

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

February 20, 2008

1:33 p.m.

MEMBERS PRESENT

Senator Hollis French, Chair
Senator Charlie Huggins, Vice Chair
Senator Lesil McGuire
Senator Bill Wielechowski
Senator Gene Therriault

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 197 am

"An Act relating to the issuance of shares of professional corporations to a trust, to trusts, to trustees, to the removal of a trustee, to the compensation of a trustee and a person employed by a trustee, to a trustee's accepting or rejecting a trusteeship, to co-trustees, to a vacancy in a trusteeship, to the resignation of a trustee, to delivery of trust property by former trustees, to the reimbursement of trustee expenses, to the certification of a trust, to the suitability of a trustee, to the place of administration of a trust, to a trustee's power to appoint property to another trust, to a change of the percentage of trust property to be considered principal, to the determination of the value of a trust, and to a settlor's intent when transferring property in trust; amending Rules 54 and 82, Alaska Rules of Civil Procedure; and providing for an effective date."

MOVED HB 197 am OUT OF COMMITTEE

HOUSE BILL NO. 25

"An Act relating to landowners' immunity for allowing use of land without charge for a recreational activity; relating to landowners' liability where landowner conduct involves gross negligence or reckless or intentional misconduct; relating to claims of adverse possession and prescriptive easements, or similar claims; and providing for an effective date."

HEARD AND HELD

CS FOR HOUSE BILL NO. 182(JUD)

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

HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 197

SHORT TITLE: TRUSTS

SPONSOR(s): JUDICIARY

03/14/07	(H)	READ THE FIRST TIME - REFERRALS
03/14/07	(H)	JUD, FIN
04/04/07	(H)	JUD AT 1:00 PM CAPITOL 120
04/04/07	(H)	Moved Out of Committee
04/04/07	(H)	MINUTE(JUD)
04/05/07	(H)	JUD RPT 4DP 2NR
04/05/07	(H)	DP: GRUENBERG, LYNN, HOLMES, RAMRAS
04/05/07	(H)	NR: COGHILL, SAMUELS
04/05/07	(H)	FIN REFERRAL REMOVED
04/05/07	(H)	L&C REFERRAL ADDED AFTER JUD
04/20/07	(H)	L&C AT 3:00 PM CAPITOL 17
04/20/07	(H)	Scheduled But Not Heard
04/30/07	(H)	L&C AT 3:00 PM CAPITOL 17
04/30/07	(H)	Moved Out of Committee
04/30/07	(H)	MINUTE(L&C)
05/02/07	(H)	L&C RPT 3DP 3NR
05/02/07	(H)	DP: GARDNER, RAMRAS, OLSON
05/02/07	(H)	NR: LEDOUX, NEUMAN, GATTO
05/04/07	(H)	TRANSMITTED TO (S)
05/04/07	(H)	VERSION: HB 197 AM
05/07/07	(S)	READ THE FIRST TIME - REFERRALS
05/07/07	(S)	JUD
02/15/08	(S)	JUD AT 1:30 PM BELTZ 211
02/15/08	(S)	Heard & Held
02/15/08	(S)	MINUTE(JUD)

BILL: HB 25

SHORT TITLE: RECREATIONAL LAND USE LIABILITY/ADV. POSS

SPONSOR(s): REPRESENTATIVE(s) SEATON, WILSON

01/16/07	(H)	PREFILE RELEASED 1/5/07
01/16/07	(H)	READ THE FIRST TIME - REFERRALS
01/16/07	(H)	RES, JUD
01/24/07	(H)	RES AT 1:00 PM CAPITOL 124
01/24/07	(H)	Moved Out of Committee
01/24/07	(H)	MINUTE(RES)
01/25/07	(H)	RES RPT 8DP

