

ALASKA STATE LEGISLATURE
SENATE LABOR & COMMERCE COMMITTEE

April 30, 2002
1:40 pm

MEMBERS PRESENT

Senator Ben Stevens, Chair
Senator Alan Austerman
Senator Loren Leman
Senator John Torgerson

MEMBERS ABSENT

Senator Bettye Davis

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 27(FIN)

"An Act relating to the registration of individuals who perform home inspections; relating to regulation of contractors; relating to registration fees for specialty contractors, home inspectors, and associate home inspectors; relating to home inspection requirements for residential loans purchased or approved by the Alaska Housing Finance Corporation; relating to civil actions by and against home inspectors and to civil actions arising from residential unit inspections; and providing for an effective date."

MOVED CSHB 27(FIN) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 472(JUD) am

"An Act relating to certain persons who buy and sell secondhand articles and to certain persons who lend money on secondhand articles."

HEARD AND HELD

CS FOR HOUSE BILL NO. 393(JUD) am

"An Act relating to unfair and deceptive trade practices and to the sale of business opportunities; amending Rules 4 and 73, Alaska Rules of Civil Procedure; and providing for an effective date."

HEARD AND HELD

SENATE CS FOR CS FOR HOUSE BILL NO. 246(JUD)

"An Act relating to regulation of a person providing insurance for the cost of medical care, to confidentiality of insurance records, to insurance hearings, to insurance fees, to annual and quarterly statements by insurers, to managed care insurance, to taxes on insurance, to insurer certificates of authority, to risk based capital for insurers, to unauthorized and nonadmitted insurers, to surplus lines insurance, to health insurance, to life insurance, to annuity insurance, to consumer credit insurance, to insurer liquidation, to multiple employer welfare arrangements, to title insurance, to the Alaska Insurance Guaranty Association, to hospital and medical service corporations, and to regulation of insurance producers, agents, brokers, managers, and adjusters; and providing for an effective date."

SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

HB 27 - No previous action to record.

HB 472 - No previous action to record.

HB 393 - No previous action to record.

WITNESS REGISTER

Representative Rokeberg
State Capitol Bldg.
Juneau AK 99811

POSITION STATEMENT: Sponsor of HB 27.

Mr. Steven Conn, Executive Director
Alaska Public Interest Research Group
507 E St #213
Anchorage AK 99501

POSITION STATEMENT: Supported HB 27.

Mr. Tom Martin
Kodiak Board of Realtors &
Alaska Association of Realtors
1216 Madsen Ave.
Kodiak AK 99615

POSITION STATEMENT: Supported HB 27.

Mr. Bill Brady
Chairman, Legislative Committee
Alaska Association and Anchorage Board of Realtors
POB 110101

Anchorage AK 99511
POSITION STATEMENT: Supported HB 27.

Mr. Franco Venuti, Certified Building Inspector
POB 3652
Homer AK 99603
POSITION STATEMENT: Supported HB 27.

Ms. Carol Perkins
Active Inspections and Energy Rating
POB 870505
Wasilla AK 99687
POSITION STATEMENT: Opposed HB 27.

Mr. William Bruu
Ti-Le-An Management
HC30, Box 5569
Palmer AK 99645
POSITION STATEMENT: Opposed HB 27.

Mr. David Owens
Owens Inspection
POB 3589
Palmer AK 99645
POSITION STATEMENT: Opposed HB 27.

Ms. Robin Ward
Alaska State Homebuilders Association
POB 91443
Anchorage AK 99509
POSITION STATEMENT: Supported HB 27.

Ms. Laura Achee
Staff to Representative Joe Green
State Capitol Bldg.
Juneau AK 99811
POSITION STATEMENT: Commented on HB 472 for Representative Green.

Mr. Norm Blakely
Alaska Trading and Loans
POB 537
Soldotna AK 99669
POSITION STATEMENT: Commented on HB 472.

Lieutenant Julie Grimes
Department of Public Safety
PO Box 111200
Juneau, AK 99811-1200
POSITION STATEMENT: Supported HB 472.

Representative Gary Stevens

State Capitol Bldg.
Juneau AK 99811

POSITION STATEMENT: Sponsor of HB 393

Ms. Cynthia Drinkwater, Assistant Attorney General
Department of Law
PO Box 110300
Juneau, AK 99811-0300

POSITION STATEMENT: Commented on HB 393.

