

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

April 2, 2007

1:11 p.m.

**MEMBERS PRESENT**

Representative Jay Ramras, Chair  
Representative Nancy Dahlstrom, Vice Chair  
Representative John Coghill  
Representative Bob Lynn  
Representative Ralph Samuels  
Representative Max Gruenberg  
Representative Lindsey Holmes

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 158

"An Act providing for the licensing and regulation of private investigators and private investigator agencies; and providing for an effective date."

- MOVED CSHB 158(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 151

"An Act requiring an indemnification and hold harmless provision in professional services contracts of state agencies, quasi-public agencies, municipalities, and political subdivisions."

- HEARD AND HELD

HOUSE BILL NO. 182

"An Act making the offering of certain promotional checks an unfair or deceptive act or practice."

- MOVED CSHB 182(JUD) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: HB 158

SHORT TITLE: PRIVATE INVESTIGATORS/AGENCIES

SPONSOR(S): REPRESENTATIVE(S) ROSES

02/28/07 (H) READ THE FIRST TIME - REFERRALS  
02/28/07 (H) JUD, FIN  
04/02/07 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 151

SHORT TITLE: INDEMNITY CLAUSE IN PUBLIC CONTRACTS  
SPONSOR(S): REPRESENTATIVE(S) JOHNSON BY REQUEST

02/22/07 (H) READ THE FIRST TIME - REFERRALS  
02/22/07 (H) STA, JUD  
03/20/07 (H) STA AT 8:00 AM CAPITOL 106  
03/20/07 (H) Heard & Held  
03/20/07 (H) MINUTE(STA)  
03/24/07 (H) STA AT 10:00 AM CAPITOL 106  
03/24/07 (H) Moved CSHB 151(STA) Out of Committee  
03/24/07 (H) MINUTE(STA)  
03/26/07 (H) STA RPT CS(STA) NT 6DP  
03/26/07 (H) DP: JOHANSEN, JOHNSON, COGHILL, DOLL,  
GRUENBERG, LYNN  
04/02/07 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 182

SHORT TITLE: OFFERING PROMOTIONAL CHECKS  
SPONSOR(S): REPRESENTATIVE(S) LYNN

03/07/07 (H) READ THE FIRST TIME - REFERRALS  
03/07/07 (H) L&C, JUD  
03/19/07 (H) L&C AT 3:00 PM CAPITOL 17  
03/19/07 (H) Moved Out of Committee  
03/19/07 (H) MINUTE(L&C)  
03/21/07 (H) L&C RPT 7DP  
03/21/07 (H) DP: GARDNER, LEDOUX, BUCH, NEUMAN,  
GATTO, RAMRAS, OLSON  
04/02/07 (H) JUD AT 1:00 PM CAPITOL 120

**WITNESS REGISTER**

REPRESENTATIVE BOB ROSES  
Alaska State Legislature  
Juneau, Alaska  
POSITION STATEMENT: Sponsor of HB 158.

TIM MARTINSON, Staff  
to Representative Bob Roses  
Juneau, Alaska  
POSITION STATEMENT: Presented HB 158 on behalf of the sponsor,  
Representative Roses, and responded to questions.

HILLIARD H. "TRES" LEWIS, III, Private Investigator  
Mendenhall Investigations, Inc.  
Juneau, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of HB 158.

RALPH TAYLOR, Secretary  
Alaska Investigators' Association, Inc. (AIA)  
Nome, Alaska

POSITION STATEMENT: Provided comments regarding the educational requirements of HB 158.

KATHRYN MONFREDA, Chief  
Criminal Records and Identification Bureau  
Division of Statewide Services  
Department of Public Safety (DPS)  
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 158.

ANDY KLAMSER, Member  
Board of Directors  
Alaska Investigators' Association, Inc. (AIA)  
Homer, Alaska

POSITION STATEMENT: During discussion of HB 158, provided comments and said he supports the bill and urges its passage.

JOSEPH E. AUSTIN, Member  
Board of Directors  
Alaska Investigators' Association, Inc. (AIA)  
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 158.

DENISE MARIE PETTY, Owner  
DC Recovery & Investigations;  
President  
Alaska Investigators' Association, Inc. (AIA)  
Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 158.

