ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
March 22, 2002
1:22 p.m.

MEMBERS PRESENT

Representative Norman Rokeberg, Chair
Representative Jeannette James
Representative John Coghill
Representative Kevin Meyer
Representative Ethan Berkowitz
Representative Albert Kookesh

MEMBERS ABSENT

Representative Scott Ogan, Vice Chair

COMMITTEE CALENDAR

CS FOR SENATE JOINT RESOLUTION NO. 24(RLS)
Proposing amendments to the Constitution of the State of Alaska relating to the budget reserve fund.

- MOVED HCS CSSJR 24(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 385
"An Act relating to the attorney fees and costs awarded in certain court actions relating to unfair trade practices; and amending Rules 54, 79, and 82, Alaska Rules of Civil Procedure."

- HEARD AND HELD

PREVIOUS ACTION

BILL: SJR 24
SHORT TITLE:AMEND CONSTITUTIONAL BUDGET RESERVE FUND
SPONSOR(S): FINANCE

Jrn-Date	Jrn-Page		Action
04/09/01	1013	(S)	READ THE FIRST TIME - REFERRALS
04/09/01	1013	(S)	FIN
04/17/01		(S)	FIN AT 9:00 AM SENATE FINANCE 532
04/17/01		(S)	Heard & Held
04/17/01		(S)	MINUTE(FIN)

04/23/01		(S)	FIN AT 9:00 AM SENATE FINANCE 532
04/23/01		(S)	Moved Out of Committee
04/23/01		(S)	MINUTE(FIN)
04/23/01	1215	(S)	FIN RPT 6DP 3NR
04/23/01	1215	(S)	DP: DONLEY, KELLY, GREEN, WILKEN,
04/23/01	1215	(S)	LEMAN, WARD;
04/23/01	1215	(S)	NR: AUSTERMAN, HOFFMAN, OLSON
04/23/01	1216	(S)	FN1: (GOV)
04/30/01		(S)	RLS AT 11:50 AM FAHRENKAMP 203
04/30/01		(S)	<Bill Postponed to 5/1/01> -- Time Change --
04/30/01		(S)	RLS AT 4:45 PM FAHRENKAMP 203
04/30/01		(S)	-- Meeting Canceled --
05/01/01		(S)	RLS AT 12:15 PM FAHRENKAMP 203
05/01/01		(S)	-- Time Change --
05/01/01		(S)	MINUTE(RLS)
05/01/01	1412	(S)	READ THE SECOND TIME
05/01/01	1412	(S)	RLS CS ADOPTED UNAN CONSENT
05/01/01	1413	(S)	ADVANCED TO 3RD READING FAILED Y14 N6
05/01/01	1413	(S)	ADVANCED TO THIRD READING 5/2 CALENDAR
05/01/01	1401	(S)	RULES TO CAL W/CS 1OR 5/1 SAME TITLE
05/01/01	1401	(S)	FN1: (GOV)
05/02/01	1443	(S)	READ THE THIRD TIME CSSJR 24(RLS)
05/02/01	1444	(S)	HELD IN THIRD READING TO 5/3 CALENDAR
05/03/01	1472	(S)	HELD IN THIRD READING TO 5/4 CALENDAR
05/04/01	1503	(S)	BEFORE THE SENATE IN THIRD READING
05/04/01	1503	(S)	PASSED Y14 N6
05/04/01	1504	(S)	ELLIS NOTICE OF RECONSIDERATION
05/05/01	1527	(S)	RECON TAKEN UP - IN THIRD READING
05/05/01	1527	(S)	PASSED ON RECONSIDERATION Y14 N6
05/05/01	1559	(S)	TRANSMITTED TO (H)
05/05/01	1559	(S)	VERSION: CSSJR 24(RLS)
05/05/01	1571	(H)	READ THE FIRST TIME -

			REFERRALS
05/05/01	1571	(H)	JUD, FIN
10/19/01		(H)	JUD AT 11:00 AM Anch LIO Conf Rm
10/19/01		(H)	Heard & Held
10/19/01		(H)	MINUTE(JUD)
02/04/02		(H)	JUD AT 1:00 PM CAPITOL 120
02/04/02		(H)	Heard & Held
02/04/02		(H)	MINUTE(JUD)
03/22/02		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 385
SHORT TITLE:UNFAIR TRADE PRACTICES ATTY FEES/COSTS
SPONSOR(S): REPRESENTATIVE(S)CROFT

Jrn-Date	Jrn-Page		Action
02/06/02	2164	(H)	READ THE FIRST TIME - REFERRALS
02/06/02	2164	(H)	JUD
03/22/02		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

DEB DAVIDSON, Staff
to Senator Dave Donley
Senate Finance Committee
Alaska State Legislature
Capitol Building, Room 506
Juneau, Alaska 99801
POSITION STATEMENT: During discussion of SJR 24 responded to questions on behalf of the Senate Finance Committee, sponsor.

REPRESENTATIVE ERIC CROFT
Alaska State Legislature
Capitol Building, Room 400
Juneau, Alaska 99801
POSITION STATEMENT: Sponsor of HB 385.

LES S. GARA, Attorney
1242 West 10th Avenue
Anchorage, Alaska 99501
POSITION STATEMENT: Testified in support of HB 385.

STEVE CONN, Executive Director
Alaska Public Interest Research Group (AkPIRG)
PO Box 101093
Anchorage, Alaska 99510

POSITION STATEMENT: Provided comments in support of HB 385.

MARIE DARLIN, AARP
415 Willoughby Avenue
Juneau, Alaska 99801
POSITION STATEMENT: Testified in support of HB 385.

PAM LaBOLLE, President
Alaska State Chamber of Commerce
217 2nd Street
Juneau, Alaska 99801
POSITION STATEMENT: Provided comments in opposition to HB 385.

CLYDE (ED) SNIFFIN, JR.
Assistant Attorney General
Fair Business Practices Section
Civil Division (Anchorage)
Department of Law (DOL)
1031 West 4th Avenue, Suite 200
Anchorage, Alaska 99501-1994
POSITION STATEMENT: Testified in support of HB 385 and responded to questions.

ACTION NARRATIVE

TAPE 02-35, SIDE A
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing Committee meeting to order at 1:22 p.m. Representatives Rokeberg, James, Coghill, and Meyer were present at the call to order. Representatives Berkowitz and Kookesh arrived as the meeting was in progress.

