

PRESIDENT: Thank you. Senator Landis, please.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, have you had a chance to look at this opinion on your desk, because it's pretty interesting. It's from Alan Peterson and, don't you know, as predicted, Alan's got his opinion here and, shock of shocks, it finds a constitutional argument, at least it's not an argument, a shadow, I think, is Alan's word for it, on the prospect of criminalizing legal notices. It seems to me that it would be possible to fashion a better remedy than what Senator Haberman has used so far. And I wonder if I could suggest this remedy to you as an alternative to the idea of criminalization, because it is a notion that Alan mentions here in the opinion. What if, instead of criminalizing these notices at over the publishing rate, what if we merely said any notice that is published at higher than the legal rate is ineffective to serve as a legal notice. Now the paper can run it, if they want to, but it's not affective as a legal notice. That's not legal notice. One of the virtues would be that there is no direction to the newspaper whatsoever on that point. We don't criminalize the activity of the paper, we don't send a message as to what they can or can't print. What we say is, if a notice is printed at a rater higher than the legal notice, it's not legal notice. It would be, by the way, effective for those papers who then, following that law, continued to advertise such notices as legal notices. Why? Because it would trip, as Alan points out in his memo under VIII, eight, Roman Numeral, that there is a deceptive overcharging prohibition. If a paper were to say advertise with us, we'll make you pay higher than the legal notice, but this is a legal notice, the paper would be deceiving its customer. It would be saying this is...this will be affective as legal notice, and in fact it wouldn't be affective as legal notice and, as Alan points out, that would be a deceptive trade practice. So, what I think I'm going to do in this case is I'm going to support this reconsideration. I think there is a better remedy than the criminalization path, and that alternative would be to say, for somebody who purchases a legal notice at a rate higher than the legal rate, that notice is ineffective to communicate legal notice. A paper that is purportedly extending legal notice would clearly understand this fact and could not then advertise or could not do this practice without tripping a deceptive pricing act prohibition. I'll support the reconsideration motion. I think there is a better remedy that runs around the Alan Peterson opinion. And it seems