RICK URION, Director  
Juneau Office  
Division of Corporations, Business, and Professional Licensing  
Department of Commerce, Community, & Economic Development  
(DCCED)  
Juneau, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 158.

REPRESENTATIVE CRAIG JOHNSON  
Alaska State Legislature  
Juneau, Alaska

POSITION STATEMENT: Speaking as the sponsor by request, presented HB 151 and responded to questions.

CLYDE (ED) SNIFFEN, JR., Assistant Attorney General  
Commercial/Fair Business Section  
Civil Division (Anchorage)  
Department of Law (DOL)  
Anchorage, Alaska

POSITION STATEMENT: Provided comments and responded to questions during discussion of HB 182.

#### **ACTION NARRATIVE**

**CHAIR JAY RAMRAS** called the House Judiciary Standing Committee meeting to order at [1:11:51 PM](#). Representatives Samuels, Lynn, Dahlstrom, and Ramras were present at the call to order. Representatives Holmes, Gruenberg, and Coghill arrived as the meeting was in progress.

#### HB 158 - PRIVATE INVESTIGATORS/AGENCIES

[1:12:06 PM](#)

CHAIR RAMRAS announced that the first order of business would be HOUSE BILL NO. 158, "An Act providing for the licensing and regulation of private investigators and private investigator agencies; and providing for an effective date."

[1:12:14 PM](#)

REPRESENTATIVE DAHLSTROM moved to adopt the proposed committee substitute (CS) for HB 158, Version 25-LS0442\E, Bullard, 3/14/07, as the work draft. There being no objection, Version E was before the committee.

[1:12:31 PM](#)

REPRESENTATIVE BOB ROSES, Alaska State Legislature, sponsor, relayed that his staff would present HB 158, and that various witnesses would be testifying on the different aspects of the bill.

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TIM MARTINSON, Staff to Representative Bob Roses, Alaska State Legislature, said on behalf of Representative Roses, sponsor, that HB 158 would enact statewide licensing and regulation of private investigators and private investigative agencies, none of which are currently regulated by the state; currently, one can simply claim to be an investigator and obtain a business license without any experience in the field of investigation. The primary goal of HB 158 is that of protecting the consumer; currently those claiming to be investigators are not required to maintain errors and omissions insurance, and this leaves consumers with little or no recourse in the event that those they've hired are incompetent or [guilty] of misconduct.

MR. MARTINSON pointed out that investigators that conduct business in states without licensing standards and requirements are placed at serious disadvantage because many insurance companies and law firms will not hire investigators who are not both licensed and insured. This means, for example, that out-of-state licensed investigators unfamiliar with Alaska law would be hired to conduct investigations in Alaska. He offered that licensing investigators as set out via HB 158 will ensure that only investigators with insurance, good moral character, and sufficient education and experience will be conducting private investigations in the state.

[1:16:23 PM](#)

HILLIARD H. "TRES" LEWIS, III, Private Investigator, Mendenhall Investigations, Inc., relayed that he has 20-plus years of experience in the field of private investigation, and that he and the other private investigators that will be providing testimony are all members of the Alaska Investigators' Association, Inc. (AIA), and have been looking at licensing issues for several years. He explained that a number of problems have occurred in the past when those that have represented themselves as private investigators haven't really been qualified to act as such. For example, one person who'd just graduated from high school simply acquired a business license and then hired himself out as a private investigator even though he didn't know anything about being a private investigator; that person eventually contacted Mr. Lewis to obtain help, and Mr. Lewis was able to assist that person before any of the parties were injured.

MR. LEWIS went on to explain that when he began his career as a private investigator, he was mentored by an attorney for three and a half years, and most of the work he did at that time was done for that attorney. He mentioned that HB 158 provides that someone seeking a career as a private investigator can obtain the necessary education by going to work for an established private investigator or a law enforcement agency or via college courses specific to investigative work.

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REPRESENTATIVE DAHLSTROM offered her understanding that HB 158 has not been introduced to address a specific instance or problem.

MR. MARTINSON concurred.

REPRESENTATIVE DAHLSTROM asked how many investigators belong to the AIA.

MR. LEWIS said there are approximately 50 members.