SJR 24 - AMEND CONSTITUTIONAL BUDGET RESERVE FUND

Number 0043

CHAIR ROKEBERG announced that the first order of business would be CS FOR SENATE JOINT RESOLUTION NO. 24(RLS), Proposing amendments to the Constitution of the State of Alaska relating to the budget reserve fund. He noted that at a prior hearing, the administration's representative had raised four points in opposition to SJR 24.

Number 0073

DEB DAVIDSON, Staff to Senator Dave Donley, Senate Finance Committee, Alaska State Legislature, on behalf of the Senate Finance Committee, sponsor, confirmed that those points had been raised at the prior hearing, and mentioned that in members' packets is a letter of response to those issues. To elaborate, on the point that SJR 24 is a policy change, she concurred that it is, and noted that this is intentional. Under SJR 24, funds could be withdrawn from the constitutional budget reserve (CBR) fund with a majority vote, provided that they are used for appropriations from the general fund (GF). Currently funds from the CBR can be used to fund any shortfall [in] any program, although there is a three-fourths vote requirement. With SJR 24 in effect, for example, a majority vote could withdraw CBR funds in order to pay for a shortfall in education funding, which is a GF program; however, in order pay to for a shortfall in a program that is funded entirely by program receipts, for example, CBR funds could only be withdrawn with a three-fourths vote.

MS. DAVIDSON, on the point regarding the use of the term "unrestricted general funds", said that staff had checked with the Legal and Research Services Division, Legislative Affairs Agency, and had been told that there would not be a problem with using that term and that its use was merely a policy choice. On the point regarding the possibility that deleting the "sweep provision" without first eliminating the liability to the CBR would cause a problem with the bond market, she noted that there is no straight answer to this complex issue. Basically, she explained, the debt owed to the CBR is a debt that "we owe ourselves"; therefore, legally, getting rid of the sweep provision automatically gets rid of the liability. So while it appears from an accounting viewpoint, on paper, as though there is a liability, it is merely money that the state owes itself. She opined that getting rid of the sweep provision should not cause any problem because it would also get rid of the liability. She noted that if, in the future, any questions were raised by the bond market or "Wall Street," the legislature would have several options with which to address those questions.

MS. DAVIDSON, on the point of whether SJR 24 would have any effect should the CBR become empty in two years, said that the sponsor contends that getting rid of the sweep provision is still an important and necessary change because, otherwise, that provision would still apply regardless of whether there was any money in the CBR. In response to questions, she pointed out that under [subsection] (b), page 1, lines 13-16, "amounts

available for appropriation or appropriated from federal funds, income of the permanent fund, or this budget reserve fund may not be considered". She said that the main intent of this language is to ensure that "these same funds are either included or excluded from the amount available for appropriation, and appropriated, to make sure that the comparison was based on this same..."

Number 0583

REPRESENTATIVE JAMES interjected that she was a member of the legislature during the implementation of the constitutional budget reserve [fund] and, according to her recollection of the debate at that time, the court decision regarding implementation was different than how the CBR was intended to work and different than what she had in mind when she voted for it. She opined that there has been a problem ever since that court decision was made. One of the issues that the court had to decide was, at what level of appeal does resulting money go into the CBR; she noted that she did not have any problems with the [decision] on that issue. Another issue, she explained, that the court had to decide revolved around "what was available for appropriations, based on what last year's budget was, so that if your current year's budget was more than your last year's budget, if you didn't have enough money to cover it, you could take the money out with a majority vote." She said that the court determined that when "you're measuring in the first place, if you have enough money to cover the budget, they did not include the permanent fund; and yet they did include the permanent fund, so you never would ever get there as long as you had any money in the permanent fund." However, she added, at the end, because that money had to be paid back and everything was "swept," then the earnings of the permanent fund were not included.

REPRESENTATIVE JAMES opined that that was a gross [misinterpretation] of the language in the original ballot measure. "It either should be counted at one end and the other, or at neither end," she added. She said that another problem is "the payback," which is the sweep provision. "As we go forward we do need a budget control or ... slush fund ...; we need to be able to build up a budget surplus because we never know what the conditions are going to be," she said. But the rules of the CBR are so restrictive, that it is not going to be the best vehicle for surpluses unless some changes are made. She remarked, however, that she is not convinced that [SJR 24] is going to "solve the problem; it seems to me like if we wish to take the

money from the CBR rather than the earnings reserve of the permanent fund, then, as far as I'm concerned, we'll always have a [three-fourths] vote." She opined that there are only two solutions: "one is to fix it so we don't have to pay it back, which ... solves part of the problem, ... and this is all that you've done here."

Number 0787

MS. DAVIDSON argued that in addition to repealing the sweep provision, SJR 24 changes "the phrasing in how the funds can be withdrawn with a majority vote, to clarify when that may happen." She offered that the phrasing in Section 1 specifies that the federal funds, the permanent fund, or the budget reserve fund cannot be considered when calculating amounts available for appropriation or the amounts appropriated, the comparison has been made level on both sides. She surmised that part of the problem, initially, was that amounts available for appropriation and amounts actually appropriated were defined in statute, and the court found that this was inconsistent with the [Alaska State] Constitution. By placing "this" in the constitution, she opined, it would squarely set out what the comparison is.

REPRESENTATIVE JAMES asked whether SJR 24 would be removing the stipulations pertaining to the prior year's budget and, if so, whether that meant that the budget could be raised and just a majority vote would be needed to access the CBR.

MS. DAVIDSON said not entirely, no. She elaborated:

> What this says is, ... if the amount that you were appropriating this year is more than you have available to appropriate, you may withdraw funds from the CBR up to the total that was appropriated the year before with a majority vote - anything more than that will require the [three-fourths] vote - and the difference in that amount may only be used for appropriations from the unrestricted general fund. As I said, for funding education, if you needed to make up that difference, you would be able to do it up to the last year's level with the general fund. If you were funding a shortfall from another funding source - something funded by [Alaska Housing Finance Corporation] AHFC receipts, something like that - that would require a [three-fourths] vote. So it restricts

more than the current does [with regard to] what may be withdrawn....

REPRESENTATIVE JAMES remarked that although she understands the sponsor's intent, if the public were to be asked "this question, they'd say no." She acknowledged that there are some problems with "the CBR," but opined that [SJR 24] is not going to resolve them.

Number 0982

REPRESENTATIVE BERKOWITZ asked whether the "exceptions to the amount of appropriations made in the current year apply to those made in previous years?" That is, if the permanent fund or federal funds had been used - appropriated - in prior years, does that impact how this mechanism would work?

