, misdemeanor sexual abuse of a minor, misdemeanor sexual assault, incest, and felony indecent exposure was two years and therefore:

(1) civil actions based on those crimes that were committed from October 1, 2001 until the day CSHB 2 (JUD) takes effect must be brought within two years rather than at any time (for unlawful exploitation of a minor) or within three years (for the others listed); in other words, that the statute of limitations in effect at the time the crime was committed is the statute of limitations that applies; or

(2) statutes of limitations based on crimes committed before October 1, 2001, that had a three year statute of limitations when they were committed were cut back to two years after October 1, 2001 (e.g., if incest were committed in December, 2000, the civil statute of limitations in effect in 2000 would have expired in December 2003, but, due to the change effective October 1, 2001, the statute of limitations expired in December 2002.)

Representative Kevin Meyer

May 1, 2003

Page 2

I do not know what a court would decide in the situations described above, but, to the extent the constitution permits, a retroactive provision would prevent a defendant from making those arguments.

If you have additional questions, please give me a call.

PF:mdr

03-097.mdr

HB

12



REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

Sponsor Statement

CS HB 12 (JUD)am

“An Act relating to the crime of harassment committed by use of electronic communication.”

Under CS HB 12 (JUD)am, the list of methods of harassment under AS 11.61.120 will be expanded to include the sending of obscene electronic communications, or sending electronic communications that threaten physical injury or sexual contact.

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 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 communication 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 electronic 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 electronic 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. CS HB 12 (JUD)am would provide these agencies with a significant tool to protect and prosecute on behalf of Alaskans.

Last Updated: 2/21/2003

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 12(JUD)
 (H) Publish Date: 2/12/03

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 ()						
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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 Daughetee 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: 2
 Bill Version: CSHB 12(JUD)
 (H) Publish Date: 2/12/03

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						
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CHANGE IN REVENUES ()						
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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: 3
Bill Version: CSHB 12(JUD)
(H) Publish Date: 2/12/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title An Act relating to harrasment. BRU Legal and Advocacy Service
Sponsor Representative Meyer Component Public Defender Agency
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	*	*	*	*	*	*
1005 GF/Program Receipts						
1037 G/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

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 cursive script, appearing to read "Lesil McGuire", written over a horizontal line.

Representative Lesil McGuire
Chair

**Adopted by the House
February 19, 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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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

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

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

Subject: The Electronic Harassment Bill

Date: Sun, 16 Feb 2003 11:14:45 -0500

From: WHOA <whoa@haltabuse.org>

To: Representative_Kevin_Meyer@legis.state.ak.us

Rep. Meyer,

I don't know if you've heard of me before, but as a result of my cyberstalking case, Maryland became the first state in the nation to pass an online-harassment law back in 1997. Since then, I've helped get similar laws passed in many states by providing in-person or written testimony and I'd like to make that offer to you as well. My testimony is compelling, not only because I was a victim, but because I am now an expert in cybercrime.

I am currently living in Maine, so I don't know if you have the budget to fly me to Alaska, but if written testimony will help, I'll be glad to e-mail it to you.

Since 1997, several things have happened to me:

I am now president of WHOA (Working to Halt Online Abuse) at www.haltabuse.org - we help online victims from around the world, have the latest in cyberstalking statistics and many resources.

I am considered one of the nation's leading experts in cybercrime and travel the country training and lecturing law enforcement, security personnel and advocates on how to track down cybercriminals, work with victims and more.

My latest book, Net Crimes & Misdemeanors (www.netcrimes.net), came out in August and covers many aspects of online crimes and how consumers can protect themselves, their families and their computers.

I write for several computer and Internet-related magazines - LAPTOP, SmartComputing, TechEdge, Link-UP, Intranet Professional and Police Chief.

I am a consultant to the IACP (International Association of Chiefs of Police), NCVIC (National Center for Victims of Crime), the OVC (Office for Victims of Crime) and the Department of Justice, as well as law enforcement agencies worldwide.

I am an assistant for online Basic and Advanced Internet courses for the University of Maryland University College.

My cyberstalkers were finally arrested by the US Postal Inspection Service in January of 2000 and one is in jail right now. You can read the whole story at www.jahitchcock.com/cyberstalked.

Forty-four states now have online harassment or cyberstalking laws - I would love to see Alaska become the 45th.

You can contact me at this e-mail address or via phone at 207-351-9965. My mailing address is 161 Long Sands Road, York, Maine 03909.

Sincerely,

Jayne

J.A. Hitchcock

from the September 03, 2002 edition - <http://www.csmonitor.com/2002/0903/p02s01-usju.html>

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!

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Cracking Down on E-Mail Harassment

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[Electronic Mailbox Protection Act of 1997](#)

By *Brooke A. Masters*
 Washington Post Staff Writer
 Sunday, November 1, 1998

The e-mails started coming in April. Every day, James Gress's electronic mailbox at the Pentagon was clogged with 50 or more unwanted communications, including offers for pornography and subscriptions to online magazines such as "Workstation Tip of the Day" and "WebShoppers Hot Products Daily."

Gress, an official with the Defense Information Systems Agency, had no idea who was signing him up for all these services, but it had become all but impossible for him to identify the legitimate e-mails that he received for work.

So he complained to the Defense Criminal Investigative Service's new computer crimes unit. It tracked the subscriptions to a former underling, Trung Ngo, who apparently was still angry about a 1995 performance evaluation that rated him "Highly Successful" rather than "Outstanding," according to court documents.

As the online population has soared to an estimated 80 million users, the real-world crimes of harassment and stalking have moved into cyberspace, causing annoyance and outright fear for victims and headaches for law enforcement officials.

The mechanics of the Internet – mailing services and free e-mail accounts that make it possible to send vast numbers of anonymous messages with one keystroke – make it a fertile field for those seeking to frighten or intimidate, analysts said. A single user can send the same file to hundreds of people in far less time than it would take to telephone or write them.

At the same time, many police agencies are reluctant or ill equipped to deal with the problem because it is still so new and because it is often unclear when online misbehavior crosses the legal line from annoying to criminal. Many states are rushing to adapt their penal codes; in Maryland, a law making it a misdemeanor to send e-mail "with the intent to harass" went into effect Oct. 1.

About 30 percent of the 47,000 complaints reported so far this year to the Web Police, an international group that attempts to address online

crime, involved harassing or threatening e-mail, said founder Peter Hampton. Last year, the group received fewer than 13,000 complaints.

Victims report everything from e-mail "bombs" that flood them with hundreds of messages to outright extortion and death threats, law enforcement agencies said. In a variation on the old "for a good time call Sally" prank, a 30-year-old Alexandria woman discovered that her name and phone number had been posted on matchmaking and sexual Web sites, leading other Internet users to send her suggestive or obscene messages.

Academics and others who study cyberspace say it is not clear whether e-mail has simply become another venue for crimes that would occur anyway or whether the electronic medium exacerbates the problem by making it easier to stalk and harass.

"The architecture of cyberspace might make it more common because you can do it all from your chair ... without going to the trouble of tracking [a victim] down, going to their house and leaving a note," said Jonathan Zittrain, executive director of Harvard University's Berkman Center for Internet and Society. "It's easier to do and easier to do anonymously."

Last year, a Northern Virginia couple found themselves on the receiving end of several forms of harassment when they banned a Florida man from their online chat room on professional wrestling. First, the man, Emmett Gulley, of West Melbourne, kept trying to get back on to the chat room, posting insulting and threatening messages before they could throw him off. Then, he branched out.

"My husband has a Web page on the Net, and it has a guest book, and he started signing it, saying he was going to come after us and kill us," said the woman, 38, who asked not to be identified because authorities think Gulley never learned the Fredericksburg area couple's real names. "We tried calling the police, and they were clueless. It went on and on, and finally he started threatening my children."

Gulley also e-mailed them profanity-laced audio files containing more threats and telephoned and e-mailed threats to several other members of the chat room, according to court papers. He pleaded guilty two weeks ago to transmitting threats in interstate commerce and faces up to five years in prison when he is sentenced in U.S. District Court in Orlando in January. His lawyer declined to comment.

The chat room couple got results, they said, because they decided to call the FBI, which took their problem seriously. Special Agent John Mesisca said his Washington-based squad will get involved when the

threats are interstate and make explicit reference to doing bodily harm. The Washington Field Office, which covers the District and Northern Virginia, opens about six e-mail threat cases each month, he said.

Most victims have a harder time getting help from law enforcement, online advocacy groups say.

"Usually, state and local law enforcement will ... throw their hands up in the air unless you can show them off-line harassment," said Parry Aftab, executive director of Cyber Angels, the online offshoot of the Guardian Angels.

