

# Alaska State Legislature

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## Senator Lesil McGuire

### SB 76

#### **SPONSOR STATEMENT**

Under AS 08.88.396, a real estate licensee acting before January 1, 2005 was authorized to act as both a buyer's and a seller's representative, but only after the licensee informed both the buyer and the seller of his or her dual agency and obtained written consent from both. The statute, as originally enacted, did not specify remedies if a real estate licensee (or agent) violated its provisions.

In 2003, the Alaska Legislature acted to correct the remedies-omission. The Legislature was concerned that without specifying its intent with respect to appropriate remedies in the case of a violation, a court might feel compelled to impose the potentially business-ending remedy of forfeiture of real-estate sales commissions. The Legislature was particularly concerned that this could occur in cases even where the plaintiffs had suffered no actual damages.

In order to address this concern, the Legislature enacted House Bill 257, legislation that fixed this ambiguity by retroactively limiting the remedy for violations of AS 08.88.396 to actual damages. HB 257 passed the Legislature, was signed into law and despite challenges before two different Superior Court judges, has been found constitutional. The Alaska Supreme Court has twice declined to review the case.

Despite the enactment of House Bill 257, and despite the finding of constitutionality by the Superior Court, questions have arisen regarding the Legislature's intent in amending AS 08.88.396. Senate Bill 76 is intended to make clear the Legislature's intent when it amended AS 08.88.396 in 2003 by specifying and clarifying that the "actual damages" limitation of the 2003 amendment applies to all claims that are based upon or arise out of allegations of violations of AS 08.88.396.

The clarification is necessarily retroactive because the Legislature enacted House Bill 29 in 2004 which, among other things, specified that AS 08.88.396 ceased to apply to real estate transactions as of January 1, 2005; and the Legislature desires to ensure that any claims pre-dating the 2005 effective date of House Bill 29 are appropriately subject to the intent of

its 2003 enactment of House Bill 257.

The retroactivity of the bill is constitutional, as provided in both U.S. Supreme Court and Alaska Supreme Court decisions.<sup>1</sup> This bill preserves the right of purchasers of real estate to seek redress for actual damages under AS 08.88.396 while ensuring that the Legislature's intent that only actual damages be awarded is recognized by courts hearing cases arising within the relevant time periods.

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<sup>1</sup> See *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 216 (1995) (“When a new law makes clear that it is retroactive, an appellate court must apply that law in reviewing judgments still on appeal that were rendered before the law was enacted, and must alter the outcome accordingly.”); *Estate of Kim ex rel. Alexander v. Coxe*, 295 P.3d 380, 388-92 (Alaska 2013).