MS. DAVIDSON said that she didn't believe so because of the addition of the phrase, "For purposes of applying this subsection, amounts available for appropriation or appropriated from federal funds, income of the permanent fund, or this budget reserve fund may not be considered." She opined that if the funds were appropriated in the prior year, they would not be considered in what was calculated for the current year or for the current year's appropriations.

REPRESENTATIVE BERKOWITZ asked: "If you had appropriations of federal funds in a prior year, and you needed to reach that aggregate funding level, ... what would the mechanism be to get into the CBR in the current year?"

MS. DAVIDSON replied that that would be the [three-fourths] vote. The section in the [Alaska State] Constitution that allows appropriations from the CBR to be made for any public purpose with a [three-fourths] vote remains there; that has not changed at all. "So, if you wanted to use funds from the CBR to make up a loss of federal funds or to get to a total, you could do that; it would, however, require a [three-fourths] vote rather than a majority vote," she said.

REPRESENTATIVE BERKOWITZ referred to the phrase, "For purposes of this subsection, 'unrestricted general fund' shall be defined by law". He asked whether the sponsor had any ideas regarding how "unrestricted general fund" might be defined.

MS. DAVIDSON said that she did not know whether the sponsor had any specific definition in mind regarding "unrestricted general

fund". She mentioned that although currently there is not a specific definition of what constitutes "unrestricted general funds", that phrase is used in several statutes. Referring to members' packets, she pointed out an example of a statute - AS 37.05.146 - which specifies items that "are not made from the unrestricted general fund". She said that it is her belief that "when the definition came through, there would be consideration of that, as well as other things."

REPRESENTATIVE JAMES opined that the [lack of a current definition] seems to "give us a little trap here as to what that's going to be." She mentioned that she considers dividends from Alaska Industrial Development and Export Authority (AIDEA), for example, to be general funds "when they come over," but acknowledged that they are not counted as such.

Number 1227

MS. DAVIDSON remarked that if funding is needed for any of the program receipts listed in AS 37.05.146(b), a [three-fourths] vote would be required to access the CBR because the statute specifically says that appropriations for those items are not made from the unrestricted general fund. She said that the best example of what unrestricted general funds are currently used for is "partially doing the education funding," adding her belief that revenue sharing also comes from the unrestricted general fund. Thus, although there is no definition of what unrestricted general funds are, there is a definition of what they are not.

REPRESENTATIVE JAMES indicated that she thought that funds which are appropriated would still be general funds until spent, although they would be considered restricted [funds] because they'd already been appropriated.

CHAIR ROKEBERG, mentioning that he had concerns about drafting, referred to the phrase on lines 13-15: "For purposes of applying this subsection, amounts available for appropriation or appropriated from federal funds". He asked, "Why is that disjunctive there?"

MS. DAVIDSON offered that it is because of how lines 5-6 are drafted: "If the amount available for appropriation for a fiscal year is not sufficient to fully fund the amount appropriated".

CHAIR ROKEBERG mentioned that he does not understand lines 13-15 the way they are drafted; they appear to essentially say, "amounts available for appropriation may not be considered."

REPRESENTATIVE JAMES agreed that the language on lines 13-15 doesn't make sense.

Number 1394

MS. DAVIDSON said that in her mind, she translated that language to: "For applying this subsection, amounts available for appropriation [pause] or amounts appropriated from [pause] then federal funds, income of the permanent fund, or the budget reserve fund may not be considered."

CHAIR ROKEBERG remarked that according to the way Ms. Davidson spoke regarding her interpretation of lines 13-15, it sounded as though there was a long pause before the word "or", in which case perhaps some form of punctuation is needed in that phrase. He said:

> To translate what I think the meaning should be, it should be that ... when you're defining amounts available for appropriations, you may not consider federal funds, income of the permanent fund, or budget reserve funds. Is that what it means?

MS. DAVIDSON replied:

> Not only for when considering amounts available for appropriation, but also when considering amounts appropriated, because we compare amounts available for appropriation with amounts actually appropriated, and when you're considering either one of these two items, you may not consider federal funds, income from the permanent fund, or the budget reserve fund.

CHAIR ROKEBERG mentioned that "it's not real clear."

REPRESENTATIVE JAMES said:

> I see the comparison now, when I read lines 5 and 6, because there's two things there: there's the "available for appropriation" and "the amount appropriated". So, I think that's what they meant, that for purposes of this subsection, when they're talking about - at the beginning of (b) - amounts

> available for appropriation or appropriated from federal funds, ... there is an "available for appropriation" and "amount appropriated".

CHAIR ROKEBERG asked:

> Would it be fair to say that it could be redrafted to say, "For purposes of applying this subsection, amounts available for appropriation or appropriated from federal funds do not include income from the permanent fund or this budget reserve"?

Number 1512

REPRESENTATIVE JAMES said she did not see any connection at all between "that and federal funds." "Federal funds are one thing and these other things are something else," she added.

CHAIR ROKEBERG said, "You're right." He asked what the distinction is between "appropriated" and "appropriation".

REPRESENTATIVE JAMES offered that perhaps the language is attempting to address, in one fell swoop, both of those amounts in that first sentence, and that by doing so, it is leading to confusion. She mentioned that there are two measurements: one is, "available for appropriation", and the other is, "the amount appropriated". And they're saying that from either one of those, it doesn't include income of the permanent fund or the budget reserve fund," she surmised.

CHAIR ROKEBERG said he assumes that [amounts] "appropriated from federal funds" should also be excluded.

REPRESENTATIVE JAMES acknowledged that it should be, and thus it is the wrong "conjunctive." She pointed out, however, that it is still necessary to say, "available for appropriation or appropriated", and stop there, and then say, "income from the permanent fund, or the budget reserve, or federal funds should not be considered."

CHAIR ROKEBERG suggested that putting a colon "there" would work, although "it's not real good language." He asked Ms. Davidson whether he and Representative James were on the right track with regard to the meaning of subsection (b).

MS. DAVIDSON said that they were. She suggested that it might help to say, "For the purposes of applying this subsection,

amounts available for appropriation or amounts appropriated may not consider federal funds, income from the permanent fund, or the budget reserve fund".

CHAIR ROKEBERG remarked that if [SJR 24] goes out to the general public, and the general public cannot understand it, they are not going to vote for it.

Number 1620

REPRESENTATIVE BERKOWITZ asked: Shouldn't the "or" on line 15 be an "and"?

CHAIR ROKEBERG said: "I would think so, also.... That's what I'm worried about: it's either so poorly drafted or I don't understand what they're getting at here."

REPRESENTATIVE JAMES opined that that sentence [on lines 13-15] needs to be rewritten. She also opined that it might be difficult to get "it" into one sentence.