That's what happened to former Crofton resident Jayne Hitchcock.

In 1996 and 1997, Hitchcock was receiving several hundred e-mails at a time, and fake e-mails and postings to online groups were being sent out under her name.

When the writer complained to Anne Arundel County police, they "said there was no law that covered that. And the FBI said that unless there was a death threat against me there was nothing they could do," she said.

Eventually, the harassment escalated. Hitchcock, 39, who since has moved to New England, started receiving lewd phone calls after her name and phone number were posted to sexually oriented sites.

"If there had been a law, it never would have escalated, and I wouldn't have felt my life was in danger," she said. Hitchcock has filed a civil suit against the people she believes are behind the harassment.

Hitchcock was one of those urging Maryland legislators to adopt the new state law. In all, 17 states now have laws against online stalking or harassment, up from fewer than a half-dozen 18 months ago, said Nancy Savitt, a New Jersey-based lawyer who specializes in cyberspace issues. Neither Virginia nor the District has specific laws on e-mail harassment or stalking.

Some law enforcement agencies are also using existing laws against stalking and telephone harassment to go after those who abuse e-mail.

In the Pentagon e-mail case, Ngo, 32, pleaded guilty last month to "repeated telecommunications harassment." He could go to prison when he is sentenced in January in U.S. District Court in Alexandria because Congress recently beefed up the maximum penalties from six months to two years in prison.

His attorney, John Bevis, said Ngo is "a nice guy who had no idea of the laws that govern these situations."

Similarly, Gulley was prosecuted under a law that often is used for telephone threats, lawyers said. "A lot of electronic mail, they use the telephone wires, so we just adapt the law," Mesisca said.

In a California case, an e-mail harasser was charged under a federal civil rights law. This year, a federal jury convicted Richard J. Machado, a former student at the University of California at Irvine, in connection with a 1996 e-mail he sent to 59 mostly Asian students. The anonymous message, signed "Asian Hater," said, "I personally will ... find and kill everyone of you personally." Machado already had served a year in jail while awaiting trial and was sentenced to probation.

Legal analysts say they expect to see more criminal cases involving online harassment and stalking. However, criminalizing e-mail could raise civil liberties concerns. Overt threats to do harm clearly are not protected by the First Amendment, but some legal analysts worry that in the rush to make Internet users feel safe, lawmakers may trample on free speech by banning "lewd" communications or other e-mail that isn't clearly harmful.

"You can be crude, you can be rude, you can be nasty," said Stephen Brock, a Philadelphia lawyer who has handled several civil cases involving e-mail. "It's not a federal crime to be a jerk."

Staff writer Eric L. Wee contributed to this report.

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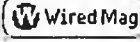
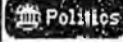
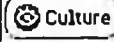
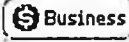
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The Epidemic of Cyberstalking

By [Katie Dean](#)

Story location: <http://www.wired.com/news/politics/0,1283,35728,00.html>

03:00 AM May. 01, 2000 PT

Deborah has been stalked in a chat room for over six months, during which time detailed personal information and a doctored pornographic photograph with her likeness has been posted on a website. The cyberstalker has threatened to rape and kill her.

"He told people that I was on drugs, that I was looking for sex," said Deborah, not her real name. "He enlisted (his) Internet friends to harass me."

Frightening scenarios like this are increasingly common as more people use the Internet and blindly trust those they meet online.

And too often, untrained police officers do not address the situation as they should. Advocacy groups say that when victims report their situation to authorities, a frequent response is "turn off your computer."

"They are scared out of their mind and no one takes them seriously," said Parry Aftab, executive director of the Internet safety group Cyberangels. "The victim is victimized twice."

The first cyberstalking law went into effect just over a year ago in California, and Congress is considering a federal law. The Stalking Prevention and Victim Protection Act of 2000 passed in the House, and currently is pending in the Senate.

As with offline stalking, most perpetrators are men and most victims are women who have met them before. But cyberstalking can be carried out in places as close as the same room as the victim, or as far away as another state.

There are no clear statistics on the number of cyberstalking victims, but an August 1999 report from the Department of Justice estimates that there could be hundreds of thousands affected, and the numbers are growing.

"The rate of cyberstalking has escalated enormously in the past few years with the spread of the Internet," said Linda Fairstein, chief of the sex crimes prosecution unit for the Manhattan district attorney. It

"provides a new method of committing the same kind of crime."

The anonymity of the Internet -- with free email and anonymous remailers readily available -- also enables cyberstalkers to easily conceal their identities.

"The Internet is both anonymous and public," said San Francisco Police Lt. Lon Ramlan. "(People) need to take the common sense that they use in the physical world and use those sensibilities in cyberspace."

But because not all law enforcement officers are familiar with technology, not all departments are trained to effectively deal with the problem.

"It's really a new area for police," Fairstein said.

An "unevenness of response" exists based on how technologically sophisticated and well-funded law enforcement is, she said. Large cities are more likely to have a computer crimes unit, whereas smaller departments often are unable to specialize.

"They're not equipped to handle it right now," agreed Morgan Wright, a former Kansas state trooper and police detective who heads up the advanced training unit of the International Association of Computer Investigative Specialists in Virginia. "It's not that they don't want to, it's just that they haven't been trained."

"The fact that Congress is considering making it a federal crime and a felony is an indication of how serious the problem is and that we need a national solution to it," said Nancy Savitt, chief legal officer for Cyberangels.

Savitt points out that fewer than half of the states currently have cyberstalking laws, and most offenders, if caught, face only a misdemeanor.

Victim advocacy groups are hoping that the bill in Congress will bring attention to an issue they deal with daily.

"We need to get the information out there. It's potentially going to be a very big problem if people don't learn about it, don't understand it, and don't know how to protect themselves," said Jayne Hitchcock, president of Women Halting Online Abuse.

Aftab estimates that Cyberangels receives 500 complaints of cyberstalking per day, 65 to 100 of which are legitimate cases.

In addition to providing support and guidance to victims, Cyberangels and WHOA regularly contact ISPs to alert them about harassers. This will often halt the abuse, but there are cases like Deborah's that are more serious and require police involvement. These advocacy groups also talk to the police for the victims to alert them to the seriousness of the crime.

"I feel like I'm being placated and not taken very seriously because it is happening on the Internet," she said. "I feel like a sitting duck in a shooting house."



HB

15

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House District 7

House of Representatives

Memorandum

To: Senator Ralph Seekins, Chair, Senate Judiciary Committee
Fm: Representative Hugh Fate
Cc:
Date: April 21, 2004
Re: Request to hear SCS for CS for HB 15 (L&C)

Please accept this memo and attached documents as a request for the Senate Judiciary Committee to hear Senate CS for CS for HB 15 (L&C). The current version is a rewrite of the previous bill, based on passage of similar language in Federal Legislation.

SCSCSHB 15 (L&C) is language carefully written by the Department of Law, this office and Legislative Legal to allow for enforcement of the Federal Do-Not Call list within our borders. It establishes rules for registration and fees for telemarketers and the penalties for non-compliance.

Thank you for your consideration of SCSCS for HB 15(L&C).

Attachments: Sponsor Statement, Sectional SCSCSHB 15 (L&C), SCSCSHB 15(L&C), CSHB 15 (FIN) am, House Floor Journal Text, Senate Labor and Commerce Committee Report, CSHB 15 (FIN), CS Fiscal Notes, CSHB 15 (STA), CSHB 15 (L&C), HB 15, Fiscal Notes prior to change, AARP Support for HB 15, NY Times story of 10th Circuit Decision, Response from National AARP, Referenced Alaska Statute, Public Law 108-10, Title 16 C.F.R. 310

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House District 7

House of Representatives Sponsor Statement SCSCS for HB 15 (L&C)

"An Act relating to fair trade practices and consumer protection; relating to telephonic solicitations; relating to charitable solicitations; and providing for an effective date."

Committee Substitute for House Bill 15 is a combined effort of the Department of Law and our office to assure a quieter dinner hour for Alaskans. When HB 15 was introduced the intent was to bring responsibility to the telemarketing industry, and give Alaskans an opportunity to sign up for a no-call list. While working on the bill, Congress was working on similar language for the nation. H.R. 395 was passed into law, regulations have been promulgated and the National No-Call list is in effect.

The CS version of HB 15 is language that will complete the process for Alaska. It supplements the federal law by making specific. some of the language geared for a nation, rather than a state. Further, it establishes specific guidelines for telemarketers operating in state. Those guidelines include a registration fees, how telemarketers are expected to identify themselves, financial reports, and allows the Department of Law to establish penalties for non-compliance.