REPRESENTATIVE DAHLSTROM asked what the AIA's membership requirements are, and what ongoing education members go through.

MR. LEWIS explained that the AIA is an organization of peers; that it holds annual conferences with "world famous" speakers addressing specific topics including but not limited to homicide investigations, polygraphs, and computer forensics; that several state agencies allow their investigators to attend the AIA's conferences, and members of the AIA are allowed to go to "pieces and parts of their conferences"; that private investigator organizations in other states offer additional educational opportunities; and that to join the AIA, prospective members fill out an application, submit to a [criminal] background check, and pay membership dues. He remarked that without the backing of a state statute, the AIA is unable to do more for, and require more of, its members and other private investigators in Alaska.

MR. LEWIS, in response to a question, relayed that under [Version E], licensing will occur through the Division of Corporations, Business, and Professional Licensing - which is located within the Department of Commerce, Community, & Economic Development (DCCED) - and licensees will not be governed by a board.

REPRESENTATIVE DAHLSTROM asked whether those provisions of the bill have been discussed with the commissioner of the Department of Public Safety (DPS).

MR. MARTINSON said [he] has spoken with the DPS and the DPS has indicated that it intends to remain neutral on the bill. He mentioned that the reason for choosing not to have a governing board was to decrease the fiscal note.

REPRESENTATIVE DAHLSTROM asked whether private investigators would be governed by an existing board if they are instead licensed under the DPS.

REPRESENTATIVE COGHILL surmised that that wouldn't be the case, and that the DPS wouldn't have purview over private investigators because "this is a professional practices area."

REPRESENTATIVE SAMUELS asked whether HB 158 contains provisions for revoking licenses.

[1:25:24 PM](#)

MR. LEWIS offered his understanding that under the bill, if someone filed a complaint against a licensed private investigator, the division would investigate the complaint and then suspend the license if the complaint is found to be valid. With regard to the question of who should license private investigators, he opined that there would be an inherent conflict of interest were the DPS to license private investigators; "I could give you a long list of troopers who respect me but ... don't like me because ... my job is to show where they have not successfully investigated or properly conducted the investigations in criminal cases." This is one reason why it's preferred that licensing be conducted by the division, he added.

MR. LEWIS, in response to a comment, pointed out that the division already employs its own investigators and thus it is familiar with what criteria ought to be met by those applying for licensure.

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RALPH TAYLOR, Secretary, Alaska Investigators' Association, Inc. (AIA), relayed that he would be speaking to the bill's education requirements. Education is imperative in any profession, regardless of whether that profession is seeking to improve

itself or maintain a professional image, and standards in training and education go hand-in-hand with high ethical standards - without education requirements, there will be no ethical requirements. He therefore requested that the committee support HB 158 and provide educational standards and licensing requirements for Alaska's private investigators.

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KATHRYN MONFREDA, Chief, Criminal Records and Identification Bureau, Division of Statewide Services, Department of Public Safety (DPS), relayed that she could answer questions regarding the background check provisions of HB 158.

REPRESENTATIVE GRUENBERG indicated that members have received a memorandum from Joan Kasson, Department of Public Safety, regarding a suggestion to insert a new paragraph (15) into AS 12.62.400 that would read, "licensure as a private investigator or private investigator agency under AS 08.85."; he asked Ms. Monfreda whether she supports this proposed amendment."

MS. MONFREDA said she does support it and was the one who had recommended it because it will ensure that national fingerprint-based background checks can be conducted. In response to another question, she said she can't speak to the pros or cons of licensing private investigators, but surmised that the bill will have very little impact on her section of the division. On the issue of whether the DPS should review applications, she said that she has received no direction regarding whether she should speak to that issue.

MR. MARTINSON, in response to a question, offered his understanding that the indeterminate fiscal note provided by the Division of Alaska State Troopers is outdated [since Version E no longer provides for the establishment of a governing board].