01/25/07 (H) DP: GUTTENBERG, EDGMON, SEATON,
KAWASAKI, WILSON, ROSES, JOHNSON, GATTO
01/31/07 (H) JUD AT 1:00 PM CAPITOL 120
01/31/07 (H) Heard & Held
01/31/07 (H) MINUTE(JUD)
02/01/07 (H) JUD AT 1:00 PM CAPITOL 120
02/01/07 (H) Heard & Held
02/01/07 (H) MINUTE(JUD)
02/05/07 (H) JUD AT 1:00 PM CAPITOL 120
02/05/07 (H) Moved Out of Committee
02/05/07 (H) MINUTE(JUD)
02/07/07 (H) JUD RPT 1DP 3NR
02/07/07 (H) DP: LYNN
02/07/07 (H) NR: GRUENBERG, HOLMES, SAMUELS
02/12/07 (H) TRANSMITTED TO (S)
02/12/07 (H) VERSION: HB 25
02/14/07 (S) READ THE FIRST TIME - REFERRALS
02/14/07 (S) RES, JUD
03/02/07 (S) RES AT 3:30 PM BUTROVICH 205
03/02/07 (S) Heard & Held
03/02/07 (S) MINUTE(RES)
04/02/07 (S) RES AT 3:30 PM BUTROVICH 205
04/02/07 (S) Moved HB 25 Out of Committee
04/02/07 (S) MINUTE(RES)
04/04/07 (S) RES RPT 2DP 4NR 1AM
04/04/07 (S) DP: HUGGINS, STEVENS
04/04/07 (S) NR: GREEN, MCGUIRE, STEDMAN, WAGONER
04/04/07 (S) AM: WIELECHOWSKI
02/20/08 (S) JUD AT 1:30 PM BELTZ 211

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
04/02/07 (H) Moved CSHB 182(JUD) Out of Committee
04/02/07 (H) MINUTE(JUD)
04/04/07 (H) JUD RPT CS(JUD) 6DP

04/04/07 (H) DP: GRUENBERG, LYNN, DAHLSTROM,
SAMUELS, HOLMES, RAMRAS
04/11/07 (H) TRANSMITTED TO (S)
04/11/07 (H) VERSION: CSHB 182(JUD)
04/13/07 (S) READ THE FIRST TIME - REFERRALS
04/13/07 (S) L&C, JUD
05/01/07 (S) L&C AT 1:30 PM BELTZ 211
05/01/07 (S) Moved CSHB 182(JUD) Out of Committee
05/01/07 (S) MINUTE(L&C)
05/02/07 (S) L&C RPT 4DP
05/02/07 (S) DP: ELLIS, BUNDE, DAVIS, STEVENS
02/20/08 (S) JUD AT 1:30 PM BELTZ 211

WITNESS REGISTER

JANE PIERSON, Staff
to Representative Ramras
Alaska State Capitol
Juneau, AK

POSITION STATEMENT: Represented the sponsor of HB 197.

REPRESENTATIVE PAUL SEATON
Alaska State Capitol
Juneau, AK

POSITION STATEMENT: Sponsor of HB 25

GEORGE SCHAAF, Executive Director
Trail Mix Inc
Juneau, AK

POSITION STATEMENT: Spoke in strong support of HB 25.

DAVE BRANN
Kachemak Nordic Ski Club
Homer, AK

POSITION STATEMENT: Spoke in strong support of HB 25.

LEAH JENKIN
Homer, AK

POSITION STATEMENT: Spoke in support of HB 25.

MICHAEL SCHNEIDER, Attorney at Law
Anchorage, AK

POSITION STATEMENT: Highlighted shortcomings in HB 25.

ROBERTA HIGHLAND
Homer, AK

POSITION STATEMENT: Spoke enthusiastically about HB 25.

PHILIP PAUL WAGONER, Attorney at Law
Anchorage, AK

POSITION STATEMENT: Echoed Mr. Schneider's concern with HB 25.

JACK MOSBY, former President
Alaska Trails
Anchorage, AK

POSITION STATEMENT: Spoke in support of HB 25

MIKE SICA, Aide
to Representative Lynn
Alaska State Capitol
Juneau, AK

POSITION STATEMENT: Introduced HB 182 on behalf of the sponsor.

MARIE DARLIN, Coordinator
AARP Capital City Task Force
Juneau, AK

POSITION STATEMENT: Spoke in support of HB 182.

DALE LEHMAN
Anchorage, AK

POSITION STATEMENT: Spoke in support of HB 182.

JULIA COSTER, Assistant Attorney General
Civil Division
Commercial/Fair Business Section
Department of Law (DOL)
Anchorage, AK

POSITION STATEMENT: Responded to questions and stated support for SB 182.

ACTION NARRATIVE

CHAIR HOLLIS FRENCH called the Senate Judiciary Standing Committee meeting to order at [1:33:43 PM](#). Present at the call to order were Senators French, Huggins, and Wielechowski. Senators Therriault and McGuire arrived shortly thereafter.