CS for HB 15 will accomplish what the original version sought to do, without the need for Alaskans to sign up again in state. It sends a clear message to telemarketers that these people do not wish to be called, and that there are consequences for non-compliance. It strengthens statutory language and assures Alaskans that we agree the phone should only ring during the dinner hours when it is someone we want to talk too.

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House of Representatives Sectional Analysis

SCSCS for HB 15 (L&C)

"An Act relating to fair trade practices and consumer protection; relating to telephonic solicitations; relating to charitable solicitations; and providing for an effective date."

It should be noted that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1

Changes telephonic to telephonic means. This change is throughout the bill and expands the language to include other forms of communication using telephone lines.

Section 2

Identifies the existence of a national do not call registry and that Alaskans on that list are not to be called.

Section 3

References to Section 2 and allows for a good faith error on the part of the solicitor.

Section 4

The no-call policy is expanded to all telephone numbers that are registered. Also referenced is a release from liability for the caller if the call was unintended and did not represent a reckless disregard.

Section 5

Establishes a notification policy for local phone companies to pass along to their customers. The notice will be in the annual phone directory and as an insert in the phone book each quarter.

Section 6

Defines customer to include more than residential

Section 7

Defines telephone solicitation and cites exemptions and specifics for previous contacts, charities, businesses, polls and political ideas.

Section 8

Defines National do not call registry

Section 9

Defines goods and services and includes solicitations by credit organizations offering financing arraignments

Section 10

A telephone seller may not operate in the state without registering 30 days in advance with the Department of Law

Section 11

Further requires a telephone seller not to operate in the state without receiving acknowledgement from the department that they have registered.

(b) To register under (a) of this section, a person shall file with the department (emphasis added)

Section 12

Establishes a format for the notice of intent, which must be filed, and that, at the department's discretion that intent may have to be submitted under oath or affirmation. It requires the telephone seller to detail the campaign and whether the seller has or is involved in criminal, administrative, or civil action.

Section 13

Allows the Department to establish fees for registration.

Section 14

Requires that a written, signed contract must be received by the telephone seller, from the buyer before any charges can be assessed the buyer. The telephone seller must notify the buyer of their rights.

Section 15

Refund and replacement language if the product is not as promised, provided that the buyer returns the product and asks within seven days of receipt.

Section 16

Telephone sales become final seven days after receipt of the product and exceptions.

Section 17

Telephone sales for a service becomes final seven days after delivery and exceptions.

Section 18

Telephone sellers may not represent themselves as licensed in Alaska if they are not nor may they claim that license as an endorsement by the state or municipality.

Section 19

Requires telemarketers to identify themselves when calling, forces them to hang up if the person indicates they are not interested in the goods or service, and prevents them from harassing a person.

Section 20

Prevents a telephone seller from requesting a waiver from the buyer of the buyer's rights.

Section 21

Lists the exemptions in current statute and makes a technical correction. The list of exemptions, only apply to the registration requirements. All other applications of the no-call list must be adhered too. Penalties will also apply for non-compliance.

Section 22

Defines buyer

Section 23

Defines telephone seller

Section 24

Adds telephonic means to existing language and details what must be included as part of the registration or re registration forms.

Section 25

Adds telephonic means to existing language which defines reasons for the department not to issue a, or to suspend a license.

Section 26

Adds telephonic means to existing language in another section of statute

Section 27

Allows the department to use either a form or a format for registration

Section 28

The Department may require additional information of the telephone seller than is on the registration or renewal form and may require oath or affirmation.

Section 29

Allows the Department to establish registration fees for the permit, which must be filed with the registration forms.

Section 30

Establishes reporting requirements for each solicitation campaign including financial information.

Section 31

Makes all reports in reference to telemarketers public information

Section 32

Defines solicitation campaign as contacting two or more people

Section 33 & 34

Emphasis added language is repealed

Sec. 45.63.100. Definitions.

(6) "telephonic seller" means a person who is required to be registered under AS 45.63.010

Sec. 45.50.475. Unlawful, unwanted telephone advertisements and solicitations.

(a) A person is in violation of AS 45.50.471 (b)(41) if the person

(1) engages in the telephone solicitation of a residential telephone customer of a telecommunications company and the customer is identified in the telephone directory as not wishing to receive telephone solicitations; or (existing black dot)

(c) A local exchange telecommunications company shall, upon request, provide to a person who engages in telephone solicitation a list of all telephone numbers identified in the telephone directory as residential customers who do not wish to receive telephone solicitations. If possible and if requested by the person who engages in telephone solicitations, this list shall be provided in computer readable format. The local exchange telephone company may impose a reasonable charge for the list. The charge shall be based on the cost of providing the list and is subject to the approval of the Regulatory Commission of Alaska. (emphasis added)

Section 35

Effective dates for various Sections of the Bill

Section 36

Allows the department to begin the regulation process to take effect when the statute becomes law.

Section 37-39

Effective dates for various Sections of the Bill

SENATE COMMITTEE REPORT

DATE: 3/4/04

FURTHER: Judiciary

DATE TURNED
IN TO OFFICE: _____

Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 15(FIN) am

HB 15 SOLICITATIONS/CONSUMER PROTECTION

"An Act relating to fair trade practices and consumer protection, to telephone solicitations, to charitable solicitations; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:
 Same Title
 New Title

House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	Indet.	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	Indet.	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
<i>Joseph DeLeon</i>	✓			
<i>George Davis</i>			X	
<i>[Signature]</i>			X	
<i>[Signature]</i>			X	
CHAIR: <i>[Signature]</i>			✓	

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 15(L&C)
(H) Publish Date: 2/10/03

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title: Telemarketers No-Call Lists BRU: Banking, Securities & Corp. (115)
Component: Banking, Securities & Corp.
Sponsor: Representative Fate
Requester: House Labor & Commerce Component No.: 1233

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 ()						
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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)

This legislation does not affect the operations of this department.

Prepared by: Mark Davis, Director Phone 907-269-8452
Division: Banking, Securities & Corporations Date/Time 1/28/03 5:31 PM
Approved by: Edgar Blatchford, Commissioner Date 1/28/2003
Agency: Department of Community & Economic Development

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 15(L&C)
(H) Publish Date: 2/10/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title: "An Act establishing the Alaska No-Call List, a data base of residential telephone customers . . ." BRU: Civil Division
Sponsor: Representative Fate Component: Fair Business Practices
Requester: House Labor & Commerce Component No.: 2206

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	103.4	103.4	103.4	103.4	103.4	103.4
Travel	0.4	0.4	0.4	0.4	0.4	0.4
Contractual	16.5	14.5	14.5	14.5	14.5	14.5
Supplies	1.9	1.9	1.9	1.9	1.9	1.9
Equipment	13.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	135.2	120.2	120.2	120.2	120.2	120.2

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	135.2	120.2	120.2	120.2	120.2	120.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	135.2	120.2	120.2	120.2	120.2	120.2

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		2	2	2	2	2
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 15 requires the attorney general to contract with an designated agent to establish and maintain a centralized data base of telephone subscribers who do not want to receive telephonic solicitations. Telephonic solicitors and organizations who are otherwise exempt from telephonic solicitation registration requirements, but who intend to conduct a solicitation, must purchase the data base. Fees charged to buy the "Alaska No-Call" data base must cover the direct and indirect costs of creating, updating, and maintaining the data base. Fees will be based on a sliding scale from zero, for solicitors with fewer than five employees and non-profit organizations, to a maximum of \$500, for solicitors with more than 1,000 employees. In addition to the data base, the designated agent is to be charged with maintaining an automated complaint system for residential subscribers to report suspected violations to the appropriate enforcement agency, which is the Department of Law, via the Internet or 800 number.

Prepared by: Joan M. Kasson
Division: Attorney General's Office
Approved by: Kathryn Daughettee for Gregg D. Renkes, Attorney General
Agency: Department of Law

Phone: (907) 465-5370
Date/Time: 2/5/03 3:27 PM
Date: 2/5/2003

FISCAL NOTE #2

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. CSHB 15(L&C)

ANALYSIS CONTINUATION

The Colorado Public Utilities Commission was recently charged with implementing the Colorado No-Call Law, on which Alaska's HB 15 is modeled. The Colorado Attorney General's Office handles enforcement under that law. We have spoken with both of these agencies, and used their experience to develop this fiscal note, making adjustments for the smaller number of residential telephone subscribers in Alaska, as compared to Colorado.