ACTION NARRATIVE

TAPE 02-26, SIDE A

Number 001
#HB27

HB 27-HOME INSPECTORS/CONTRACTORS

CHAIRMAN BEN STEVENS called the Senate Labor & Commerce Committee meeting to order at 1:40 pm and announced HB 27 to be up for consideration.

REPRESENTATIVE ROKEBERG, sponsor of HB 27, said that right now anyone who wants to call themselves a home inspector can "hang up a shingle." HB 27 seeks to protect the homeowner and endeavors to balance the legal responsibilities of the inspectors together with the consumers and those other people who are a part of a real estate transaction. The version they are working with, CSHB 27(FIN), adds the home inspector licensures to the specially contract and endorsement section in statute. He explained that several versions of this bill have a stand alone board, but the cost for the biennial fee was in excess of \$1,500. So, they have lowered those costs to \$250 by not establishing a board, but creating an endorsement as a specialty contractor license.

CHAIRMAN STEVENS asked regarding page 6, line 4, who requests the inspection.

REPRESENTATIVE ROKEBERG replied that it could be either a buyer, a seller, a bank "or somebody." It gives ownership of the report to the person who is purchasing it.

CHAIRMAN STEVENS asked if anybody has the authority to order it.

REPRESENTATIVE ROKEBERG replied that anybody could, but there has to be consent from the purchaser of the report to pass it on to someone else. Typically, a buyer wants to make an offer on a home, puts money down contingent on a home inspection. At that point a home inspector is hired by the buyer and he produces a

report. In this case, the report is in the buyer's hands. Typically, he would give that to the seller of the house noting the items that need repairs before he completes the purchase. The intent is to keep the seller from being able to pass the report around to other parties who weren't party to the original transaction giving them standing to bring an action against the inspector.

SENATOR TORGERSON asked regarding page 3, line 10, where "specialty contractor" is defined and noted that it is only used once.

REPRESENTATIVE ROKEBERG said as he indicated, the home inspector under this legislation is a specialty contractor under the contractor's section of the statute, which is already on the books.

CHAIRMAN TORGERSON noted that the work is good for six months and asked if that was an industry standard.

REPRESENTATIVE ROKEBERG said that was a standard after discussions.

MR. STEVE CONN, Executive Director, AKPIRG, supported HB 27, but said there were several problems with it. Section AS 08.18.061(b), related to the bonding has a long-term problem, because the bonds, which were set a long time ago, are "woefully low" in terms of the actual potential damage. "Ten and five thousand dollars is really almost laughable."

Section AS 08.18.061 talks about the exemptions, because they speak of non-applicability of certain provisions when the work is \$10,000 or less. He doesn't agree with that, since a roofing job that cost less than \$10,000 should have the same legal right accorded to it as anything else. "To use that as a jumping off place for an exemption and at the same time only bond people at \$10,000 and \$5,000 seems illogical to say the least."

The section related to limits of liability is also too short. On existing homes AS 08.18.085 has a one-year provision to bring an action. A person who has an inspection in the spring might not find out how inadequate the inspection was until it has experienced an Alaskan winter. Finally, he thought that cities like Anchorage and Fairbanks would want to require a bond based on the realities of their market, if the state is going to allow inspectors to be under-bonded.

REPRESENTATIVE ROKEBERG responded that this is a business

transaction and it sounds like he wants to protect the public with a "legal license." The bonding requirement is not intended to pay for someone's roof. The inspections typically cost about \$350.

People don't understand what constitutes the inspection report and what liability arrives from these situations. Heretofore the inspectors have tried to limit their liability to the amount of the fees, but the courts in the state of Alaska found them void. They're not enforceable contracts because they're against public policy. This particular bill outlaws that explicitly in the black letter law. But to find that we need to have the home inspectors by omission as a matter of factual evidence is a matter that could be played out in a court. We shouldn't be looking to them to right all the ills of a particular transaction.

MR. TOM MARTIN, Kodiak Board of Realtors, said he also represents the Alaska Association of Realtors and they support HB 27.

MR. BILL BRADY, Chairman, Legislative Committee, Alaska Association Anchorage Board of Realtors, said he is also the former President of the Alaska Association of Realtors and that they support HB 27. They strongly believe it is a consumer protection bill and hope they pass it out of committee today.