1:32:55 PM

ANDY KLAMSER, Member, Board of Directors, Alaska Investigators' Association, Inc. (AIA), offered information regarding his experience in the field of law enforcement and as a private investigator, adding that his own private investigator firm primarily handles jobs for law firms and insurance companies. He said that there are considerably more people operating as private investigators than belong to the AIA. On the issue of reciprocity, he said that many of the other 42 states that regulate private investigators provide reciprocity for

investigators from states that also license their investigators; currently, without the passage of HB 158, Alaska's investigators are not able to operate in those other states. He referenced Alaska's laws pertaining to victim protection and witness protection - particularly as they relate to sexual assault and sexual abuse of a minor crimes - and federal laws pertaining to identity theft and consumer privacy protection, and opined that it is important for anyone in Alaska working in the private investigator field to have a knowledge of those laws and abide by them. In conclusion, he said he supports [HB 158] and urged its passage.

CHAIR RAMRAS asked what is currently done in situations involving [an incompetent, fraudulent, or dangerous private investigator].

MR. LEWIS reiterated that currently the public has no recourse other than to seek assistance from "the district attorney's office" regarding a fraud investigation.

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JOSEPH E. AUSTIN, Member, Board of Directors, Alaska Investigators' Association, Inc. (AIA), relayed that he supports HB 158. He mentioned that he'd recently conducted some research and found that the state has issued 165 "private investigator" business licenses, that 40 of those were issued to out of state firms, and that of the 40 advertisements under the heading of private detectives and private investigators in the yellow pages of the phone book only 11 were placed by entities that are actually licensed. Furthermore, a criminal background check on several persons currently holding a business license in this field showed that some have been found guilty of the crimes of sexual assault, registered sex offender out of compliance, hindering prosecution, domestic violence assault, theft, and commercial bribery; a criminal background check on some persons whose business license in this field has expired have been found guilty of sex crimes and failing to register as a sex offender. He mentioned that under HB 158, such people would not be granted licensure. He asked the committee for its support in passing HB 158, and mentioned that information he's provided to the committee contains further specific instances of wrongdoing by those holding a business license and claiming to be a private investigator.

REPRESENTATIVE COGHILL asked whether municipalities provide licensing.

MR. AUSTIN said that in the Municipality of Anchorage (MOA), one is merely required to obtain a business license, submit a copy of a criminal background check, and pay the licensing fee.

REPRESENTATIVE COGHILL asked whether the bill will provide private investigators with new authority.

MR. LEWIS said no, and explained that the permissible activities listed in the bill are merely aspects of current practice with one exception: at the national level there are database companies that provide information only to licensed private investigators, and, under the bill, Alaska's private investigators will be able to access that information as well, whereas now they can't because they are not licensed.

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DENISE MARIE PETTY, Owner, DC Recovery & Investigations; President, Alaska Investigators' Association, Inc. (AIA), said that HB 158 is supported wholeheartedly because it will institute standards and accountability for people who are performing investigative services for insurance companies, attorneys, and private individuals. Without standards and accountability, some holding themselves out to be private investigators have the ability to cause great harm. The bill proposes to institute standards regarding continuing education, background checks, and reciprocity. The ultimate goal of the bill is to protect the consumer; under the bill, the consumer will have the ability to check and verify the credentials of those holding themselves out as private investigators, and the bonding and insurance requirements will allow the consumer to recover damages.

MS. PETTY said she has great concerns with possibly losing access to information simply because the state lacks licensure for this industry - losing access to information will impact the ability of private investigators to serve their clients - and with individuals holding themselves out to be private investigators not being of good moral character or honest, or who are sex offenders or commit other crimes. In conclusion, she said that she and the AIA support HB 158.

REPRESENTATIVE COGHILL asked whether the state's stalking laws impact the industry.

MS. PETTY indicated that those laws do not impact her industry because one must first notice he/she is being investigated and then feel threatened, and a good private investigator will not act in such a way as to get noticed to begin with; a good private investigator will not violate a person's rights.

MR. LEWIS explained that most of the time when doing surveillance, a private investigator is instructed specifically to not let the subject know he/she is being investigated, and would therefore cease his/her surveillance efforts if it appeared as though the subject was going to learn that he/she was the subject of an investigation. A private investigator could be arrested for harassment or stalking, just like anyone else, if he/she gets carried away with his/her investigation. In response to another question, he opined that the bill will not embolden private investigators to take chances, particularly given that those hiring a private investigator will not want him/her to take such chances.

CHAIR RAMRAS noted that Version E doesn't contain any bonding requirements.