HB 197 am -TRUSTS

[1:33:57 PM](#)

CHAIR FRENCH announced the consideration of HB 197 am.

JANE PIERSON, Staff to Representative Ramras, said that HB 197 passed unanimously in the House and she'd like to see it move from this committee.

CHAIR FRENCH noted that the bill was heard previously and public comment was taken. Finding no further questions or comments, he asked for the will of the committee.

[1:34:52 PM](#)

SENATOR WIELECHOWSKI motioned to report HB 197 from committee with individual recommendations and attached fiscal note(s).

CHAIR FRENCH announced that without objection, HB 197 am is moved from committee.

HB 25-RECREATIONAL LAND USE LIABILITY/ADV. POSS

[1:35:19 PM](#)

CHAIR FRENCH announced the consideration of HB 25.

REPRESENTATIVE PAUL SEATON, sponsor of HB 25, explained that the bill encourages the expansion of recreational opportunities for Alaskans by increasing liability protection for landowners who allow free recreational use of their land. This is achieved by raising the standard of care that a landowner owes for allowing someone to use their land. The bill provides immunity from suit unless there is gross negligence, intentional misconduct, or reckless endangerment. HB 25 is consistent with practices in 45 other states.

REPRESENTATIVE SEATON said that the current simple negligence liability standard applies to unimproved land. That generally makes landowners uncomfortable and the result is that they're more inclined to restrict access to their land. He clarified that this bill does not address landowners who charge to use their land and it does not apply to municipalities and other governments. He highlighted letters and resolutions from diverse groups and private citizens supporting HB 25.

[1:37:04 PM](#)

SENATOR THERRIAULT joined the meeting.

SENATOR HUGGINS asked how airstrips are treated.

REPRESENTATIVE SEATON explained that current law says that for abandoned airstrips and unimproved land the standard for the

private landowner is gross negligence, intentional misconduct, or reckless endangerment.

SENATOR HUGGINS asked about the hypothetical scenario where he allows free use of a snow machine track on his property.

REPRESENTATIVE SEATON explained that as long as you aren't charging and you aren't grossly negligent you aren't liable. But if you were to put up a cable across the trail and someone were to get hurt as a result, that would be intentional misconduct and you'd be liable. But if someone is accidentally hurt while using the snow machine track or getting ready to use the track, the gross negligence standard would apply.

[1:41:30 PM](#)

SENATOR HUGGINS asked if he could subsequently deny access to that hypothetical snow machine track.

REPRESENTATIVE SEATON said he could. He added that the bill specifically protects landowners from adverse possession or prescriptive easement claims by someone using the property for free for recreation.

[1:44:08 PM](#)

SENATOR HUGGINS asked if this affects traditional trails running through private property.

REPRESENTATIVE SEATON replied this wouldn't change the aspect of traditional trails, but it is important to separate recreational use from access. This bill doesn't address the situation where someone is using a road on private property to gain access to a recreational area.

CHAIR FRENCH referred to the scenario Senator Huggins posed and said should this bill pass the landowner who allows access would have a legal problem only if they are guilty of gross negligence. But once a no trespassing sign is posted, the standard of care reverts to negligence. Essentially the standard reverts to what the law is now. He asked if that scenario had been discussed and if he agrees.

[1:46:54 PM](#)

REPRESENTATIVE SEATON replied that was discussed and it's a different scenario if someone is criminally trespassing by disregarding the no trespassing signs. "You're thrown into a whole different series of obligations when you have criminal

trespass." This bill allows free recreational access as compared to someone trespassing.

CHAIR FRENCH restated that if this becomes law the standard of care becomes gross negligence, but the standard of care if access is denied is negligence.

REPRESENTATIVE SEATON highlighted AS 09.65.200, which is immunity for unimproved land. "So if it's unimproved land the standard is already gross negligence." This involves improved land. It becomes difficult because there are conflicting statutes. For example the standard for abandoned runways is gross negligence. And if you're allowing someone to use your private airstrip it's gross negligence for take offs and landings, but it's a question with regard to walking to and from the plane. If the land is unimproved the standard is gross negligence, but if you've mowed the grass, set a snow machine track, or if you're too close to a barn then the standard is simple negligence. It's confusing for the public and it's difficult for the property owner to know if somebody could get a proscriptive easement if they let someone use their land. This gives the landowner confidence that he or she can help provide recreation in Alaska. "Gross negligence comes down to choices," he said.