MR. FRANCO VENUTI, Certified Combination Building Inspector, said he has performed in excess of 3,000 inspections and although he supported HB 27, he had some questions with section 33 that allows engineers and architects to inspect rural areas for Alaska Housing Finance Corporation loans. He understands that there is no insurance requirement for engineers or architects and inspectors are required to be insured. He was also concerned with AS 08.18.156, which is the extension for home inspections. Item 8 effectively eliminates the requirement for energy raters to be licensed under this bill, but energy ratings are a very important part of the process and they should be held just as responsible for them as the inspector.

Section 41, the transitional licensing provisions, is also troublesome because it states that licenses would be offered to someone who has been in the home inspection business in the state on October 1, 2001 and has passed the Building Inspector Examination or Property Maintenance and Housing Inspector Examination given by the International Conference of Building Officials (ICBO).

Most of the ICBO inspectors who have been doing Alaska Housing Finance Corporation inspection for properties

are certified combination dwelling inspectors. That was the certification required when this process went into effect back in '92. My question on this requirement is if we hold the combination dwelling inspector certification that some of us in the business view as requiring a higher degree of knowledge than a building inspector exam, I'm wondering why they've reduced that requirement to only be a building inspector exam.

MR. VENUTTI said he had another concern with section 22 and the requirement for insurance in AS 08.18.010(1), which is not clear. It talks about requiring a \$20,000 property damage, \$50,000 injury including death for one person and \$100,000 for injury, including death for one or more people and he was wondering if that is the insurance requirement for this bill.

REPRESENTATIVE ROKEBERG replied yes. They are just requiring very limited liability insurance that any business should have.

The examination that that gentleman has passed is certainly going to be adequate. The home inspector examination given by ICBO is meant to be an inclusive term of art to include the different categories that the ICBO provides examinations on. So, that should not be a problem.

He said they considered bringing the energy raters underneath the bill, but because they don't have the breadth of knowledge, they were determined to be in a separate category not regulated by this particular bill. The architects and engineers insurance is in existing law right now and is up to Alaska Housing. "The insurance requirements are almost diminutive here, so I don't think there's any problem."

SENATOR TORGERSON asked if it would hurt to put "equivalent" after "International Conference of Building Officials."

REPRESENTATIVE ROKEBERG said stated to "pass the building home inspector examination or property maintenance..." and those would be established by regulation. There are various types of exams the ICBO gives.

SENATOR TORGERSON asked Mr. Venuti if he was satisfied that the language is broad enough to cover an examination that he might have taken.

MR. VENUTI replied that he wasn't. He wanted to see it in writing so it wouldn't be interpreted wrong by someone else.

CHAIRMAN STEVENS asked him what he was licensed as.

MR. VENUTI replied that he is a combination building dwelling inspector. This is the certification that most people now have who do Alaska Housing Finance Corporation inspections.

SENATOR TORGERSON asked who actually issued the license.

MR. VENUTI replied, "The International Conference of Building Officials," and added that the examinations in the bill are entirely different.

SENATOR TORGERSON said that didn't appear to be the case and asked if they had changed the process or if he was looking at the same version of the bill. He said that Mr. Venuti referenced section 41, but he actually was referencing section 43, which says, "Pass the building inspectors examination on property maintenance and home inspection issued by the ICBO."

MR. VENUTI responded that those are entirely different certifications than a combination dwelling inspector, which includes building inspections, electrical inspections, plumbing and mechanical inspections.

REPRESENTATIVE ROKEBERG commented, "The housing inspector examination, as given by the ICBO, are meant to be generic so they would include all those examinations that are appropriately given by the ICBO."

He appreciated Mr. Venuti's concern, but the language is meant to be inclusive.

CHAIRMAN STEVENS asked if his concerns could be addressed in section 31, the exemptions.

REPRESENTATIVE ROKEBERG replied that he didn't think so. He referred to section 7 on page 4 and said the language is intended to be vague.

CHAIRMAN STEVENS asked Mr. Venuti to write his concerns down and fax them in to his office.

MS. CAROL PERKINS, Partner, Active Inspections and Energy Rating, said she does new and existing construction and energy ratings and that she has some questions with the bill. She wanted to know if the language on page 5, line 21, AS 08.18.023, applied to all inspections.