COSTS TO THE STATE:

During the first year, the costs to the Department of Law will involve implementing the Alaska No-Call data base. Legal services will be necessary to develop and implement regulations, including holding public hearings on the draft regulations. Next, the procurement process to hire the designated agent will take place. Once a designated agent is under contract, considerable time will be required to oversee the web site content development including what consumer information should be available, and what information should be available to registering telemarketers. The development of the automated complaint system is expected to require significant amounts of time to ensure the department will receive all necessary information related to the complaints electronically, in a timely manner. Colorado estimated this phase of the project required as much as one-third of each of three full-time employees for five to six months (one full-time equivalent), and approximately 400 hours of attorney time and 100 hours of paraprofessional time. While hopefully, Alaska can piggyback on Colorado's experience, considerable time will still be required to fit our own circumstances.

We estimate the services of one-half of a full time attorney position and one-half of a full time paraprofessional position will be required for this implementation stage. In addition, we anticipate \$2,000 will be needed for direct case costs associated with holding public hearings on the draft regulations. As there will be no fee revenue available to pay for these start-up costs, and the Department of Law cannot absorb this activity within its existing budget, these costs would need to be paid for with general funds.

Once the data base is up and running, a certain amount of attorney and paraprofessional time will be necessary to manage the program. This activity would include reviewing telephone solicitor registrations, supervising the web site, and regular contact with the designated agent. The Colorado PUC told us this regular contact took about four hours per week for them. We are assuming the impact of this in Alaska will be much smaller, both because some of their contact was due to problems with their web site and 800 number we hope to avoid using their example, and because Alaska has a much smaller population. We anticipate this regular contact will require no more than one-hour of paraprofessional time per week. In addition, the department estimates the annual readjustment of fees will require 10 hours of attorney time and 10 hours of paraprofessional time, with an additional 10 hours of attorney time needed to assist in preparation of the semi-annual report to the legislature.

As pointed out in the introduction, the bill also requires the designated agent set up and maintain an automated complaint system that would "... report violations to the appropriate state enforcement agency for enforcement action." The Department of Law would be responsible for these enforcement actions. The Colorado Attorney General's Office estimates they use the services of one-half of an attorney and one full-time paraprofessional for enforcement. We estimate the services of a half-time attorney position and a half-time paraprofessional position would be sufficient to handle all on-going maintenance and enforcement activities.

HB 15 requires that fees cover the cost of creating and maintaining the Alaska No-Call List. It is unclear whether enforcement actions would be considered creating or maintaining the data base, and we do not know if fees will be sufficient to cover any of the state's cost if that is the legislature's intent. (See subsequent discussion.) Accordingly, we have included all Department of Law anticipated costs as general funds starting in FY 2005 for the purposes of further discussion with the legislature.

STATE OF ALASKA
2003 LEGISLATIVE SESSIONBILL NO. CSHB 15(L&C)ANALYSIS CONTINUATIONEXTERNAL COSTS AND REVENUES:

Under this bill, telemarketers purchase the data base from the designated agent, who receives the fees. Fees are designed to cover the costs of developing and maintaining the data base, so are adjusted annually. In Colorado, the contract with the designated agent requires that, in a given year, surplus revenues collected by the agent be placed in escrow, to be applied against future No-Call List contracts. Surplus revenues are those over the amount of the contract between the State of Colorado and the designated agent; costs to the state have not been charged against fees to date, although the Colorado AG has asked the legislature for authority to receive \$15.0 in FY 2002, \$55.0 in FY2003, and \$50.0 in FY 2004 from fee revenue to offset part of their costs.

When the State of Colorado started the Colorado No-Call List, the number of potential telemarketers who might purchase the list was unknown. Only 40 telemarketers were registered with the Colorado Attorney General's Office. When Colorado's system was implemented, the rates were set as follows: 0-5 employees, \$0; 6-10 employees, \$100; 11-50 employees, \$200; 51-100 employees, \$300; 101-250 employees, \$350; 251-400 employees, \$400; 401-1000 employees, \$450; 1001+ employees, \$500. The list proved wildly successful.

As of November 30, 2002, there were 2,103 telemarketers registered under Colorado's No-Call program. Fees from 501, or 24 percent, of those telemarketers generated \$156,750 in revenue. The Colorado Public Utilities Commission, who administers the No-Call List, have lowered the fees in FY 2003 due to revenues collected in FY 2002 being more than the contracted price for the period of the contract. Fees were lowered from 50 to 75 percent.

Colorado has approximately 2 million residential telephone subscribers, of which more than 1,000,000 have signed up for the No-Call List as of December 31, 2002. Alaska has approximately 275,000 residential subscribers, or 14 percent of Colorado's. If Alaska's subscribers follow Colorado's example, we could expect about 137,500 subscribers to sign up to be on the No-Call List.

Alaska has less than ten registered telemarketers, and 40 paid solicitors who would have to register under this bill. We have no idea how many other organizations there are who are exempt from registration, but who would need to purchase the No-Call List. We would expect that most, if not all, of these organizations have less than 1,000 employees. If we assume there are 50 exempt organizations, there may be 100 entities in total who would purchase the data base. Assuming an average fee of \$350, \$35,000 per year in revenue might be generated. However, if the Colorado experience is repeated in Alaska and only 24 percent of these 100 entities are paying all the fees, even if all 24 percent paid the maximum, total annual revenues would only be \$12,000.

We do not know how much it would cost to hire the designated agent in Alaska. Colorado entered into a contract with their designated agent on December 18, 2001. The web site and toll free number were required to be operational July 1, 2002, but came on line May 8, 2002. The Colorado PUC entered a three-year contract with their designated agent totaling \$126,500, and the Colorado Attorney General paid an additional \$10,500 for the development and administration of their complaint reporting system. As of September 30, 2002, the agent showed \$176,849 in expenses. Unexpected first year costs for the toll free voice recognition system and unanticipated legal fees for the vendor resulted in an amendment to the PUC's contract for \$63,990. (The vendor was named in a federal lawsuit seeking to overturn the No-Call List law.) The contract amendment brings the 3-year total projected cost to \$173,990, with much of the expenditure occurring in the first year.

We would expect that at least some of these start-up costs could be avoided in Alaska by using Colorado's experience as much as possible. In addition, we would not have the volume of toll free calls Colorado's toll free voice recognition system received in the early days because we don't have that many telephone subscribers. (Colorado's designated agent had to expand their number of toll free lines from eight to 24 in the first month of operation to handle the volume of calls coming in from consumers wanting to get on the No-Call List. They had an estimated \$45,000 phone bill in that first month from those lines.)

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: CSHB 15 (STA)
(H) Publish Date: 3/26/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title: "An Act establishing the Alaska No-Call List,
a data base of residential telephone customers ..." BRU: Civil Division
Sponsor: Representative Fate Component: Fair Business Practices
Requester: House State Affairs Committee Component No.: 2206

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	83.3	83.3	83.3	83.3	83.3	83.3
Travel	0.3	0.3	0.3	0.3	0.3	0.3
Contractual	11.7	11.7	11.7	11.7	11.7	11.7
Supplies	1.5	1.5	1.5	1.5	1.5	1.5
Equipment	6.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	103.3	96.8	96.8	96.8	96.8	96.8

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	103.3					
1005 GF/Program Receipts						
1037 GF/Mental Health						
1108 Statutory Designated Prog Rcpts		96.8	96.8	96.8	96.8	96.8
TOTAL	103.3	96.8	96.8	96.8	96.8	96.8

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	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSHB 15 (STA) requires the attorney general to contract with an designated agent to establish and maintain a centralized data base of telephone subscribers who do not want to receive telephonic solicitations. Telephonic solicitors and organizations who are otherwise exempt from telephonic solicitation registration requirements, but who intend to conduct a solicitation, must purchase the data base. Fees charged to buy the "Alaska No-Call" data base must cover the direct and indirect costs of creating, updating, and maintaining the data base, and reimbursement to the attorney general for relevant expenditures. In addition to the data base, the designated agent is to be charged with maintaining an automated complaint system for residential subscribers to report suspected violations to the appropriate enforcement agency, which is the Department of Law, via the Internet or 800 number.

Prepared by: Joan M. Kasson
Division: Attorney General's Office
Approved by: Joan M. Kasson for Gregg D. Renkes, Attorney General
Agency: Department of Law

Phone (907) 465-5370
Date/Time 3/24/03 3:09 PM
Date 3/24/2003

FISCAL NOTE #3

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. CSHB 15(STA)

ANALYSIS CONTINUATION

The Colorado Public Utilities Commission was recently charged with implementing the Colorado No-Call Law, on which this bill is modeled. The Colorado Attorney General's Office handles enforcement under that law. We have spoken with both of these agencies, as well as a number of other states administering No-Call laws, and used their experiences to develop this fiscal note.