[1:50:07 PM](#)

CHAIR FRENCH consulted Blacks Law Dictionary about the difference between negligence and gross negligence so that the committee has in mind the consequences of this bill. He read the following:

Negligence. The omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent man would not do.

Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances; it is the doing of some act which a person of ordinary prudence would not have done under similar circumstances or failure to do what a person of ordinary prudence would have done under similar circumstances.

Gross negligence. The intentional failure to perform a manifest duty in reckless disregard of the

consequences as affecting the life or property of another.

It is materially more want of care than constitutes simple inadvertence. It is an act or omission respecting legal duty of an aggravated character as distinguished from a mere failure to exercise ordinary care. It amounts to indifference to present legal duty and to utter forgetfulness of legal obligations so far as other persons may be affected. ...

CHAIR FRENCH opened public testimony.

1:52:32 PM

GEORGE SCHAAF, Executive Director, Trail Mix Inc, spoke in strong support of HB 25. Trail Mix is a local non-profit trails organization that was created in part to address complicated landownership problems. He explained that Southeast Alaska has lots of trails and recreational facilities that may begin on public land but any given trail may cross back and forth from federal land, to state parks land, to city land, and to private land. Because no one was interested in maintaining 20 percent of a trail, Trail Mix came along to coordinate trail building and planning efforts in the Juneau community and borough. He said he believes that HB 25 is a well-considered measure that protects the interests of landowners and recreational hikers.

MR. SCHAAF reiterated that landownership issues in Southeast Alaska are complicated given the terrain and the amount of public land that's there. In Juneau three trails in particular will be affected by this bill. The trails going up Perseverance Basin and Mount Juneau cross private land owned by the Keen family. They've been fantastic supporters of trails and grant public access, but liability has always been an issue. This bill will go a long way in alleviating some of their concerns. Another trail at Tee Harbor has recently led to some tension among community members because the trail access crosses a corner of private land. Potentially that trail will be rerouted at significant expense because the property owner is afraid of liability. This bill will help address that issue, he said. On behalf of the 350 members of Trail Mix, he restated support for HB 25. This will go a long way toward supporting outdoor recreation and the benefits that provides the community.

SENATOR WIELECHOWSKI asked if he's aware of anyone who has been sued for this.

MR. SCHAAF said not in Juneau but the concern is out there. Folks in this community have been very trusting and have wanted to maintain open access to recreational areas. You never know what will happen in the future, he added.

[1:56:51 PM](#)

DAVE BRANN, Kachemak Nordic Ski Club reported that he's worked on recreational trails in the Homer area for about 25 years. A long-standing concern has been trails that cross a variety of properties including private, borough, state, and Native. In fact, potential trail access across private property has been limited because of liability concerns. People in the Homer area have been generous in allowing trail use on their property but there is increasing concern about liability. On behalf of the Kachemak Nordic Ski Club he stated strong support for HB 25. He added that he allows free recreational use of his property and he finds existing statutes to be very confusing; a lot of people don't know what is and isn't allowed.

[1:58:44 PM](#)

LEAH JENKIN, Homer resident said she owns 10 acres near an equestrian center and ball parks and the state built an access road through part of her property. Although she supports both facilities, she's worried about liability. "When we're talking about children and horses, a landowner needs all the protection they can get." She urged the committee to pass HB 25.

[2:00:37 PM](#)

MICHAEL SCHNEIDER, Attorney at Law, reported that he's lived in Anchorage since 1975. He said his testimony is based on two assumptions. The first is that this bill was heard by the Senate Resources Committee last session. Second, he assumes that the committee received a copy of his 3/16/07 letter to Representative Seaton addressing his concerns about the bill.

CHAIR FRENCH told him that both assumptions are correct.

MR. SCHNEIDER said he takes issue with the overriding premise of the bill because there's no way that folks who are interested in public access and trail use can figure out whether a landowner has or has not given permission to use their land. They can't check at the records office, for example, because nobody has to do anything official to obtain the immunity status set forth in the bill. His letter suggests a way around that problem so that there would never be any doubt about whether or not a given property is open for public use and the owner is thus entitled to immunity.

2:03:30 PM

MR. SCHNEIDER suggested that the bill encourages fraud and perjury by property owners who may be sued in the face of a death or serious injury. Hypothetically the insurance agent will inform the property owner that barring gross negligence, he or she will be immune from suit if the property is open to free recreational use. He surmised that that that defense will be asserted 100 percent of the time even though the property may be open for recreational use less than 100 percent of the time.