REPRESENTATIVE ROKEBERG replied yes.

MS. PERKINS continued her questioning asking, if that is the case, it refers to a report that goes back to section under

definitions of reports where it says they have to notify the purchaser of the inspection as to the limitations of their report and their coverage.

REPRESENTATIVE ROKEBERG said he wasn't used to being interrogated by a witness.

MS. PERKINS clarified her question saying that section 32 says home inspection means a legal examination performed in accordance with standards of practice adopted by the department...readily visible heating, plumbing etc. She explained that all new construction has to be readily visible before they inspect it. Then there is a list of inspections they are supposed to do for Alaska Housing and notification they are supposed to give regarding defects, which relates more to existing housing than it does to new construction. Other language also applies to existing construction more than to new construction. She thought that references to new construction and existing construction needed to be clarified. She also questioned what was meant by "valid" in the section regarding the length of time the reports are good.

CHAIRMAN STEVENS said he thought "valid" referred to the timeframe for any recourse.

REPRESENTATIVE ROKEBERG said he had talked with Ms. Perkins for a long time and had answered all of her questions before.

MR. WILLIAM BRUU, Owner, Ti-Le-An Management Incorporated, an inspection firm that has been doing inspections of all types in the Valley for almost 15 years, he said that he faxed his concern to the sponsor, but he absolutely refuses to see his point.

There are two types of inspections here that are trying to be legislated or regulated by one regulation and it just doesn't work. The home inspector goes out and looks at an existing home for two to three hours on one day and he's done. He never goes back. In the meantime, a new construction inspector goes to a dwelling that is being constructed from the time the plans are provided to him until the time the house is finished. He may be on-site anywhere up to 15 times at that house. Not only that, but when he provides his final inspection and he signs off on the paperwork as required by Alaska Housing, the paperwork becomes a recorded legal document. His name is attached to that dwelling in perpetuity. This bill just is so confusing to people who are inspectors as to where their liabilities are going to be, what they are going to have to insure against as far as liabilities are concerned and the cost as indicated in the fiscal note that's attached to

this is - and I think the sponsor misspoke when he said the licensing fees would be approximately \$250 per year. Our best estimate for the population of inspectors that would be licensed in the state of Alaska is just above 100 people. And if you take the first year cost of \$16,500 as indicated in the fiscal note and you divide that by 100 people, that drives the licensing cost to over \$800 per person. Not only that, but you add on top of that that now requires bonding - and what you've done is you've driven the overhead cost for an inspector to well over \$1,000 per year. That money is going to have to be paid for by somebody and it will be the consumers and I don't see how driving the cost of obtaining a house up significantly for a consumer is a protection item.

REPRESENTATIVE ROKEBERG interrupted to say the Mr. Bruu has the wrong information and testimony from the last three people are from people he has been dealing with for three or four years.

Frankly, I don't think anything will satisfy these people. As my testimony indicated, this approximate \$250 is going to be spread over 2,100 - 2,200 specialty contractors. We've changed the bill. He's referring to an old version - and the fact of the matter is the distinctions between new construction and existing construction is understood by me and is accommodated in this bill. 'The requirements of a homeowner or a lender will set the requirements for the nature of the inspection and/or the individual inspector does.' All he has is the requirement that it be written.

CHAIRMAN STEVENS said he didn't receive Mr. Bruu's fax and asked him to send it again.

MR. DAVID R. OWENS, Owner, Owens Inspection Services, said he lived in Alaska since 1962 and had been a building inspector since 1983. He currently opposed the bill as written and agreed with the previous speakers regarding further clarification needing to be done to separate existing inspection and new construction. He further agreed with Mr. Venuti who pointed out that it is important to clarify what examination was required for new construction and for existing construction, because they are quite different. The combination dwelling inspection test that ICBO puts out is a more appropriate one for new construction and that is an important point.

MR. OWENS said that he is also opposed to repealing AS 18.56.300(c), which has important protection language for the

inspector. It was put there 10 years ago by Alaska Housing so they wouldn't be afraid to do their jobs on new construction by being bothered with frivolous lawsuits from a minor oversight.

MS. ROBIN WARD, Alaska State Homebuilders Association, explained that this is a compromise document that industry has worked on for the past three or four years. She believed this is a good document. "The industries are equally uncomfortable, but there is a public benefit to the consumer by this legislation."