MR. MARTINSON explained that they were removed because Version E contains a requirement that private investigators purchase errors and omissions insurance of \$100,000, and it was felt that such insurance makes it easier for a disgruntled client to file a claim and get his/her money back.

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MR. LEWIS, in response to a question, said that in addition to working for insurance companies he has also been employed by a number of individual attorneys, and has done investigative work on a number of major criminal felonies. He mentioned that he has not done any "domestic cases" in over 15 years - ever since Alaska became a "no fault" divorce state. He opined that it's not really appropriate for an investigator to do that type of work when he/she could instead simply advise the individual that Alaska is a "no fault" divorce state and so finding out that his/her spouse is cheating won't do him/her any good in the court room. He mentioned that when he investigates workers' compensation cases he is usually employed by the insurance company. He also relayed that he's sought former property owners in land title cases, and has found adoptees and heirs to estates.

MR. LEWIS, in response to a question, assured the committee that private investigators are not allowed to do things that law enforcement personnel are prohibited from doing, and that private investigators will not be granted extra rights by the bill; a private investigator can look through someone's trash, but can not get a wiretap nor petition a court for a wiretap. Furthermore, confidentiality is assumed with the title, "private investigator" and most private investigators would be out of business if they violated that confidentiality.

MR. LEWIS, in response to further questions, said that a private investigator has no additional authority to arrest people other than that of a regular citizen to make a citizen's arrest, though he has transported two individuals to jail at the request of the individuals' attorneys when those individuals violated the conditions of their release.

REPRESENTATIVE GRUENBERG expressed favor with Version E. He opined, however, that rather than simply referencing AS 08.85.150 along with some other specific informational items, proposed AS 08.85.600 should specifically list all of the informational items outlined in proposed AS 08.85.150 that ought to be kept confidential. He suggested that that be done before the bill gets to the House floor.

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RICK URION, Director, Juneau Office, Division of Corporations, Business, and Professional Licensing, Department of Commerce, Community, & Economic Development (DCCED), explained that the administration is taking a neutral stance on the bill. He went on to say: "As you know, we license people for public protection and public safety, and we don't think unlicensed activity by investigators rises to the level of needing ... licensure at this time." Should the legislature decide to move forward with the bill, however, the division will do as directed, he relayed, and mentioned that licensing a category of people without also having a corresponding board can be done and already occurs. With regard to Representative Gruenberg's comments, he explained that the aforementioned provisions pertain to what the DCCED keeps confidential. In response to a question, he listed some other categories of people that the DCCED licenses without there being a corresponding board.

MR. URION, in response to a comment, said that it may come down to a judgment call regarding who the division chooses to license. There is a very fine line between protecting the

public and protecting the profession, and some professions, he opined, cross that line by setting standards for admission that are overly restrictive.

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CHAIR RAMRAS asked whether the bill would exclude someone with many years of experience as a private investigator simply because he/she doesn't meet the educational criteria outlined in the bill. He also asked whether currently practicing private investigators that've been found guilty of domestic violence crimes or other crimes will be excluded from receiving a license under the bill.

MR. LEWIS explained that the bill contains a provision that would permit those that are currently practicing to obtain licensure. He then recapped some of the qualifications outlined in proposed AS 08.85.130 and AS 08.85.140 pertaining to education and prior experience, and opined that there will be multiple avenues by which one can enter into the occupation.

MR. URION pointed out that if there truly is a problem with those that are currently holding themselves out to be private investigators, then allowing those that are currently practicing to be "grandfathered" in will not solve the alleged problem.

REPRESENTATIVE DAHLSTROM expressed concern that people who are convicted sex offenders would be allowed to be grandfathered in.

MR. LEWIS offered that under the transitional provisions of the bill, in order to be grandfathered in, one must still meet the criteria outlined in AS 08.85.110, or he/she [won't] qualify regardless of how many hours of experience he/she has.

MR. MARTINSON concurred, and, in response to a further question, mentioned that proposed AS 08.85.110(2) says: "may not have been convicted of a felony in any jurisdiction in the 10 years preceding license application".

CHAIR RAMRAS asked why a threshold of 10 years was chosen.

MR. LEWIS indicated that a similar threshold already applies to process servers.