COSTS TO THE STATE:

During the first year, the costs to the Department of Law will involve implementing the Alaska No-Call data base. Legal services will be necessary to develop and implement regulations. Next, the procurement process to hire the designated agent will take place. Once a designated agent is under contract, considerable time will be required to oversee the web site content development including what consumer information should be available, and what information should be available to registering telemarketers. The development of the automated complaint system is expected to require significant amounts of time to ensure the department will receive all necessary information related to the complaints electronically, in a timely manner. Colorado estimated this phase of the project required as much as one-third of each of three full-time employees for five to six months (one full-time equivalent), and approximately 400 hours of attorney time and 100 hours of paraprofessional time. Given the number of states with this type of program that we should be able to piggyback on, we would expect our costs to be less.

Once the data base is up and running, a certain amount of attorney and paraprofessional time will be necessary to manage the program. This activity would include reviewing telephone solicitor registrations, supervising the web site, and regular contact with the designated agent. The Colorado PUC told us this regular contact took about four hours per week for them. We are assuming the impact of this in Alaska will be much smaller, both because some of their contact was due to problems with their web site and 800 number we hope to avoid using their example, and because Alaska has a much smaller population. We anticipate this regular contact will require no more than one-hour of paraprofessional time per week. In addition, the department estimates the annual readjustment of fees and reporting to the legislature will require 10 hours of attorney time and 10 hours of paraprofessional time.

As pointed out in the introduction, the bill also requires the designated agent set up and maintain an automated complaint system that would "... report violations to the appropriate state enforcement agency for enforcement action." The Department of Law would be responsible for these enforcement actions. The Colorado Attorney General's Office estimates they use the services of one-half of an attorney and one full-time paraprofessional for enforcement. Idaho, which maintains its database in house, estimates they use the services of 1.5 non-enforcement staff to take complaints and maintain the data base, and three attorneys to investigate complaints and provide enforcement. Other states using vendor maintained databases that we surveyed estimated anywhere from 1.5 to 15, with most estimating two to four staff positions.

After talking to these other states, we estimate the services of a full-time paraprofessional position would be sufficient to handle the program implementation and all on-going maintenance and enforcement activities. While some attorney time will be expended, as a practical matter we anticipate this will be offset as the paraprofessional takes on some paraprofessional-level duties that attorneys are now doing themselves at the higher hourly rate due to staffing constraints.

CSHB 15 (STA) requires that fees cover the cost of creating and maintaining the Alaska No-Call database and complaint system, and relevant expenditures of the Department of Law. Under this bill, telemarketers purchase the data base from the designated agent, who receives the fees. Fees are designed to cover the costs of developing and maintaining the data base and relevant expenditures of the attorney general, so are adjusted annually.

FISCAL NOTE #3

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. CSHB 15(STA)

ANALYSIS CONTINUATION

Alaska has less than ten registered telemarketers, and 40 paid solicitors who would have to register under this bill. We have no idea how many other organizations there are who are exempt from registration, but who would need to purchase the No-Call List. If we assume there are 50 exempt organizations, there may be 100 entities in total who would purchase the data base.

Discussions with other states indicate the amount of revenue generated from sale of the No-Call List is linked to enforcement. If the state actively enforces their No-Call law with hefty fines, telemarketers who wish to do business in that state have an incentive to purchase the list. We would expect this same effect in Alaska, but have no way of projecting an amount without some experience. Idaho is the only state we talked to that is near our size with a self-supporting program, but they also charge subscribers to sign up and most of their revenue derives from that source. Louisiana has a self-supporting program using a vendor, but the revenue used to support their program comes from noncompliance fines.

We do not know how much it would cost to hire the designated agent in Alaska. Colorado anticipates paying their designated agent \$174,000 over a three-year period. This amount includes unexpected first year costs for the toll free voice recognition system and unanticipated legal fees for the vendor. (The vendor was named in a federal lawsuit seeking to overturn the No-Call List law.) Louisiana reported spending \$50,000 for their contract with a vendor.

We would expect that at least some of Colorado's start-up costs could be avoided in Alaska by using their experience as much as possible, and by virtue of our smaller size. For example, we would not have the unexpected and expensive volume of toll free calls Colorado's toll free voice recognition system received in the early days because we don't have that many telephone subscribers. Although Connecticut too warned us to expect an initial surge of subscribers wanting to sign up all at once, the number presumably would be smaller.

In the first year, until the data base is up and running and available for purchase, there will be no fees. Once the data base is available for purchase, presumably the initial fees would be needed to pay the designated agent. Accordingly, the department's FY2004 costs are included as general funds. This fiscal note assumes the revenues will be available in the second and subsequent years to pay for the entire program. Whether this assumption proves correct will depend on variables the effect of which are difficult to predict at present. For example, we are unsure of how many telemarketers will purchase the Alaska list and how much the total costs of maintaining the data base and enforcing the program will be. If we assume 100 telemarketers would want to purchase the Alaska list, and the total costs of maintaining the data base and enforcement of its use prove to be as much as \$150,000 per year, annual fees could be as high as \$1,500. Right now, we are aware of no state that charges more than \$1,100, and most are in the \$400 to \$500 range. In addition, states around the country are concerned about what effect the advent of a federal No-Call list reported to be implemented this year will have on state No-Call List revenues.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: CSHB 15(FIN)
 (H) Publish Date: 2/24/04

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title Telemarketers No-Call Lists RDU Banking, Securities & Corp. (115)
 Component Banking, Securities & Corp.
 Sponsor Representatives Fate, et al
 Requester House Finance Component No. 1233

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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 ()						
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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 (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation does not affect the operations of this department.

Prepared by: Mark Davis, Director Phone (907) 465-2521
 Division Banking, Securities & Corporations Date/Time 2/13/04 2:04 PM
 Approved by: Edgar Blatchford, Commissioner Date 2/13/2004
 Agency Department of Community & Economic Development

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 5
Bill Version: CSHB 15(FIN)
(H) Publish Date: 2/24/04

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
Title "An Act relating to fair trade practices and consumer protection, to telephone solicitations, to charitable solicitations..." RDU CIVIL
Component Commercial & Fair Business
Sponsor Representative Fate
Requester House Finance Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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 ()	76.6	76.6	76.6	76.6	76.6	76.6
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1007 Interagency Receipts						
1141 RCA Receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill has two general components. First, it amends the Unfair Trade Practices and Consumer Protection Act by creating a state cause of action for violations of the national do-not-call registry. It also amends the Act's do-not call provision (the "black dot law") and provides for its repeal once the establishment and enforcement of the national registry is ensured. In addition, the bill clarifies that "goods or services" covered by the Act include consumer credit transactions and other credit transaction involving an indebtedness secured by a consumer's residence.

The bill also amends the Charitable Solicitations Act (CSA) and Telephone Solicitations Act (TSA) in a number of ways. It requires payment of a fee when charitable organizations, paid solicitors for charitable organizations, and telephone solicitors register, or renew their registrations, with the

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673
Division Administrative Services Date/Time 2/23/04 8:27 AM
Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 2/23/2004
Agency Department of Law

FISCAL NOTE #5

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 15(FIN)

ANALYSIS CONTINUATION

Department of Law as required under these Acts.

Paid solicitors for charitable organizations would be required to submit a financial report to the department at the close of each solicitation campaign. The report would include, among other information, the disclosure of gross revenue generated during the campaign and the amount provided to the charity.

In addition, the bill would specifically provide that a person may not provide false information on the registration form filed with the Department, and allow the forms to be submitted either under oath or affirmation or under penalty of unsworn falsification. Thus, prosecution for perjury or unsworn falsification could be pursued if a registrant provided inaccurate information to the Department. The bill also amends the TSA to remove an exemption from registration for solicitations for the sale of magazines, periodicals, sound recordings and books.

Because the bill no longer provides for the creation of a state do not call registry, the expenditures indicated the fiscal note for CSHB 15 STA) are no longer relevant. With the registration fees that would be established in the amendments to the TSA and CSA, it is anticipated that this bill would generate approximately \$76,600 each year. This revenue estimate is based on average fees charged by other states and the number of organizations that submitted registration in 2003:

Charitable organization: $\$40 \times 1,615 = \$64,600$
Paid Solicitors: $\$200 \times 30 = \$ 6,000$
Telephone solicitors: $\$200 \times 30 = \underline{\$ 6,000}$

\$76,600

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March 25, 2004

The Honorable Con Bunde, Chair
Senate Labor and Commerce Committee
Alaska Capitol, Room 506
Juneau, AK 99801-1182

RE: HB 15 (Fate)—Support

Dear Chair Bunde:

On behalf of the AARP members in Alaska, we encourage you and your colleagues on the Senate Labor and Commerce Committee to support HB 15, authored by Representative Bud Fate and co-sponsored by Representatives Gara, Chenault, Crawford, Kerttula, Croft, Seaton, Hawker, Wilson, Foster, Kookesh, Guttenberg, and Gruenberg.