TAPE 02-26, SIDE B

SENATOR AUSTERMAN asked why they limited the validity of the inspections to six months.

REPERESNTATIVE ROKEBERG said the concern is that changing weather conditions with the seasons could have an impact on the house. "They are trying to put people on notice that there is not a length of time to the report."

SENATOR AUSTERMAN asked who he introduced the bill for.

REPRESENTATIVE ROKEBERG replied, "For the people of the state of Alaska."

He explained that they are repealing immunity that the inspectors are granted under the law now under the Alaska Housing Finance Corporation.

Naturally they don't want to loose that. That's what we heard today. That's where the squeak is, because we're removing some of the immunities people are operating under to make sure they are responsible to the public.

REPRESENTATIVE ROKEBERG said that Alaska Housing has supported this bill over the years.

SENATOR LEMAN asked on page 14, line 12 and on, regarding any prohibition on an offer to deliver compensation as inducement or reward to the owner of the property, if that would prohibit someone from engaging in traditional business of buying lunch or giving a trinket.

REPRESENTATIVE ROKEBERG replied that it wouldn't.

SENATOR AUSTERMAN asked if there was a current law that requires home inspectors.

REPRESENTATIVE ROKEBERG replied that required inspections are for local building codes and Alaska Housing for new construction, not for existing.

MR. OWENS said they are trying to regulate an activity, inspection, but he thought the question is are they really regulating the whole activity or just taking bits and pieces of it.

That's what we're doing in this bill. We're not regulating all people that do inspection work. A good percentage of them, I'd say more than 50%, are going unregulated. It's just the people who do existing home inspections and new home inspections under Alaska Housing and I'm a little bit unclear whether it would include other new home inspectors. And commercial inspectors are left completely out of this, but you want to regulate an activity, you should regulate the whole group of people who do inspection work.

CHAIRMAN STEVENS said it was his intent to move this bill on with stated concerns to the Judiciary Committee.

2:40 pm

SENATOR LEMAN moved to pass CSHB 27(FIN) from committee with individual recommendations. There were no objections and it was so ordered.

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#HB472

HB 472-PAWNBROKERS/SECONDHAND DEALERS

CHAIRMAN STEVENS announced HB 472 to be up for consideration.

MS. LAURA ACHEE, staff for Representative Joe Green, sponsor of HB 472, said that he has prepared a committee substitute that she would explain.

She explained that there is a statute right now that requires anyone who buys a secondhand article with the intent of reselling it or takes a secondhand article as collateral on a loan, not including banks, to keep a record of every single article they take in including the name of the person that they purchased it from. The bill lists what the articles would be rather than saying any article - like articles with a serial number, article with a resale value greater than \$75 or article presented in a lot of 10 or more, which would cover CDs and DVDs.

The biggest change in the bill is that in addition to keeping the records now the secondhand dealers and contractors who conduct these transactions would have to provide weekly reports to their local police agency or to the state troopers if they are outside

of a municipality. The version that passed out of the House has every two weeks for reporting. After speaking with law enforcement personnel, Representative Green felt that every two weeks was not frequent enough to track stolen articles.

Representative Green wants to make it clear that the intent of this bill is not as some people have supposed - that we found that there's a big problem with dishonest shopkeepers out there. In fact, that's not the problem. We've found every shopkeeper we've spoken to has been very honest and upfront about the fact that they check I.D. s and they don't want stolen property in their stores. There are plenty of theft laws on the books that will help law enforcement shut down any shopkeepers that were known to be taking in hot items and fencing them. What we're trying to do is make it easier for police to get the items that are stolen back to the people to whom they belong and to also have a record of folks who are repeatedly stealing and selling items to be used during prosecution.

She said the next change from the version that passed out of the House is in Section 6, the property-holding requirement. The House version says that pawn brokers have to hold items for two weeks before they could sell them allowing them time to correlate the reports of items taken in with the reports of stolen items. The CS backs the holding period down a little bit to 72 hours from the time that the report is submitted so they would have to hold from the time they take it in until 72 hours after the report is submitted. They have included secondhand dealers in the holding provisions.