MS. DAVIDSON continued with her suggested change. It would say, "amounts available for appropriation or amounts appropriated may not consider federal funds, income of the permanent fund, or this budget reserve fund."

REPRESENTATIVE JAMES offered that "does not consider" would be better than "may not consider".

CHAIR ROKEBERG surmised that because [the language] is in the negative, that is why "or" is used rather than "and".

REPRESENTATIVE BERKOWITZ remarked that from a legal perspective, "or" usually means: any one of these and all of them.

CHAIR ROKEBERG surmised, then, that using "or" would be alright.

Number 1696

CHAIR ROKEBERG made a motion to adopt Conceptual Amendment 1, which would, on line 14, add the word "amounts" between "or" and "appropriated"; add the words "should not consider" after the word "appropriated"; striking "from"; and then going on to read "federal funds, income of the permanent, or this budget reserve fund." There being no objection, Conceptual Amendment 1 was adopted.

Number 1786

REPRESENTATIVE MEYER moved to report CSSJR 24(RLS), as amended, out of committee with individual recommendations and the accompanying fiscal notes.

Number 1790

REPRESENTATIVE BERKOWITZ objected.

REPRESENTATIVE JAMES requested confirmation that repealing the "sweep provision" [of the Alaska State Constitution], as proposed by Section 2, would also "do away with the debt."

MS. DAVIDSON confirmed that it would.

REPRESENTATIVE BERKOWITZ, speaking to his objection, commented:

> The premise that the sponsor repeats over and over again is that the CBR has somehow led to leveraging of the budget, and I brought with me our budget requests that we negotiated with the majority last year. It came to a grand total of $9,571,000. Now, I don't know whether the majority helped leverage it up the other $140 million - it may well be - but our contribution and use of the CBR is clearly overstated, and to use that as a premise for advancing this constitutional amendment seems a little flawed. I also have a little difficulty reconciling the sponsor's other proposed amendment with this. In that other constitutional amendment, he requires a supermajority to get to increased funds, on the theory that if you require a supermajority, it makes it harder to spend more. And here, he seems to suggest that if we have a simple majority, you can access funds and that will decrease the budget, and it seems that those are somewhat discordant notions of how the budget works.

CHAIR ROKEBERG remarked that in drawing on his own experience, with few exceptions, he does not find Representative Berkowitz's analysis of the situation to be accurate.

REPRESENTATIVE BERKOWITZ asked Chair Rokeberg whether he had information to the contrary regarding how much [the House minority] negotiated, which he recalled to be roughly $10 million.

Number 1924

REPRESENTATIVE JAMES said that according to her evaluation of SJR 24 it is very likely that there would never be a time when they could access the CBR with a majority vote unless "we're going to do a real ramp-down of spending."

CHAIR ROKEBERG argued that [SJR 24] is "supposed to encourage it more often," since just a majority vote would be required.

REPRESENTATIVE JAMES pointed out, however, that accessing the CBR could only be done "if the money that you have is less than last year's budget, and that's all the further you can go with it," otherwise a [three-fourths] vote would be required.

REPRESENTATIVE BERKOWITZ remarked that from the minority's perspective, or at lease from his perspective, "this" is somewhat of a mute argument because the CBR is going to be gone in two years anyway. He reiterated that he is having a difficult time reconciling SJR 24 with the sponsor's other amendment. He continued:

> I also have concerns with the language here: there's loose terms - we don't know what "unrestricted general fund" is. It's unclear how the mechanism works. And, in the [Alaska State] Constitution, I thought we were striving for clarity and simplicity, and this amendment doesn't move us in that direction.

CHAIR ROKEBERG remarked that in terms of clarity, Amendment 1 has certainly helped a little bit. He acknowledged that in the last couple of years, with regard to the [three-fourths] vote, there has been less difficulty in working towards common goals. He noted, however, that he does not share Representative Berkowitz's thoughts regarding the elimination of the CBR in two years.

REPRESENTATIVE BERKOWITZ asked for an explanation of why, on the one hand, a [simple] majority vote on the CBR would help diminish spending while, on the other hand, a supermajority [vote] on a spending cap is also supposed to diminish spending.

REPRESENTATIVE JAMES, returning to the motion regarding SJR 24, opined that the language in the resolution is complicated, and therefore she is sure that the public will vote "no" because it is not easily understood. She offered that the only way to fix

the CBR is to repeal it and start over, making the language specifically clear with regard to what is intended. "The language in the original CBR was so strange and so misunderstood [because] of the way it was drafted - as I understand it, on a napkin in the middle of the night - that that's what we got, and this sounds like they're trying to fix something that's already so flawed it can't be fixed," she added.

Number 2108

A roll call vote was taken. Representatives James, Coghill, Meyer, and Rokeberg voted to report CSSJR 24(RLS), as amended, out of committee. Representatives Berkowitz and Kookesh voted against it. Therefore, HCS CSSJR 24(JUD) was reported out of the House Judiciary Standing Committee by a vote of 4-2.

HB 385 - UNFAIR TRADE PRACTICES ATTY FEES/COSTS

Number 2124

CHAIR ROKEBERG announced that the last order of business would be HOUSE BILL NO. 385, "An Act relating to the attorney fees and costs awarded in certain court actions relating to unfair trade practices; and amending Rules 54, 79, and 82, Alaska Rules of Civil Procedure."

Number 2162

REPRESENTATIVE BERKOWITZ moved to adopt the proposed committee substitute (CS) for HB 385, version 22-LS1224\C, Bannister, 3/21/02, as a work draft. There being no objection, Version C was before the committee.

Number 2213

REPRESENTATIVE ERIC CROFT, Alaska State Legislature, sponsor, said that HB 385 does two things. Section 1 attempts to provide a shield for consumers who are pursuing their own claims by precluding them from having to pay attorney fees to a prevailing defendant unless the suit is found to be frivolous. He remarked that the fundamental problem with consumer protection [cases] is the lack of available legal counsel who are willing to pursue what are essentially small claims. He elaborated:

> When you buy a $100 toaster and it does not work, and the major corporation that sold it to you does not give you any satisfaction under the warranty, you're

> in a difficult situation trying to get a lawyer to pursue that kind of claim. They will say, "First of all, it will cost you ... $5,000 to pursue this all the way through." And the worst part about it is, the major corporation knows that, and they can tell you ... essentially what they want because very few people are going to have the ability to spend $5,000 to get their $100 toaster fixed.