Well over half the number of people targeted by telemarketers each day are age 50 and over – and many of them are your own constituents.

AARP's perspective:

Recently the Federal Tenth Circuit Court ruled in favor of upholding the constitutionality of the National Do Not Call Registry. AARP filed an amicus brief to support the recently enacted federal legislation.

This court ruling affirms the long campaign AARP waged in Congress to put control of the telephone back where it belongs—with the consumer.

AARP's survey of older telemarketing fraud victims revealed they find it almost impossible to tell the difference between fraudulent and legitimate sales calls, underscoring the importance of allowing the consumer to stop calls in the first place.

Even though baby boomers have been called the most savvy and Informed consumers of any generation of Americans, many of them, like their parents and their children, have been victims of an unrelenting deluge of unwanted telemarketing sales calls.

The FTC does not regulate intrastate calls. The FTC Chair has explained that it is very hard to predict how many calls the new federal registry will prevent, as telemarketers may establish in-state call centers to avoid the federal law. Therefore, state law is crucial to cover any Alaska-originated calls.

The FTC has no jurisdiction over common carriers (such as long-distance companies or airlines), banks, credit unions, or insurance companies. There is no limitation on the states to regulate these calls and state law is needed to address the exemptions to the FTC rule.

In addition, telephone calls soliciting money for charitable institutions or political organizations are not covered by the Telemarketing Sales Rule. Alaska has the authority to regulate these types of solicitation should the Legislature decide to include them:

Realistically, it may be difficult to have comprehensive federal enforcement of a national Do Not Call law covering millions of people, given the relatively small size of the FTC's staff devoted to this issue and the resources available to fight abuse of consumers. Alaska is in a much better position to detect, deter, and prosecute Do Not Call violations. AARP believes a state law that is enforceable in state court is essential to give the law some needed teeth. Without a state statute, some telemarketers may not have a strong incentive to carefully monitor, update, and follow Do Not Call lists.

It should be much more cost-effective for Alaska to enact a Do Not Call law in 2004 since we will not have to bear the expense of collecting, updating, and disseminating the Do Not Call list. The FTC will allow consumers to register free-of-charge and will use a sliding scale to charge telemarketers for access to the list.

Other states have already taken step to make sure that their constituents can have dinner in peace. Alaska's citizens deserve no less.

AARP recommends an "AYE" vote on HB 15.

Should you have any questions about our position, please feel free to contact Patrick Luby (907.762.3314), AARP Legislative Representative; or me Marie Darlin (907.586.3637), Coordinator of the AARP Capital City Task Force; (907.245.5259).

Thank you for your consideration.

Sincerely,

Marguerite Stetson

Marguerite Stetson
AARP Alaska
Executive Council Member for Advocacy
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cc: Representative Bud Fate
Vice-Chair Ralph Seekins
Senator Gary Stevens
Senator Bettye Davis
Senator Hollis French
Marie Darlin
Patrick Luby

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February 18, 2004

Do-Not-Call Registry for Telemarketing Upheld in Court

By DAVID STOUT

WASHINGTON, Feb. 17 - A federal appeals court on Tuesday upheld the government's right to help people shield themselves from unwanted telemarketing calls.

A panel of the United States Court of Appeals for the Tenth Circuit in Denver ruled that a do-not-call registry created by the federal government last fall helped to combat abusive telemarketing and "prevents the invasion of consumer privacy."

"The challenged regulations do not hinder any business's ability to contact consumers by other means, such as through direct mailings or other forms of advertising," the ruling said.

The telemarketing industry said it was considering an appeal to the United States Supreme Court. But the Supreme Court may not feel the need to take the case because it does not involve any conflicts among circuit courts, said Gregory A. Castanias, a Washington lawyer who specializes in appeals involving constitutional issues and technology law.

The chairman of the Federal Trade Commission, Timothy J. Muris, said Tuesday that the do-not-call registry had been very successful and that "we are pleased that this popular program, like America's dinner hour, will not be interrupted."

H. Robert Wientzen, president and chief executive of the Direct Marketing Association, which represents nearly 5,000 companies in the United States and elsewhere, said an appeal to the full Tenth Circuit or to the Supreme Court was possible. Meanwhile, he said, his group will follow the voluntary policy it has had for 18 years: "If people don't want to be called, we don't want to call them."

Since the F.T.C. and the Federal Communications Commission established the registry last fall, it has grown enormously. It now includes more than 50 million telephone numbers.

Telemarketing interests have maintained that the calls are a legitimate business technique, and that the new federal regulations could cost as many as 2 million jobs in an industry that now has 6.5 million workers. But the court was not swayed. "Just as a consumer can avoid door-to-door peddlers by placing a 'no solicitation' sign in his or her front yard, the do-not-call registry lets consumers avoid unwanted sales pitches that invade the home via telephone," Judge David M. Ebel wrote.

The appeals court set aside a ruling by Federal District Judge Edward W. Nottingham of Denver, who had found that the list violated the right to free speech. The appeals court said that the First Amendment did not prevent the government from giving consumers the do-not-call option. It had allowed the government to enforce the program pending the outcome of the case decided Tuesday.

The ruling combined the government's appeal of Judge Nottingham's decision with two related cases. One was a case brought against the Federal Communications Commission by Denver telemarketers, and the other was an appeal by the Federal Trade Commission of an Oklahoma ruling that said it had no authority to create and enforce a do-not-call list.

FOR IMMEDIATE RELEASE

CONTACT: David Schneier, 202-434-2561

AARP REACTION STATEMENT ON NATIONAL DO NOT CALL LIST RULING

AARP is very pleased with the Tenth Circuit's ruling today in upholding the constitutionality of the National Do Not Call Registry. The ruling of the court adheres closely to the AARP amicus brief filed in support of the do not call legislation.

This ruling affirms the long and hard campaign that AARP has waged at the state and national level to put control of the telephone back where it belongs – with the consumer.

AARP's survey of older telemarketing fraud victims revealed they find it almost impossible to tell the difference between fraudulent and legitimate sales calls, underscoring the importance of allowing them to stop calls in the first place.

"Baby boomers have been called the most savvy and informed consumers of any generation of Americans," said AARP Foundation Litigation senior attorney Deborah Zuckerman. "Yet many of them, like their parents and their children, have been victims of an unrelenting deluge of unwanted telemarketing sales calls."

AARP will continue to advocate for state laws that compliment the federal rule in scope and jurisdiction.

#

AS 45.50.475. Unlawful, unwanted telephone advertisements and solicitations.

(a) A person is in violation of AS 45.50.471(b)(41) if the person

(1) engages in the telephone solicitation of a residential telephone customer of a telecommunications company and the customer is identified in the telephone directory as not wishing to receive telephone solicitations; or

(2) originates a telephone call using an automated or recorded message as a telephonic advertisement or solicitation.

(b) A local exchange telecommunications company and a company that provides a telephone directory on behalf of a local exchange telecommunications company shall provide for the identification in the telephone directory of those residential customers who do not wish to receive telephone solicitations. The local exchange telecommunications company may impose a reasonable charge for identification in the directory. The charge shall be based on the cost of providing the identification and is subject to the approval of the Regulatory Commission of Alaska.

(c) A local exchange telecommunications company shall, upon request, provide to a person who engages in telephone solicitation a list of all telephone numbers identified in the telephone directory as residential customers who do not wish to receive telephone solicitations. If possible and if requested by the person who engages in telephone solicitations, this list shall be provided in computer readable format. The local exchange telephone company may impose a reasonable charge for the list. The charge shall be based on the cost of providing the list and is subject to the approval of the Regulatory Commission of Alaska.

(d) A person who employs individuals to engage in telephone solicitations is not liable for the violation of this section if an employee solicits a residential telephone customer who is identified in the telephone directory as not wishing to receive telephone solicitations if the person established that

(1) the person has adopted and implemented written procedures to comply with (a) of this section including corrective actions where appropriate;

(2) the person has trained its personnel in the procedures established under (1) of this subsection;

(3) the call that violated this section was made contrary to the procedures and policies established by the person; and

(4) calls on behalf of the person that result in violations of this section are infrequent.

(e) An individual who solicits a residential telephone customer who is identified in the telephone directory as not wishing to receive telephone solicitations is not liable for the violation of this section if the individual establishes that the individual did not intend to make a call in violation of this section and did not recklessly disregard information or policies and procedures that would have avoided the improper call.