The next change is in part (b) of this section where it's made really clear that in the case of a pawned item, the person who pawned it may redeem that item within the hold period and not be held to the hold period. AS 08.76.760 has an exemption. In Alaska especially a lot of people own shops that cover a range of services like secondhand dealers, pawn brokers, thrift stores, etc. and they want to make it clear that if a dealer purchases an item from another dealer, purchases it at auction or purchases it wholesale, are not subject to the reporting laws, because they are not items that are likely to be stolen or if they are secondhand goods that come from another dealer, they're presumed to have been reported in the original transaction.

Another change in the CS is in section 1, the House version, which said that they would record 'items' that fall in these categories. The CS makes it clear that it refers to secondhand items.

SENATOR AUSTERMAN asked if they know what percentage of pawned secondhand items are hot.

MS. ACHEE replied that she didn't know that.

SENATOR AUSTERMAN moved to adopt the CS to HB 472 for discussion purposes. There were no objections and it was so adopted.

SENATOR AUSTERMAN said he assumed there was a big problem with secondhand stores that requires these reporting restrictions.

MS. ACHEE explained that this bill came from the fact that the Municipality of Anchorage has a law that requires pawn brokers to make weekly reports and it has been helpful in tracking stolen items. They have a constituent who had a number of items stolen and the Anchorage Police Department checked the local stores and couldn't find them. They then thought the items had gone out of Anchorage to the Valley and sent an officer out once or twice to check the records and all of the stores. Ultimately, the items were never recovered even though they had an idea of where they went. This constituent thought a statewide reporting system would improve the process. In Anchorage, alone, there is one police officer whose entire job is checking pawn shops and secondhand stores looking for stolen items.

SENATOR TORGERSON said the only part of the bill he doesn't like is the reporting every week to the Police Department. He asked why they can't just go in and inspect the records, which existing statute allows them to do.

MS. ACHEE replied that he was correct about the records already being open to law enforcement agencies, but there is a manpower issue and they don't have the time.

SENATOR TORGERSON asked how many pawnbrokers and secondhand stores are in Alaska that are required to report. Another question he has was what happens when you have the municipal police and the borough state troopers who both need it then. It sounds to him like it's a never-ending thing where everyone needs to report.

MS. ACHEE replied that with regard to reporting, it would be to the presiding jurisdiction. And if an item has to be recorded when it's taken in and that's the only time it has to be recorded. The volume of information going to police departments isn't going to change if you're reporting it weekly versus reporting it every two weeks.

It's going to be the same number of transactions being recorded. It's just how frequently the reports come in. In a situation, especially with hold requirements that

in the version that came out of the House were identical to the reporting times, it gives the law enforcement no time to correlate their reports for stolen property with these reports of items that have been pawned or sold to see if any matches occur unless the frequency is greater.

SENATOR TORGERSON said he understands the situation, but he thought it was an over-burdened position to put pawn brokers and secondhand dealers in when their books are already open for inspection. "Also, this information is going to pile up in a corner somewhere. I can't think they're going to have a dedicated person look through this stuff to see if somebody's serial number or item shows up on a list. Maybe they will."

MR. NORM BLAKELY, Alaska Trading and Loans on the Kenai Peninsula, said he had some questions about this bill. He voluntarily does this in his shop on the Peninsula for about three or four months and finally their officer told them that they just didn't have the manpower to take care of the reports and go through them. So they no longer needed to do it. He said that his was the only shop that volunteered to do the reports and that there were others that didn't. He didn't see how this would work.

MR. BLAKELY also said that most of the time what happens in these cases that he can see are family disputes. He thought they should think this bill through and make it a little more equitable for everyone.

SENATOR TORGERSON asked if he gave his information to the troopers as well as the City of Soldotna.

MR. BLAKELY replied that Chief Gifford was in the loop they were working with and the troopers were supposed to come by and pick them up, but they didn't have the time to do it. Nobody came by to pick the reports up and it was time consuming to do.

LIEUTENANT JULIE GRIMES, Department of Public Safety, said she thought the bill was "a step in the right direction."

People who are victims of theft would benefit from the way this bill is written and law enforcement will definitely have an easier time in doing their job identifying stolen property that has been pawned and then trying to get it back to the rightful owner, but more importantly actually identifying who has the professional stolen items and trying to make arrests and do a good case investigation. We do believe it is a step in the right direction.

SENATOR TORGERSON asked if his concern about the volume of information that might be coming was a concern of hers.