MR. SCHNEIDER observed that there seems to be a foregone conclusion that if someone engages in a specific conduct, such as pulling a cable across a trail, that amounts to grossly negligent conduct. But whether or not the particular conduct is grossly negligent will be a jury question in virtually every case. Also, he does not agree with the sponsor's statement that the bill is of no benefit to someone who charges for use of their land. Anybody after the fact can divert funds toward hazard remediation and claim the benefit of this loosely worded legislation, he said. Furthermore the term "land" includes a lot of things - including machinery, which would make it difficult to prove liability. It would provide broad immunity under circumstances where the public is receiving nothing tangible in exchange.

MR. SCHNEIDER offered his view that from a public policy standpoint the sponsor's intent is a good idea, but the bill needs many things fixed or it's a give away of constituents' rights for virtually nothing in return.

2:07:02 PM

ROBERTA HIGHLAND, Homer stated strong support for HB 25. She agrees with Mr. Schneider that it's important to get things right, but she can't imagine that the 45 states that have this law haven't already addressed every potential legal issue. In her view the litigation-happy standard in this country negatively affects quality of life. She'd like attitudes and laws to change such that personal responsibility is given back to the individual. HB 25 begins that process. She explained that she and her husband welcome non-motorized use on the trails on their land and this bill would relieve their concerns about litigation. Trails are an important part in the enjoyment of life.

2:09:11 PM

PHILIP PAUL WAGONER, Attorney at Law and Anchorage property owner, said he concurs with Mr. Schneider. He recognizes the good will intent of the bill but it provides such blanket immunity to persons that engage in culpable conduct that it will ultimately shift the responsibility for that conduct to the coffers of the state. He gave examples of several cases where he represented people who were severely injured by cables that were strung across trails. The way the bill is written if any landowner directly or indirectly allows free recreational activity, then it's blanket immunity even if they stretch a cable across a trail. It's also a situation where a landowner could allow a select group to engage in recreational activity without charge and then stretch a cable across the trail for the general public. He expressed the view that the bill really needs to be reworked. "It's always problematic when laws are passed that infringe on constitutional rights" We sometimes forget the fact that the writers of the U.S. and Alaska constitutions granted a right to a jury trial as it existed in common law. That means if someone puts up a dangerous obstacle on developed or undeveloped land they're liable and the resulting harm is shifted to their coffers and not to the victim or the public. He asked the committee to send the bill back for fine-tuning so its purposes can be achieved without providing blanket immunity to people who engage in conduct that will cause serious harm.

[2:13:11 PM](#)

CHAIR FRENCH asked if he had reviewed Mr. Schneider's March 16, 2007 letter.

MR. WAGONER said he had and he concurs with his comments. He understands the good intent but it's dangerous to grant immunity. "As sure as we're all here on this Earth today, if this bill is passed in its present form, somebody's going to get seriously hurt due to culpable conduct and the person is going to escape and ... their insurance company is going to escape and the ultimate harm is going to be left to the victim and or the public coffers."

[2:13:51 PM](#)

SENATOR MCGUIRE joined the meeting.

[2:14:13 PM](#)

JACK MOSBY, former President, Alaska Trails, relayed that this statewide non-profit group was formed to enhance Alaska trail experiences by supporting sustainable trails through advocacy and education. He's aware that liability is a continuing issue with projects in Anchorage, MatSu Valley, and Fairbanks. It

sounds as though it's an issue in other places in the state as well. He reiterated the group's continuing support for HB 25.

CHAIR FRENCH asked if he's aware of any lawsuits that hinged on allowing or not allowing access - instances where innocent homeowners have been dragged into a legal dispute because of accidents on trails.

MR. MOSBY replied he's not aware of any such cases.

CHAIR FRENCH stated his intention to hold the bill for a subsequent hearing.

[2:16:17 PM](#)

REPRESENTATIVE SEATON distributed two documents to respond to the issues Mr. Schneider raised in his letter. One discusses gross negligence and associated case law. The second is an opinion from legislative legal services about the hypothetical circumstance where a landowner strings a cable on their property that results in the decapitation of a person who is using the property for recreational purposes. He also highlighted that this bill removes the ambiguity between improved land and land that is mowed or a hayfield close to a building. Under current Alaska statute the standard for unimproved lands is gross negligence, but unless protected by HB 25 the hayfield could be considered improved land which has the simple negligence liability standard.