REPRESENTATIVE CROFT said that currently, even if someone is able to pursue such a case, if it gets thrown out on some sort of technicality, that person could be assessed either all or a large portion of the major corporation's attorney fees. He explained that in developing HB 385, he used a model from the Civil Rights Act, which, because of a lack of attorneys willing to pursue such cases, enabled private individuals to pursue their claims without being assessed attorney fees if they lost.

REPRESENTATIVE CROFT explained that Section 2 of HB 385 would give the attorney general the power to collect fees and put them in a special fund that would be used for "consumer protection defense actions." He mentioned that although Sections 1 and 2 are severable, he opined that together, Sections 1 and 2 provide a little more help for individual plaintiffs and a slightly more certain funding stream for the Office of the Attorney General so that it can pursue [consumer protection] claims.

CHAIR ROKEBERG noted that language similar to that of Section 1 was heard and rejected in a prior legislature.

REPRESENTATIVE CROFT remarked that the decisions of one legislature are not binding on future legislatures.

Number 2360

REPRESENTATIVE JAMES mentioned that she learned early on that for less serious issues, the best advice she could give people is for them to stay out of court to begin with if at all possible. People who go to court expecting to be compensated for their losses are bound to be disappointed because of the additional emotional costs; going to court is a dart game. She said that it is her belief that if people are willing to go to court over an issue, they should be willing to pay the price if they lose.

REPRESENTATIVE CROFT agreed that Representative James's advice is good advice, but noted that this is unfortunate, since the

justice system is intended to fix "some of these problems." The reality, however, is that there is very little cost-effective remedy for small indignities, he noted. When an entity has sold a shoddy piece of goods of a relatively low value, "are we really going to say that Alaskans have no recourse to fix that?" he asked. He said the corporations that do so, although they are probably few in number, know that the disadvantages of going to court are so big that very few individual consumers are going to do it; therefore, those corporations are willing to sell 100 defective toasters, for example, since 99 of the buyers aren't going to seek recourse. He remarked that although the justice system works well for resolving large injustices, he is searching for a cost-effective, relatively quick way for ordinary consumers to get risk-free relief for small injustices.

REPRESENTATIVE JAMES pointed out, however, that there is an inherent risk to living, that not everything can be fixed, and that time is money.

TAPE 02-35, SIDE B
Number 2489

REPRESENTATIVE JAMES said whether "it's your own time or someone else's time," the amount of money it's costing to pay attorney fees and court fees is only a small part of the cost of going to court." If it's a big issue, she said, it should be pursued, but if it's a small issue, "you just need to swallow and go on with life."

REPRESENTATIVE BERKOWITZ, referring to the "100 toasters" example, pointed out that it is usually not the single consumer who would bring the action against the seller; it would be someone who knew that there were a 100 folks who'd been ripped off by a bad toaster. Therefore, any problem that could possibly be corrected by the language in Section 1 of HB 385 only exists if one aggregates all of those small indignities.

REPRESENTATIVE COGHILL asked how many suits have been deemed frivolous.

REPRESENTATIVE CROFT said he does not have any statistics regarding the number of frivolous suits. And although there are sanctions for frivolous actions, he surmised that the very burdens that Representative James spoke of tend to keep many [frivolous suits] from being filed.

CHAIR ROKEBERG mentioned that prior legislation, which later became law, contained a definition of frivolous. He suggested that there has never been "a finding of [Civil Rule 11 of the Alaska Rules of Civil Procedure]"

REPRESENTATIVE BERKOWITZ argued to the contrary that if the committee's staff researched that issue, "she would come up with a long list of Rule 11 cases."

REPRESENTATIVE CROFT, to summarize, said that Section 1 and Section 2 reflect two different approaches. Section 1 empowers individual consumers to pursue their own cases, whereas Section 2 helps the government pursue consumer protection cases. Via Section 2, when the government wins consumer protection cases, it would be allowed to keep the fees and use them to further consumer protection activities. He opined that there is a problem that needs solving, and to that end, he observed, the committee can either keep both Sections 1 and 2, so that they can work in tandem, or keep one of the sections and delete the other, depending on which philosophy the committees prefers - individual empowerment or governmental [intervention]. He also opined that Alaskans are increasingly becoming targets of consumer fraud, and the legislature should do something about it.

REPRESENTATIVE BERKOWITZ asked Representative Croft whether he would characterize [Section 1] as form of privatization.

REPRESENTATIVE CROFT indicated that he would. He mentioned that four years ago, he'd introduced legislation to provide the Office of the Attorney General with more funds with which to pursue consumer protection issues, but other legislators, notwithstanding concerns regarding consumer fraud, were reluctant to support [the increased funding].

Number 2213

REPRESENTATIVE BERKOWITZ surmised, then, that legislators who generally support privatization as a concept should feel comfortable with Section 1.

REPRESENTATIVE CROFT said: "You would think so."

CHAIR ROKEBERG asked for confirmation that currently, plaintiffs in "these private rights of actions [get] the costs, by court rule, and full reasonable [attorney] fees."

[An unidentified speaker indicated that was correct.]

CHAIR ROKEBERG continued, pointing out that currently, defendants are subject to [Civil Rule 82 of the Alaska Rules of Civil Procedure]; therefore, there is already an inequity in favor of plaintiffs, since they get full attorney fees.

REPRESENTATIVE CROFT countered that although that is a correct analysis, plaintiffs currently face an unbalanced field in terms of the difference in power between an individual with a faulty toaster and a major corporation. He acknowledged that [Section 1] would be providing an individual who sought redress for a small injustice another tool that the defendant would not have.

CHAIR ROKEBERG remarked that [current statute] already gives plaintiffs full right of recovery, which, he opined, is a pretty major concession.

REPRESENTATIVE CROFT, after restating his opening remarks that there is a problem that needs to be fixed and what the aspects of that problem are, opined that although current statute provides some protection for consumers, it does not go far enough.

Number 2053

LES S. GARA, Attorney, testified via teleconference, and said:

> Five years ago we enacted the first round of amendments to the "consumer protection" Act, and ... they tried to make a fix to what was a pretty broken consumer protection system. ... We took a look over the last five years to see how well what we did five years ago was working. We held a consumer law conference in November; it was attended by about 100-125 people. [Representative] Dyson was there; [Representative] Croft was there. And what we got out of that conference was that we still had two major problems. Two major problems that keep the consumer protection system from working, and that's what these two provision aim to solve. ...
>
> This bill ... is timely; at a time when we're asking the members and citizens of the state to contribute to possibly help fund government, I think we have to find ways to save people money at the same time, and that's what this does. The bill also saves people money and

enhances the consumer protection system without impacting the budget, and I think that's also important. We've really tried to work to come up with a better system that doesn't impact the budget. The provisions of [HB 385] are well tried and tested.