(f) Local exchange telecommunications companies shall inform residential customers of the provisions of this section. Notification may be made by

(1) annual inserts in the billing statements mailed to residential customers; or

(2) conspicuous publication of the notice in the consumer information pages of local telephone directories.

(g) In this section,

(1) "charitable organization" has the meaning given in AS 45.68.900;

(2) "customer" means a residential telephone customer of a telecommunications company;

(3) "telephone solicitation"

(A) means the solicitation by a person by telephone of a customer at the residence of the customer for the purpose of encouraging the customer to purchase property, goods, or services, or make a donation;

(B) does not include

(i) calls made in response to a request or inquiry by the called customer or communication made during a call made by the customer;

(ii) calls made by a charitable organization, a public agency, or volunteers on behalf of the charitable organization or public agency to members of the organization or agency or to persons who, within the last 24 months, have made a donation to the organization or agency or expressed an interest in making a donation;

(iii) calls limited to soliciting the expression of ideas, opinions, or votes;

(iv) business-to-business calls; or

(v) a person soliciting business from prospective purchasers who have, within the last 24 months, purchased from the person making the solicitation or from the business enterprise for which the person is calling but only if the person or business enterprise has not received a written request from the prospective purchaser asking that telephone solicitations cease; the person or business enterprise is presumed to have received a written request no later than 10 days after the prospective purchaser mailed it, properly addressed and with the appropriate postage.

(a) In AS 45.50.471 - 45.50.561

(1) "advertising" includes the attempt directly or indirectly by publication, dissemination, solicitation, endorsement, or circulation, display in any manner, including solicitation or dissemination by mail, telephone or door-to-door contacts, or in any other way, to induce directly or indirectly a person to enter or not enter into an obligation or acquire title or interest in any merchandise or to increase the consumption of it or to make a loan;

(2) "cemetery lot" means a lot, plot, space, grave, niche, mausoleum, crypt, vault, or columbarium, used or intended to be used for the interment of human remains;

(3) "chain distributor scheme" means a sales device whereby a person, upon condition that the person make an investment, is granted a license or right to solicit or recruit for profit one or more additional persons who are also granted a license or right upon condition of making an investment and may further perpetuate the chain of persons who are granted a license or right upon the condition of investment; a limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility for the license or right to solicit or recruit or the receipt of profit from these does not change the identity of the scheme as a chain distributor scheme; as used in this paragraph, "investment" means acquisition, for a consideration other than personal services, of tangible or intangible property, and includes but is not limited to franchises, business opportunities and services; "investment" does not include sales demonstration equipment and materials furnished at cost for use in making sales and not for resale;

(4) "consumer" means a person who seeks or acquires goods or services by lease or purchase;

(5) "dealing in hearing aids" has the meaning given in AS 08.55.200;

(6) "documentary material" means the original or a copy of a book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate;

(7) "examination" of documentary material includes the inspection, study, or copying of the material, and the taking of testimony under oath or acknowledgment in respect of documentary material or copy of it;

(8) "fresh" means a condition of food that has never been frozen;

(9) "hearing aid" has the meaning given in AS 08.55.200;

(10) "knowingly" means actual awareness of the falsity or deception, but actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness;

(11) "seconds" means manufactured items having flaws or consisting of a standard quantity or quality less than the manufacturer's quality standard.

(b) AS 45.50.471- 45.50.561 may be cited as the Alaska Unfair Trade Practices and Consumer Protection Act.

AS 45.63.010. Registration.

(a) A person may not sell or attempt to sell property or services by telephonic means if the person makes substantially the same offer on substantially the same terms to two or more persons, unless the telephonic seller is registered with the Department of Law at least 30 days before the solicitation campaign.

(b) To register under (a) of this section, a person shall file with the department

(1) a notice of intent to engage in a solicitation campaign; a separate notice of intent shall be filed for each solicitation campaign;

(2) an irrevocable consent appointing the department the person's agent for the receipt of service of process in a court action or other proceeding against the person, or the successor in interest of the person, for a violation of this chapter; and

(3) a signed statement that the person has read and will comply with this chapter and the regulations adopted under this chapter.

(c) Registration under (b) of this section is not complete until the telephonic seller receives an acknowledgement from the department that the seller has complied with (b) of this section.

(d) The notice of intent must be on a form provided and established by the department by regulation. The notice of intent must include detailed information about the nature of the solicitation campaign and the identity and business practices of the telephonic seller, including information on the employees, agents, and officers affiliated with the telephonic seller. The notice of intent must disclose criminal convictions, civil judgments, orders, consent decrees, or administrative determinations involving allegations of unfair or deceptive business practices by the telephonic seller.

(e) A person may not provide false information in a notice of intent.

AS 45.63.020. Written contract required.

Until a telephonic seller receives from a buyer a signed, written contract for the purchase, the telephonic seller may not solicit payment for the purchase, charge a credit card account for the purchase, negotiate a check or other commercial instrument intended for payment of the purchase, or accept a cash payment for the purchase. The written contract must notify the buyer of the rights of the buyer under AS 45.63.030(a) and disclose the information required by the department by regulation.

AS 45.63.030. Cancellation or replacement.

(a) Notwithstanding AS 45.01 - AS 45.08, AS 45.12, AS 45.14, and AS 45.29 (Uniform Commercial Code), a telephonic seller shall give the buyer a refund, credit, or replacement, at the option of the buyer, if

(1) the property or services purchased are defective, not as represented, or not received as promised by the seller;

(2) within seven days after receiving the purchased property, the buyer returns the purchased property and makes a written request for the refund, credit, or replacement; or

(3) within seven days after paying for the purchased services and before the services are provided, the buyer makes a written request for the refund or credit.

(b) A return or request is timely under (a) of this section if the return or request is made in person within the seven days or if the return or request is mailed, properly addressed and postmarked, postage prepaid, within the seven days.

(c) Notwithstanding AS 45.01 - AS 45.08, AS 45.12, AS 45.14, and AS 45.29 (Uniform Commercial Code), a purchase of property from a telephonic seller becomes final seven days after receipt of the property, unless the buyer requests a refund, credit, or replacement under (a) of this section, or the telephonic seller fails to obtain the contract required by AS 45.63.020.

(d) A purchase of services from a telephonic seller becomes final seven days after receipt of the contract required by AS 45.63.020, unless the buyer requests a refund or credit under (a) of this section.

AS 45.63.040. Prohibited representations.

(a) Unless the telephonic seller is asked for the information by the buyer, the seller may not state or imply that the seller has a license, consent, or other form of permission from the state.

(b) A telephonic seller may not state or imply that

(1) the seller is complying with state law; or

(2) the seller's compliance with the laws of this state or a municipality constitutes approval or endorsement by the state or municipality.

AS 45.63.050. Waiver prohibited and void.

A telephonic seller may not request or obtain from a buyer a waiver of the rights of the buyer under this chapter. A waiver of the rights of a buyer under this chapter is void.

AS 45.63.060. Criminal penalties.

(a) A person who sells or attempts to sell property or services by telephonic means by making substantially the same offer on substantially the same terms to two or more persons without complying with the registration requirements of AS 45.63.010, or who solicits, or receives, payment for a purchase before receiving the written contract required by AS 45.63.020 is guilty of a class C felony.

(b) A person who violates AS 45.63.030 - 45.63.050 is guilty of a class A misdemeanor.

AS 45.63.070. Remedies not exclusive.

The remedies in this chapter are in addition to other remedies available to a buyer or the department.

AS 45.63.080. Exemptions.