CHAIR FRENCH said the committee would look closely at the documents. [HB 25 was held for a subsequent hearing.]

CSHB 182(JUD)-OFFERING PROMOTIONAL CHECKS

[2:18:42 PM](#)

CHAIR FRENCH announced the consideration of HB 182. Before the committee was CSHB 182(JUD).

MIKE SICA, Aide to Representative Lynn read the following into the record on behalf of the sponsor. [Original punctuation provided.]

HB 182 is a small, one-page bill, about small dollar checks that cause big headaches for Alaska consumers. The checks are maybe for only three or four dollars and, according to the Department of Law, the checks are sent to thousands of businesses and individuals throughout our state.

The good news? The checks are legitimate. The bad news? The checks are "legitimate." In actuality, cashing one of these checks can amount to an unintended contract. Hundreds of Alaskans cash these little checks, only to find themselves obligated by contract for products and services they don't want and never needed.

Let me give you one example. In 2006, the Alaska Department of Law announced a settlement with a California-based company that sent Alaskans what appeared to be rebates from local yellow page companies. Not so. Endorsement of a check for \$3.49 was actually a contract for \$179 in advertising services - which they didn't want and didn't need.

Consumers, who thought they were getting a very small windfall, got a much larger downfall. That's because they didn't see the tiny, fine print, disclosure on the back of the check. Or, if they did see it, they didn't have a magnifying glass. And when the checks are endorsed, consumers end up getting billed - and sometimes hounded - by collection agencies, which can damage their credit rating.

The Consumer Protection Unit of the Alaska Department of Law considers these promotional checks to be a classic example of deceptive acts or practices - and believe that prohibiting these kinds of checks is the only effective method of preventing these unintended contracts, and subsequent charges, from occurring.

HB 182 makes these kinds of promotional checks an unfair or deceptive act or practice, and makes it an automatic violation of Consumer Protection laws.

Under this bill, companies that violate the law are subject to a civil penalty of a minimum of \$1,000 per violation, and a maximum of \$25,000 per violation.

Representative Lynn said he is honored that the Alaska Department of Law let him know about these deceptive checks, and he agrees with the department that HB182 is high priority consumer protection legislation.

[2:21:55 PM](#)

MR. SICA relayed that the sponsor and his chief of staff received promotional checks but they didn't cash them. During testimony in the other body a state lawmaker admitted to having been fooled.

[2:22:50 PM](#)

SENATOR McGUIRE admitted that two years ago she endorsed and deposited a \$9.95 check from Citibank under the assumption that she was redeeming points. She learned that she had enrolled herself in a driver protection program that carried an ongoing monthly fee of \$29.95. It took a full two months and a lot of headache to get out of the program. This could be devastating to seniors in particular. She questioned why this doesn't violate the interstate commerce clause.

MR. SICA replied the companies operate in Alaska so goods don't cross the boarder. He deferred to the Department of Law for further explanation. Small businesses, churches and schools receive these checks and often they're just endorsed and deposited so this protects more than just consumers. It also sends a good message to the business community that it doesn't have to compete with these people that cross that boundary.

[2:25:06 PM](#)

MARIE DARLIN, Coordinator, AARP Capital City Task Force expressed support for HB 182 and noted that a letter from AARP is in the packet. Older people are often the target of practices such as this. This would be one more tool for the offices of the attorney general and consumer protection to battle these scams.

[2:27:01 PM](#)

DALE LEHMAN, representing himself said he doesn't generally believe it's government's role to protect people from making stupid decisions, but he does urge the committee to pass HB 182. He relayed that he is usually diligent about disregarding free offers of any kind. Despite that and the fact that he's a retired economics professor who lectures about consumer scams, he deposited what appeared to be a free \$10 check from a credit card company that he'd done business with for years. Last year all his credit cards were stolen so he canceled the cards and subsequently began to examine his bills. The first one he looked at had a line item for \$39.99 from TLGHMPRT. After some research he learned that the state attorney general's office and 16 other states had reached a settlement with his credit card company for these allegedly deceptive practices. He's embarrassed to admit that he paid \$39.99 for 18 months. He was fooled but this company had to go far out of the way to do this. "This is not an

accidental thing that occurred." He never received any material about what the National Home Protection Alliance is. "To this day I really have no idea what services they provide." The ultimate irony was that the only automatic payment that was passed on to his new credit card was TLGHMPRT.