The provision ... that currently allows plaintiffs full [attorney] fees if they win their consumer fraud case, ... that ... is called privatizing the attorney general's function. What it does is, it says we know that ... the government isn't going to be able to stand up and help people when they've been victimized by consumer fraud, so let's try and make it so that they can represent and help themselves. And so five years ago we enacted a bill that said plaintiffs in consumer fraud cases, if they prove they've been defrauded, can recover full [attorney] fees; that's the only way they're going to find private attorneys to help them.

Number 1937

MR. GARA:

But there's still an impediment. And the impediment is that when somebody walks into an attorney's office and they say, "Look, I've been defrauded by a used car dealer to the tune of $800," the attorney's advise has to be to that person, "You know, we can pursue the claim, it's a really good claim, but let me tell you this: If we lose the case, you might owe $10,000; $20,000; $30,000; $40,000; $50,000 in [attorney] fees to the other side and there are many ways you can lose the case." That other person just walks out of the office and says, "Well that's an indignity I'm just going to have to keep to myself." And that's what happens in these consumer cases: they're small, and people are scared out of going to court to vindicate themselves and to stand up against an injustice. They're ... scared out by the [attorney] fee provision in Rule 82.

So what we've done in this Section 1 of [HB 385] is ... followed 100 years of practice from the federal civil rights arena. It's in the title (indisc.) that's been there since 1964; it's been in the Civil Rights Act ... since the 1800s. And it says this:

"If you win your case, if you prove that you've been wronged, you do get full [attorney] fees, so you can go out and find an attorney; we're not going to scare you out of court by saying if you lose, you have to pay [attorney] fees, except ... if your case is frivolous, you will be penalized - you'll have to pay full [attorney] fees to the other side." That's the system that works under the civil rights statutes, the system that works under a number of sort of states' and federal remedial statutes in areas just like this, and so this is a system that's worked for a long time.

Number 1880

MR. GARA continued:

It's a system that I think we need to enact here: A, in order to stop scaring people out of standing up for their rights; B, because we're never going to give the attorney general's office enough funding so that the attorney general's office will represent consumers in all the cases that are brought over to their office - they just can't do it and we don't have the money to do that. So, if we're going to have a private system that works, this is how we're going to have to do it.

We tried enacting half of the bill five years ago, which was to just give full [attorney] fees to plaintiffs if they won their cases. But the part that ... practitioners in the area say is still scaring people out of standing up for themselves is the part that says that, as an attorney, you have to tell your client, "If you take this case and lose, even if it's a good-faith case, you might owe $10,000; $20,000; $30,000; $40,000 in [attorney] fee penalties." ... The system is just not working very well with that threat in place, so I think it's a fair compromise to do what the federal and state laws in many areas do, which is only impose [attorney] fees against a plaintiff, in these kinds of cases, if they file a frivolous lawsuit, and in that case they should be penalized.

The second part, Section 2, does this -- we're in a time where we don't have a lot of money for things. I don't think anybody would say that preventing consumer fraud is a bad thing; I don't think anybody would say

that having a consumer protection section at the [Office of the Attorney General] is a bad thing. Those are good things that Republicans think are good things, Democrats think are good things, everybody thinks are good things. But how are we going to fund a state consumer protection agency? Well, it's hard in these times and we should do what many laws do in other areas, which is when the state pursues a consumer fraud claim and proves consumer fraud, they should be able to recover their full enforcement costs. And that's what Section 2 does. It makes the state whole for their time.

Number 1797

MR. GARA:

... Where's the money come from? The money ends up coming from people who commit consumer fraud. ... What better group of people are there out there to fund a state consumer protection section? So that's what Section 2 says: that the state - if it prevails, if it proves consumer fraud - is entitled to be fully compensated for its time and for its efforts. And then what'll happen is that money will go into a special account, and at the end of the year you'll be able to see how much money has been raised. You don't have to appropriate it back to the [Office of the Attorney General], but we do this in some of the environmental cases [and] we do this in other areas of law: you create this special account just so you can ... see how well the system is working, and you can appropriate the money anywhere you want. But that's what that new Section 3 does.

Places where this Section 2 system is in place - the federal environmental laws that have been amended, even under what's been called the Republican revolution in Congress - they still allow the government to recover full [attorney] fees in those cases. In the Clayton Act - that's the federal sort of an antitrust law - that's what we do: we let the government recover full [attorney] fees when they prove their cases. ... It should be no different here, and the extra motivation we have here is that we don't have a lot of money in the state any more. And so if we're going to fund government, we should have

government funded in a way that's meaningful and is smart, and I think it's meaningful and smart to have those people who commit consumer fraud pay for this part of our governmental function.

... Representative James made a good point; ... as an attorney, I told my clients ..., "You know, filing a lawsuit in this state is like Russian roulette - it's a crapshoot." But one of the things that makes it a crapshoot is this Rule 82 ... that says if you lose your case you have to pay the other side's [attorney] fees. And so we can stop it from being a crapshoot. And when I say Russian roulette, we have an even worse provision on the books right now than that ...; even today, if you win your lawsuit, you might have to pay [attorney] fees to the other side ... [because of [Civil Rule 68 of the Alaska Rules of Civil Procedure]. ...

MR. GARA concluded:

The thing is, it is a crapshoot, there is Russian roulette, and we're trying to stop it from being a crapshoot and we're trying to sort of minimize this Russian roulette concept in the law that keeps people from standing up for their rights. If we don't do anything about it, we're going to make sure the people who make $20,000; $30,000; $40,000 a year [get] to absorb the cost of shoddy business practices. That's not right. I don't think we should ask people to keep bearing those costs, especially people who live on the economic margins; ... those are ... really the people that this bill helps. ... As we've watched ... [current law] work, we've seen that there's still some somewhat major shortcomings, and through experience and through what we've learned in the last five years, we've determined that these are the two provisions that would really make ... this system work without costing the state any money. ...

Number 1570

STEVE CONN, Executive Director, Alaska Public Interest Research Group (AkPIRG), testified via teleconference, and remarked that in his experience, change does not occur in consumer-justice laws unless it is [done in a] bipartisan [manner]. He mentioned that there are two barriers for the consumer, and that the

second one, as experienced by middle-class consumers, is addressed by HB 385. The first barrier, he noted, is that most consumers - 99 percent - are too embarrassed by being cheated to speak out, particularly if they are elderly, because relatives and friends might take it as a sign that they are entering some state of dementia.