REPRESENTATIVE DAHLSTROM opined that for certain crimes, a person shouldn't be allowed to become a private investigator

just because 10 years have passed since the person was convicted.

MR. MARTINSON relayed that proposed AS 08.85.110(3) says:

may not have been convicted of a crime of dishonesty or sexual misconduct, as defined by the department in any jurisdiction that the department determines

(A) directly relates to the applicant's capacity to perform the duties of a private investigator; and

(B) provides grounds for denying licensure under this chapter to protect the citizens of the state;

REPRESENTATIVE SAMUELS surmised that proposed AS 08.85.110(2) pertains to felony convictions, and that proposed AS 08.85.110(3) pertains to sexual misconduct convictions.

CHAIR RAMRAS relayed that he will be offering an amendment to remove the 10-year threshold; this will result in those who've been convicted of a felony being excluded altogether.

REPRESENTATIVE GRUENBERG noted that proposed AS 08.85.110(3) doesn't contain a time limit; regardless of when the conviction occurred, the person would be excluded.

[2:08:18 PM](#)

REPRESENTATIVE GRUENBERG turned attention to proposed AS 08.85.750, which says:

**Immunity for complainants.** An action may not be brought against a person for damages resulting from a complaint filed in good faith with the department about a person licensed a holding or certificate under this chapter.

REPRESENTATIVE GRUENBERG asked whether the bill should require that there be some reasonable basis in fact for filing a complaint.

MR. LEWIS indicated that he's not aware of any situations that would warrant such a requirement.

[2:11:44 PM](#)

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on HB 158.

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1, as amended to fit Version E, whereupon it then read [original punctuation provided]:

Page 13, following line 16:

Insert a new bill section to read:

"\*Sec. 3. AS 12.62.400 is amended by adding a new paragraph to read:

(15) licensure as a private investigator or private investigator agency under AS 08.85."

Renumber the following bill sections accordingly.

CHAIR RAMRAS asked whether there were any objections. There being none, Amendment 1 was adopted.

[2:12:21 PM](#)

CHAIR RAMRAS made a motion to adopt Conceptual Amendment 2, to delete from page 2, line 16-17, the words, "in any jurisdiction in the 10 years preceding license application"; under Conceptual Amendment 2, he clarified, proposed AS 08.85.110(2) would read: "may not have been convicted of a felony;".

REPRESENTATIVE HOLMES suggested instead leaving in the words, "in any jurisdiction" to clarify that it would also apply to felony convictions that occur outside of Alaska.

CHAIR RAMRAS [made a motion to amend] Conceptual Amendment 2, such that proposed AS 08.85.110(2) would then read: "may not have been convicted of a felony in any jurisdiction;".

MR. LEWIS, in response to a question, said he knows of at least two investigators with 20-plus years of experience that would not be able to obtain licensure under Amendment 2 if it were amended in that fashion.

CHAIR RAMRAS surmised that perhaps a 20-year threshold would address that concern.

MR. LEWIS concurred.

CHAIR RAMRAS altered the motion to amend Conceptual Amendment 2 such that "10" on page 2, line 17, would be changed to "20". There being no objection, Amendment 2 was amended.

REPRESENTATIVE COGHILL objected, and raised a question about the statute of limitations.

REPRESENTATIVE GRUENBERG pointed out that a statute of limitations pertains to whether a person can be prosecuted, whereas proposed AS 08.85.110(2) pertains to a licensure restriction on someone who has already been convicted.

REPRESENTATIVE HOLMES and REPRESENTATIVE COGHILL removed their objections.

CHAIR RAMRAS announced that Conceptual Amendment 2, as amended, was adopted.

[2:16:32 PM](#)

REPRESENTATIVE DAHLSTROM moved to report the proposed CS for HB 158, Version 25-LS0442\E, Bullard, 3/14/07, as amended, out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GRUENBERG interjected to disclose that the law firm for which Mr. Lewis works, and perhaps Mr. Lewis himself, has done work for him and his family.

CHAIR RAMRAS, noting that there were no objections to the motion, stated that CSHB 158(JUD) was reported from the House Judiciary Standing Committee.