This chapter does not apply to a sale or attempted sale

(1) of a security regulated under AS 45.55 or a security that is exempted by AS 45.55.900 from regulation under AS 45.55;

(2) by a person registered with the United States Securities and Exchange Commission when acting within the scope of the person's Securities and Exchange Commission license;

(3) by an issuer, or a subsidiary of an issuer, of a class of securities that is

(A) subject to 15 U.S.C. 78a - 78lll (Securities Exchange Act of 1934); and

(B) either registered under 15 U.S.C. 78a - 78lll (Securities Exchange Act of 1934) or exempt from registration under 15 U.S.C. 78l(g)(2)(A) - (C) or (E) - (H);

(4) by a real estate broker, associate real estate broker, or real estate salesperson licensed under AS 08.88 and acting in a capacity covered by the license;

(5) by a person who has a certificate of registration under AS 08.18 to operate as a contractor and is acting in a capacity covered by the certificate of registration;

(6) by an embalmer or funeral director licensed under AS 08.42 and acting in a capacity covered by the license;

(7) by an insurance agent, general agent, broker, solicitor, or adjuster licensed under AS 21.27 and acting in a capacity covered by the license;

(8) by a person who is primarily soliciting the sale of a subscription to, or advertising in, a newspaper of general circulation;

(9) by a charitable organization or paid solicitor if the organization or solicitor is registered to make charitable solicitations under AS 45.68 and is acting in a capacity that is covered by the registration;

(10) by a person who is primarily soliciting the sale of a magazine, periodical, sound recording, book, or membership in a book or record club

(A) where the club provides the buyer with a form that the buyer may use to instruct the club not to ship the offered merchandise; and

(B) that is regulated by the Federal Trade Commission as a negative option plan under 16 CFR 425;

(11) of services provided by a cable television system operating under a franchise issued by a municipality;

(12) by a person who is soliciting for a business, or for an affiliate of a business, that is regulated by the Regulatory Commission of Alaska;

(13) by a person whose solicitation is solely for telephone answering services provided by the person or the person's employer;

(14) of property from a mail order catalog that is published on a regular, periodic basis and that describes or pictures the items for sale and prominently provides the specific price of each item;

(15) by a supervised financial institution or the parent, subsidiary, or affiliate of a supervised financial institution; in this paragraph, "supervised financial institution" means a commercial bank, savings bank, mutual savings bank, trust company, savings and loan association, credit union, industrial loan company, personal property broker, consumer finance lender, commercial finance lender, or other financial institution if the financial institution is subject to regulation by this state or the United States;

(16) by an insurer or the parent, subsidiary, or affiliate of an insurer;

(17) by a person who solicits a sale by a contact by telephonic means without intending to complete the sales presentation during the contact, who does not complete the sales presentation during the contact, and who only completes the sales presentation at a later meeting in person, unless at the later meeting the solicitor attempts to collect payment for property or services delivered before the later meeting;

(18) of an item of personal property, including a food product, that is made by hand by an individual, if the sale or attempted sale of the item is made by the individual who made the item; in this paragraph, "made by hand" includes the use of ordinary household devices if the majority of the value of the item is added by the labor of the individual.

AS 45.63.090. Regulations.

The department shall adopt regulations under AS 44.62 (Administrative Procedure Act) to implement this chapter.

AS 45.63.100. Definitions.

In this chapter,

(1) "buyer" means a person who buys from or is solicited by a telephonic seller;

(2) "department" means the Department of Law;

(3) "notice of intent" means the notice of intent required by AS 45.63.010 to engage in a solicitation campaign;

(4) "solicitation campaign" means a sale or attempt to sell property or services by telephonic means by making substantially the same offer on substantially the same terms to two or more persons;

(5) "telephonic means" means a telephone or another method using telephone lines, and includes a facsimile machine and electronic communication between electronic computing devices; "telephonic means" includes a letter, postcard, notice, or other written communication advising, requesting, motivating, or otherwise encouraging a person to contact a seller by telephonic means;

(6) "telephonic seller" means a person who is required to be registered under AS 45.63.010.

Public Law 108-10
108th Congress

An Act

To authorize the Federal Trade Commission to collect fees for the implementation and enforcement of a "do-not-call" registry, and for other purposes.

Mar. 11, 2003

[H.R. 395]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Do-Not-Call Implementation Act".

Do-Not-Call
Implementation
Act.
15 USC 6101
note.

SEC. 2. TELEMARKETING SALES RULE; DO-NOT-CALL REGISTRY FEES.

15 USC 6101
note.

The Federal Trade Commission may promulgate regulations establishing fees sufficient to implement and enforce the provisions relating to the "do-not-call" registry of the Telemarketing Sales Rule (16 CFR 310.4(b)(1)(iii)), promulgated under the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101 et seq.). Such regulations shall be promulgated in accordance with section 553 of title 5, United States Code. Fees may be collected pursuant to this section for fiscal years 2003 through 2007, and shall be deposited and credited as offsetting collections to the account, Federal Trade Commission—Salaries and Expenses, and shall remain available until expended. No amounts shall be collected as fees pursuant to this section for such fiscal years except to the extent provided in advance in appropriations Acts. Such amounts shall be available for expenditure only to offset the costs of activities and services related to the implementation and enforcement of the Telemarketing Sales Rule, and other activities resulting from such implementation and enforcement.

SEC. 3. FEDERAL COMMUNICATIONS COMMISSION DO-NOT-CALL REGULATIONS.

15 USC 6101
note.

Not later than 180 days after the date of enactment of this Act, the Federal Communications Commission shall issue a final rule pursuant to the rulemaking proceeding that it began on September 18, 2002, under the Telephone Consumer Protection Act (47 U.S.C. 227 et seq.). In issuing such rule, the Federal Communications Commission shall consult and coordinate with the Federal Trade Commission to maximize consistency with the rule promulgated by the Federal Trade Commission (16 CFR 310.4(l)).

Deadline.

SEC. 4. REPORTING REQUIREMENTS.

15 USC 6101
note.
Deadline.

(a) REPORT ON REGULATORY COORDINATION.—Within 45 days after the promulgation of a final rule by the Federal Communications Commission as required by section 3, the Federal Trade Commission and the Federal Communications Commission shall each transmit to the Committee on Energy and Commerce of the

House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report which shall include—

(1) an analysis of the telemarketing rules promulgated by both the Federal Trade Commission and the Federal Communications Commission;

(2) any inconsistencies between the rules promulgated by each such Commission and the effect of any such inconsistencies on consumers, and persons paying for access to the registry; and

(3) proposals to remedy any such inconsistencies.

(b) ANNUAL REPORT.—For each of fiscal years 2003 through 2007, the Federal Trade Commission and the Federal Communications Commission shall each transmit an annual report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report which shall include—

(1) an analysis of the effectiveness of the “do-not-call” registry as a national registry;

(2) the number of consumers who have placed their telephone numbers on the registry;

(3) the number of persons paying fees for access to the registry and the amount of such fees;

(4) an analysis of the progress of coordinating the operation and enforcement of the “do-not-call” registry with similar registries established and maintained by the various States;

(5) an analysis of the progress of coordinating the operation and enforcement of the “do-not-call” registry with the enforcement activities of the Federal Communications Commission pursuant to the Telephone Consumer Protection Act (47 U.S.C. 227 et seq.); and

(6) a review of the enforcement proceedings under the Telemarketing Sales Rule (16 CFR 310), in the case of the Federal Trade Commission, and under the Telephone Consumer Protection Act (47 U.S.C. 227 et seq.), in the case of the Federal Communications Commission.

Approved March 11, 2003.

LEGISLATIVE HISTORY—H.R. 395:

HOUSE REPORTS: No. 108-8 (Comm. on Energy and Commerce).

CONGRESSIONAL RECORD Vol. 149 (2003):

Feb. 12, considered and passed House.

Feb. 13, considered and passed Senate.

○

[Code of Federal Regulations]
[Title 16, Volume 1]
[Revised as of January 1, 2003]
From the U.S. Government Printing Office via GPO Access
[CITE: 16CFR310.1]

[Page 373]

TITLE 16--COMMERCIAL PRACTICES

CHAPTER I--FEDERAL TRADE COMMISSION

PART 310--TELEMARKETING SALES RULE--Table of Contents

Sec. 310.1 Scope of regulations in this part.

This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101-6108.

[Code of Federal Regulations]
[Title 16, Volume 1]
[Revised as of January 1, 2003]
From the U.S. Government Printing Office via GPO Access
[CITE: 16CFR310.2]

[Page 373-374]

TITLE 16--COMMERCIAL PRACTICES

CHAPTER I--FEDERAL TRADE COMMISSION

PART 310--TELEMARKETING SALES RULE--Table of Contents

Sec. 310.2 Definitions.

(a) Acquirer means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

(b) Attorney General means the chief legal officer of a State.

(c) Cardholder means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(d) Commission means the Federal Trade Commission.

(e) Credit means the right granted by a creditor to a debtor to defer payment

[[Page 374]]

of debt or to incur debt and defer its payment.

(f) Credit card means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(g) Credit card sales draft means any record or evidence of a credit card transaction.

(h) Credit card system means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(i) Customer means any person who is or may be required to pay for goods or services offered through telemarketing.

(j) Investment opportunity means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

(k) Material means likely to affect a person's choice of, or conduct regarding, goods or services.

(l) Merchant means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services.

(m) Merchant agreement means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services.

(n) Outbound telephone call means a telephone call initiated by a telemarketer to induce the purchase of goods or services.

(o) Person means any individual, group, unincorporated association,

limited or general partnership, corporation, or other business entity.

(p) Prize means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.

(q) Prize promotion means:

(1) A sweepstakes or other game of chance; or

(2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

(r) Seller means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.

(s) State means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(t) Telemarketer means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer.

(u) Telemarketing means a plan, program, or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: Contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term further solicitation does not include providing the customer with information about, attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

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