MR. CONN, returning to the second barrier, said that neither the rich nor the poor need to worry about penalties for filing frivolous lawsuits, because the poor are "judgment-proof" and the rich "have got deep enough pockets." He said that the people who need HB 385 "are people like you and people like me," adding that he defined the middle-class as those who have something to lose but can't afford to lose it. He opined that HB 385 is needed in order to secure some justice for the middle-class, should they have "the guts enough" to go to court. He remarked that the toaster example is an insult to the consumers that he has met: "people really do suffer major hurts that hit them where they live, that stop them from feeding their family, [or] from getting to work; this is serious business if they're going to spend the time to go to court or even be not embarrassed enough to talk about their complaint."

MR. CONN said that HB 385 speaks to something that is rooted in bipartisanism; that this legislature has got a great bipartisan movement going on several fronts, in several areas of consumer justice; that he is very positive about this [issue]; and that HB 385 emerged from the consumer roundtable discussions [organized] by Representatives Dyson and Croft. With regard to setting aside the money won from judgments for ongoing consumer protection as is proposed by Section 2 of HB 385, Mr. Conn commented that "in olden days," the state "paid consumer justice as they went." With regard to Section 1 of HB 385, he commented that if people are willing to take the time and trouble to go to court to say that they've been cheated, they mean business, they have something to lose, and they deserve the shield that HB 385 could provide. He noted that such people are also acting on behalf of the many people who won't invest the time and money or who are too embarrassed to speak up.

Number 1312

REPRESENTATIVE JAMES, after relaying that her understanding of HB 385 does not comport with Mr. Conn's explanation, asked him whether he is claiming that plaintiffs who win are not awarded attorney fees, or whether he is saying that the problem revolves around the fact that when plaintiffs lose "they have to pay."

MR. CONN said:

> If they had a sensational case and it's handled by themselves or by a good lawyer, they're going to win. But we're talking about cases that are harder to prove. They're small-money damages to start off with - so most attorneys aren't interested in them - and they're probably going to be somewhat back on the statutory/civil penalties provided in the Act. And ... they give it their best shot, but they lose because, as you said earlier, you don't know if you are going to win or lose. But they're not doing it to play games with the opposition or to play games with the courts; they're doing it because they're outraged - they're righteously outraged.

REPRESENTATIVE JAMES responded:

> I have known cases of people who have been aggrieved ... and they've gone to court and they've won and they're still stressed out because the experience was so horrible. And so I think that if we were to do this, what you're doing is encouraging more attorneys to convince them to go to court. And I'm not convinced that that's the thing they ought to do, because of all the other kinds of experiences that they can have and the net results when they're done: they're still not whole when it's over.

MR. CONN said a sense of outrage is satisfied in a lot of ways. Sometimes money will never compensate, whether one is the victim of a physical crime or a financial crime; however, he noted, what he has experienced is that for a lot of people, the satisfaction of making a crook stand in the light of day has a cathartic effect. He also remarked that people are often emboldened by the fact that others have gone forward with cases involving crimes against consumers. He opined that many consumer fraud perpetrators are not amateurs, they are real criminals that commit fraud for a living.

REPRESENTATIVE JAMES said that her concern is that it is not the plaintiff who receives the real benefit of winning such cases, it is the attorney.

Number 1088

MR. CONN remarked that there are areas of the law that attorneys "won't touch with a ten-foot pole," such as workers' compensation cases, in which people just have to do for themselves. He mentioned that consumer protection is not an area of the law that lends itself to "ambulance chasers," and that oftentimes consumers just need a little assistance from lawyers who are honestly trying to help and are not just trying to get rich, in order to put their cases forward.

REPRESENTATIVE JAMES remarked that with [HB 385], unlike legislation pertaining to workers' compensation, "the other issues are too broad ... and I'm just not willing to go there."

CHAIR ROKEBERG asked Mr. Conn whether he is aware of any instances occurring in the last five years that would justify "this remedial [legislation]."

MR. CONN said yes, adding that he has people call him all the time who are angry and in despair and who have tried without success to get help from attorneys regarding contractors, house repairers, and roofing specialists, for example.

CHAIR ROKEBERG mentioned that the limit [for] small claims court has been raised to $10,000; thus, he surmised, Mr. Conn must be referring to cases in excess of that amount.

MR. CONN indicated that he was not.

CHAIR ROKEBERG asked, then, why folks didn't just go through small claims court to get satisfaction, since that was the proper venue.

MR. CONN argued that the problem lies with the fact that "the other side can still bring their attorney into small claims court" and, through that attorney, can "remove that case out of that court." He noted that if small claims court were limited only to people representing themselves, "we might have a different story," but such is not the state of the law.

CHAIR ROKEBERG mentioned that he would like to hear some specific cases for which current law is not working.

Number 0867

MARIE DARLIN, AARP, mentioned that the AARP was very involved in trying to get responsibility for consumer protection placed back into the [Office of the Attorney General], and was very glad to

see support for doing so because the AARP had received a lot of complaints from members and other folks asking what they could do in situations of consumer fraud, and so it was nice to be able to finally say, "Call the attorney general's office; there is somebody there who will at least speak to you and give you some advice and perhaps help you out." In conjunction with that, she said, the AARP has written a letter of support for HB 385, with the idea that it will take [consumer protection] one step further.

REPRESENTATIVE JAMES stated that she certainly supports the consumer protection agency to a greater extent than [the legislature] has currently done, because that is where the responsibility belongs, since that is where the expertise is; it would be able to settle such cases more quickly and with less trauma for the [plaintiffs].

MS. DARLIN commented: "But again we come back to the fact that the rich and the poor maybe don't have to worry as much as some of the middle-income-class people and particularly some of those who may not go into small claims court."

CHAIR ROKEBERG asked Ms. Darlin whether she knew of anybody that wanted to file a lawsuit but didn't because he/she was afraid of losing attorney fees.

MS. DARLIN said no, she is not aware of any specific instances at this time, but suggested perhaps that is because "there has been another place for them to go" to receive help.

REPRESENTATIVE BERKOWITZ suggested that perhaps that question should also be asked of Mr. Conn and Mr. Gara.

CHAIR ROKEBERG indicated that he would be doing so after others had a chance to testify.