2:30:30 PM

MR. LEHMAN said HB 182 would do two constructive things. First, it would make the attorney general's job easier in prosecuting these sorts of cases because it would be an illegal practice. Second, it would encourage businesses to compete by offering better services rather than spending resources to fool consumers in ever more subtle ways.

2:32:56 PM

JULIA COSTER, Assistant Attorney General, Civil Division, Commercial/Fair Business Section, Department of Law (DOL) testified in support of SB 182. She agreed with Mr. Sica that these promotional checks have been a problem for individual and business consumers in the state. SB 182 is an attempt to fix that problem. Her office has received numerous complaints and has interviewed numerous consumers that have received and cashed these checks reasonably believing them to be a rebate or reward. They have no idea that by cashing the check they have entered into a contract to purchase goods or services. Oftentimes endorsing the check unknowingly authorizes monthly charges to the consumer's checking account, credit card, or telephone bill to pay for the goods or services. Many consumers unwittingly pay the charges for months until something brings it to their attention or until they are contacted by the consumer protection office.

MS. COSTER said her office has initiated a number of investigations several of which have resulted in prosecutions and settlement under the Alaska Consumer Protection Act. A recent case was a coordinated multi-state investigation that resulted in a settlement agreement that prohibited the use of promotional checks in 34 states. Another case resulted in a settlement for less than a total prohibition. Rather than dealing with this issue on a piecemeal basis through litigation, HB 182 deals with the problem on a more universal level. It makes the use of promotional checks from Alaska an unfair or deceptive practice under the Alaska Consumer Protection Act. "This means that the use of the check is an automatic violation of the Act." Making the promotional checks an unfair, deceptive act or practice puts the check marketers on notice. Hopefully

this will stop the use of these checks in the state and it will make enforcement easier in the future.

2:37:39 PM

CHAIR FRENCH asked her to respond to the interstate commerce question.

MS. COSTER explained that the interstate commerce clause uses a balancing test that looks at whether or not the burden on commerce outweighs the benefit to the state or its interest. It wouldn't be difficult to make a strong argument that the conduct - the use of these promotional checks - is deceptive and that outweighs any interest a person would have in continuing to use such checks.

SENATOR WIELECHOWSKI asked if there are any preemption issues.

MS. COSTER replied she isn't aware of any federal law that addresses the use of these checks.

CHAIR FRENCH referred to a question and answer interview between some member of the DOL and the bill sponsor. He highlighted the final question and answer, which asks why DOL considers this bill a high priority. The DOL answer is that many hundreds of Alaskan consumers have been harmed by the use of these promotional checks. He asked if it can be verified that it's up in the hundreds.

MS. COSTER replied, Absolutely. Many hundreds of Alaska consumers have cashed these checks and unknowingly or unwillingly paid because they were subject to coercive collection tactics.

SENATOR WIELECHOWSKI asked if Alaska has been involved in any class action lawsuits to stop this activity.

MS. COSTER replied she's unaware of private class action suits but the State of Alaska has been involved in three multi-state cases that were brought by state attorneys general offices. They may be considered class action in that they involve more than one state.

2:41:03 PM

CHAIR FRENCH referred to the bill packet and noted that in April 2006 the DOL Civil Division announced a \$500,000 settlement with Yellow Pages Inc. for having offered these checks in the state.

MS. COSTER added that that's the most recent settlement.

[2:41:47 PM](#)

SENATOR McGUIRE suggested the DOL look into the situation at Citibank as well. She surmised that consumers are accustomed to getting rebates and rewards as part of the incentive package with their credit cards. She relayed that she was enrolled in the Driver Edge Protection program that supposedly added \$29.95 extra coverage on her vehicle. She never new exactly what it was and didn't receive any information about it. "So add that to your list," she said.

MS. COSTER agreed to do so.

[2:42:46 PM](#)

MR. SICA told the committee that he appreciates that getting a bill passed is a long process and he believes that checks and balances are important. Although the bill moved along very well last year, he has to admit that during the Interim he worried about all the people who would be getting and signing these checks.

CHAIR FRENCH said HB 182 seems to be a very good bill and he intends to bring it back soon and take action on it.

There being no further business to come before the committee, Chair French adjourned the meeting at [2:43:29 PM](#).