HB 151 - INDEMNITY CLAUSE IN PUBLIC CONTRACTS

[2:17:17 PM](#)

CHAIR RAMRAS announced that the next order of business would be HOUSE BILL NO. 151, "An Act requiring an indemnification and hold harmless provision in professional services contracts of state agencies, quasi-public agencies, municipalities, and political subdivisions." [Before the committee was CSHB 151(STA); included in members' packets was a proposed committee substitute (CS) for HB 151, Version 25-LS0479\L, Bannister, 3/28/07.]

[2:18:53 PM](#)

REPRESENTATIVE CRAIG JOHNSON, Alaska State Legislature, sponsor by request, explained that HB 151 will require that uniform indemnification and hold harmless provisions be included in

professional services contracts for all public agencies within the state. He suggested that the proposed changes are sound public policy and will constitute fair business practices between the public and private sector. House Bill 151 will ensure accountability for all parties involved in professional services contracts, will prevent one party from being absolved of its own negligence, and will save the state money. Currently, in some contracts that are signed by the state - specifically those relayed to construction and engineering - the designer is required to hold state agencies harmless regardless of who is responsible for a negligent act.

REPRESENTATIVE JOHNSON, in response to comments, relayed that he sponsored HB 151 at the request of the [Alaska Professional Design Council (APDC)]. He explained that HB 151 pertains to state contracts, not contracts between private individuals; HB 151 will apply the language currently being used by the Department of Transportation & Public Facilities (DOT&PF) to all [construction-related professional services contracts of state agencies, quasi-public agencies, municipalities, and political subdivisions]. In response to further comments, he expressed a desire to see those responsible for mistakes being held accountable for those mistakes, and suggested that this will be accomplished via HB 151.

CHAIR RAMRAS suggested that it is the nature of those in the construction industry to try and absolve themselves of blame when things go wrong. He observed that none of those expressing an interest in testifying on the bill are contractors, and that only architects and engineers have written letters of support.

REPRESENTATIVE JOHNSON indicated that he's had several conversations with people in various aspects of the construction industry and has not been made aware of any problems with the bill. Currently, one can't even buy insurance that will allow one to indemnify someone else, so every time someone bids on a state contract, he/she is putting his/her company at stake. He attempted to assure the committee that HB 151 won't circumvent the courts but will instead hold the appropriate party accountable for its actions. Presently, some of the best engineers and designers either don't bid on a contract because they're required to indemnify the other parties or they "bid their project up considerably" to cover the potential cost. He concluded by suggesting that people who are not responsible for an error shouldn't be held accountable for that error.

[2:26:48 PM](#)

REPRESENTATIVE HOLMES referred to the definition of "consultant" found on page 2, line 24, and asked whether the provisions of the bill would apply to sub-consultants.

REPRESENTATIVE JOHNSON offered his understanding that contract law says that the contractor is the responsible party and the subcontractors are then responsible to that contractor. Again, the bill addresses contracts between state agencies and private companies. In response to another question, he indicated that the contractor would be responsible for any problems caused by the subcontractors.

REPRESENTATIVE DAHLSTROM offered her understanding that subcontractors must obtain "their own bonding" - it would not be the responsibility of the main contractor.

REPRESENTATIVE JOHNSON said he would assume that that's always the case, and that a prudent contractor would ensure that the subcontractors were properly bonded. He characterized the current situation in which a designer or an engineer is forced to indemnify the state agency regardless of who is at fault as unfair.

CHAIR RAMRAS referred to a construction project involving private entities wherein the roof leaks but the contractor built it to the specifications of the designer. After reading a portion of one letter of support from a designer, he again noted that members' packets don't contain any letters of support from contractors.

REPRESENTATIVE JOHNSON suggested that in the aforementioned situation the designer is at fault.

CHAIR RAMRAS argued, though, that that designer isn't accepting any of the liability.

REPRESENTATIVE JOHNSON surmised that in that situation, the parties will have to go to court. He again pointed out that the bill doesn't pertain to contracts between private individuals.

REPRESENTATIVE SAMUELS surmised that currently the liability is different for a university project than it is for a DOT&PF project.

REPRESENTATIVE JOHNSON concurred.

[2:36:25 PM](#)

REPRESENTATIVE GRUENBERG moved to adopt the proposed committee substitute (CS) for HB 151, Version 25-LS0479\L, Bannister, 3/28/07, as the work draft.