Number 0666

PAM LaBOLLE, President, Alaska State Chamber of Commerce ("the Chamber"), remarked that the vast majority of businesses in Alaska are small businesses, and, thus, the vast majority of the Chamber's members are small business owners. She opined that the premise upon which HB 385 is based is that all business is big and thus can afford to absorb the costs of "this sort of thing." She remarked that things have already been changed greatly by "allowing Rule 82 to not apply ... if you are ... found guilty: you're going to pay all the attorney fees." With

HB 385, not only will [defendants] have to pay if they are guilty, but they will also have to pay all of their own costs even if they are innocent. "This is just taking it way too far," she opined.

MS. LaBOLLE remarked that small business is what enables the Alaskan business world to operate, and that these are businesses which might only have 5-10 employees. She said that it might be the corner grocer who's hauled into court because somebody thinks the vegetable scale is rigged. It's not big business, it's not some giant company like the Proctor & Gamble Company or the General Electric Company; it's the small companies in Alaska that are going to be affected by HB 385. However, regardless of whether it is small business or big business, business people deserve equal protection under the law; they should not be treated so differently, as is proposed by HB 385.

CHAIR ROKEBERG asked Ms. LaBolle how many small business would go out of business if they were "slapped with a $20,000 or $30,000 legal bill."

MS. LaBOLLE surmised that such costs would cause a great many small business to consider going out of business, even if they were found innocent.

REPRESENTATIVE BERKOWITZ asked Ms. LaBolle how she feels about section 2 of HB 385.

MS. LaBOLLE said that her organization does not like Section 2 either.

REPRESENTATIVE BERKOWITZ noted that Section 2 merely provides that if the state wins, the state gets full attorney fees.

MS. LaBOLLE asked how that differs from current practice.

CHAIR ROKEBERG posited that currently, the state, too, is subject to Rule 82, which provides that prevailing parties are awarded attorney fees according to a scale.

Number 0337

CLYDE (ED) SNIFFIN, JR.; Assistant Attorney General; Fair Business Practices Section; Civil Division (Anchorage); Department of Law (DOL), testified via teleconference, confirming that currently, the state is subject to the limitations of Rule 82, which provides that attorney fees can

only be recovered according to a specific scale. He noted that this scale calls for a substantial reduction in the amount of attorney fees that the state can collect.

REPRESENTATIVE JAMES pointed out that a big part of Section 2 is the establishment of the separate fund.

CHAIR ROKEBERG opined that there were other problems as well.

MS. LaBOLLE indicated that even having to pay only 20-30 percent of a large legal bill would still be a huge financial burden for most small businesses. In conclusion, she said that she would like business people to receive equal protection under the law.

CHAIR ROKEBERG mentioned that according to his reading of HB 385, the separate fund has the potential to grow to "$680 million based on the tobacco settlement."

MR. SNIFFIN pointed out that only the attorney fees portion could have gone into the separate fund proposed by Section 2, not the entire settlement.

TAPE 02-36, SIDE A
Number 0001

CHAIR ROKEBERG mentioned he recalled a special payment for those costs that amounted to about $15 million.

MR. SNIFFIN commented that the DOL supports the concept embodied in Section 1 of providing more incentive to consumers who wouldn't otherwise bring some of these types of small lawsuits against businesses. In response to testimony from the Alaska State Chamber of Commerce representative, he pointed out that the provision of Section 1 could benefit small businesses as well in that if larger companies were victimizing them, they, too, might be more inclined to pursue litigation. Small businesses are oftentimes the subject of predatory action by other companies; small businesses get scammed just like other people, he added.

MR. SNIFFIN said that the DOL primarily supports Section 2 in that there is no provision, currently, that would allow the attorney general to recover its full fees. He remarked that in a lot of the bigger, multistate cases in which the DOL becomes involved, [Section 2] could be an important settlement tool for the state. Currently, because the state cannot make a claim for full attorney fees, Alaska is not in as favorable a position as

other states when settling with large, national companies; as a result, Alaska is sometimes forced to negotiate a lesser amount than other states. He also noted that adopting a provision such as Section 2 would bring Alaska in line with a lot of other federal and state laws across the country that allow for the full recovery of attorney fees in prevailing situations.

MR. SNIFFIN, in response to questions posed of other testifiers, said that the DOL has not kept any statistics regarding consumers who decide not to go forward with a lawsuit because of the fear of having to pay the opposition's attorney fees. He said that a lot of consumers come to his office seeking help because they can't afford a lawyer, and he opined that Section 1 would give such people an opportunity to pursue the action on their own.

CHAIR ROKEBERG asked whether Section 2 would apply to attorney fees from class action lawsuits that the state engages in.

MR. SNIFFIN said it would give the state more authority when negotiating in such suits.

REPRESENTATIVE BERKOWITZ, referring to page 1, line 13, asked Mr. Sniffin for his opinion regarding changing "shall" to "may".

MR. SNIFFIN said that such a change would be fine with the DOL.

Number 0480

CHAIR ROKEBERG asked Mr. Gara and Mr. Conn to provide the committee with examples of cases in which people wanted to file a lawsuit but didn't because they were afraid of losing attorney fees.

MR. GARA said that he could provide two examples in which people decided not to pursue very valid consumer claims: one case involved an elderly woman, and the other case involved someone who was defrauded by an insurance company. He said he would be happy to send the committee written testimony regarding those examples.

MR. CONN, also in response to testimony made by the Alaska State Chamber of Commerce representative, said that it is not just middleclass retired people and elderly people who contact AkPIRG for help; he also hears from small entrepreneurs all the time because they are getting abused by bigger businesses like banks, insurance companies, or suppliers. Thus, contrary to the

Chamber's testimony, small businesses would also be able to benefit from HB 385, he remarked.

CHAIR ROKEBERG asked Mr. Conn whether he is suggesting that commercial operators should take advantage of [HB 385] in commercial transactions.

MR. CONN said he was not suggesting that. He said that he is talking about consumer fraud perpetrated against small businesses, which are also consumers. For example, the owner of a delivery service who gets cheated by a big car dealer could have his/her business destroyed. He noted that the idea "of putting small businesses on one side [and] setting them up against consumers is completely nonsensical."

CHAIR ROKEBERG remarked that he has not heard from any small business owners who were clamoring for relief.

REPRESENTATIVE BERKOWITZ pointed out that Mr. Conn just mentioned examples of such.

MR. CONN confirmed that, noting that unlike the Better Business Bureau, AkPIRG does not "process cases"; rather, he simply tries to provide additional information, resources, and encouragement to people, including small business owners, who call AkPIRG for help.

CHAIR ROKEBERG announced that HB 385 would be held over.

ADJOURNMENT

Number 0693

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:05 p.m.