REPRESENTATIVE COGHILL objected for the purpose of discussion.

REPRESENTATIVE JOHNSON explained that Version L defines "construction" to mean the process of building, altering, repairing, maintaining, improving, demolishing, planning, and designing a public highway, a structure, a building, a utility, infrastructure, or another public improvement to real property, but does not mean the routine operation of a public improvement.

REPRESENTATIVE GRUENBERG noted that the definition of "professional services" in AS 36.30.990 - which is referenced on page 2, line 26, of Version L - does not include contractors; AS 36.30.990(19) says:

(19) "professional services" means professional, technical, or consultant's services that are predominantly intellectual in character, result in the production of a report or the completion of a task, and include analysis, evaluation, prediction, planning, or recommendation;

REPRESENTATIVE JOHNSON said that those listed in that definition are the ones who are currently required to hold harmless everyone down the line regardless of fault. In response to a question, he indicated that the bill is meant to indemnify the designer against a contractor's [mistake].

REPRESENTATIVE GRUENBERG surmised that the goal is to have liability apportioned fairly between the parties.

CHAIR RAMRAS and REPRESENTATIVE JOHNSON concurred.

CHAIR RAMRAS asked that people in the construction industry be contacted to determine their view on HB 151.

REPRESENTATIVE JOHNSON agreed to do so, and indicated that he wants everyone to be liable for their own errors and omissions. In response to a question, he offered his understanding that currently the bill will only apply to architects and engineers.

[2:44:11 PM](#)

CHAIR RAMRAS referred to the University of Alaska museum, and said he is questioning whether the bill will unfairly shift the burden of liability to contractors.

REPRESENTATIVE COGHILL removed his objection to the adoption of Version L as the work draft.

CHAIR RAMRAS stated that Version L was before the committee.

[HB 151, Version L, was held over.]

HB 182 - OFFERING PROMOTIONAL CHECKS

[2:46:35 PM](#)

CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 182, "An Act making the offering of certain promotional checks an unfair or deceptive act or practice."

[2:46:42 PM](#)

REPRESENTATIVE DAHLSTROM moved to adopt the proposed committee substitute (CS) for HB 182, Version 25-LS0650\M, Bannister, 3/22/07, as the work draft. There being no objection, Version M was before the committee.

REPRESENTATIVE LYNN, speaking as the sponsor, said HB 182 pertains to [promotional] checks, usually written for no more than \$3 or \$4, but which are actually contracts that go into effect once the checks are cashed. For example, last year, the Department of Law (DOL) settled a lawsuit against a California-based company that had sent Alaskans what appeared to be small rebates but which were in fact contracts for advertising services valued at \$179. House Bill 182 will prohibit the use of such checks, which, he relayed, the consumer protection section of the DOL considers to be a classic example of an unfair, deceptive act or practice as defined in state law. Passage of HB 182 will allow the DOL to take enforcement action on such practices, and companies that violate this proposed law will be subject to a civil penalty of between \$1,000 and \$25,000 per violation.

[2:52:08 PM](#)

CLYDE (ED) SNIFFEN, JR., Assistant Attorney General, Commercial/Fair Business Section, Civil Division (Anchorage),

Department of Law (DOL), said that the DOL is pleased that the sponsor has introduced the bill, which he characterized as good legislation. He mentioned that the DOL does have examples of consumers in Alaska who have been harmed by the aforementioned practice.

REPRESENTATIVE GRUENBERG asked whether the word "check" - as used on page 1, line 5 - is broad enough.

MR. SNIFFEN offered his belief that it is, particularly for enforcement purposes, and that everyone understands what that term means, though he acknowledged that the term "negotiable instrument" could be used in its stead. In response to comments and another question, he opined that the current language of Version M - which his office drafted - is sufficient as is.

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on HB 182.

[2:54:56 PM](#)

REPRESENTATIVE DAHLSTROM moved to report the proposed CS for HB 182, Version 25-LS0650\M, Bannister, 3/22/07, out of committee with individual recommendations and the accompanying zero fiscal note. There being no objection, CSHB 182(JUD) was reported from the House Judiciary Standing Committee.

#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:55 p.m.