LIEUTENANT GRIMES replied:

I'm not going to represent that we have scads of resources that could be dedicated to it right now, but at the same time, it is not something that will sit in the corner. I understand your concern. The information, for instance, I think there's four or five shops in Mat-Su Valley, the information that they would provide would come in electronically or by hard copy paper to the trooper office and it would be - it's not a big chore to categorize and file it - and those troopers working burglaries would certainly have access to that. We'd be going through it. When you've got a case going and you're trying to determine where the property might be, that's just part of your investigation - is to check that stuff. So, it's certainly not going to go away. That information is real valuable and it would be attended to by the troopers or other law enforcement departments that have active...

SENATOR TORERGSON said that it is a class A misdemeanor if the guy knowingly violates that section. "I just have a problem with that."

CHAIRMAN STEVENS said the bill says a lot of the recording will now be done by data based management and asked if that would help them access the information with less manpower. "Do you envision developing some sort of data based management for that?"

LIEUTENANT GRIMES replied that right now the Department doesn't have the resources to actually create a state wide information management system, but it is something they could work towards in the future. "For now we would probably use just a hard copy file and a trooper actually reviewing those files looking for his evidence."

SENATOR AUSTERMAN asked how she anticipated the interaction between the Anchorage Police Department and the Alaska State Troopers.

LIEUTENANT GRIMES replied that she didn't think the interaction between the law enforcement agencies was a problem. Currently, property crimes investigators all over the state network with each other, because they realize how quickly stolen items can leave their city and be pawned in another city.

SENATOR AUSTERMAN asked if she knew the percentage of hot items that is involved.

LIEUTENANT GRIMES replied that she couldn't give him an accurate answer.

SENATOR LEMAN said it would be to everyone's advantage to have a web page with the standardized format so people could submit this information electronically.

I can't imagine getting all this hard copy...I think you'd be better off to pay the secondhand dealers in the pawn shops \$1 if they submit a report electronically according to the right format to provide an incentive to them and be money ahead.

He said he knows they mean well.

CHAIRMAN STEVENS said he thought that was a valid point.

MS. ACHEE said she thought Representative Green would whole heartedly support a data based system, but this just isn't the right fiscal year to be asking for more money.

SENATOR AUSTERMAN said he didn't see where it says they need to maintain the records for one year and it talks about a seven-day period. He asked if that was for the new items.

MS. ACHEE replied that new items are not explicitly stated, but that's not the intent, which is that only the new records since the last report need to be recorded. She said that could be clarified.

MR. BLAKELY commented that he had no problem with Representative Green's concern that families get their property returned to them, but if then they need to think about restitution for the people who have purchased the property. This has been a real problem that should be addressed.

MS. ACHEE responded that without this bill, if an individual finds an item in a store that they can legitimately claim belongs to them and the police recover it, they'll get it back and the shop keeper will unfortunately be out the money. Under this bill the shop owner could bring a civil action against the person who took it and gave him their name and age.

SENATOR AUSTERMAN said he was having a hard time with this bill especially if it stays in the same form it's in now.

I think it steps too far out on the limb of creating new laws that create new work that are a burden on everybody. Unless they can show me that this is really a big problem that we need to address through creating new laws, I'm going to have a hard time moving this out of committee.

CHAIRMAN STEVENS said they would hold the bill.

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#HB393

HB 393-SALES OF BUSINESS OPPORTUNITIES

CHAIRMAN STEVENS announced HB 393 to be up for consideration.

REPRESENTATIVE GARY STEVENS, sponsor of HB 393, said this is a consumer bill introduced at the request of the Department of Law. He said the idea is to protect Alaskans from lots of consumer scams that are out there (called "busops" - short for business opportunities). He just received about 25 examples from Edna March, a Juneau lady, of "business opportunities." He said they are targeted toward people who are over 50, those who have to stay at home, etc.

This bill is not intended to harm any legitimate businessman, but it does place requirements on those that may not be quite on the up and up. The busops are very high pressure as you'll see from reading through some of these...They promise huge earnings; they scam the vulnerable among us..

HB 393 requires that the busops register with the state so they can find them. Right now they can't locate them. It also requires them to disclose information to the buyers, they would have to use an escrow account to make sure that things people buy actually arrive and gives the customer the 30 day right of cancellation. He said that about half the states have similar regulations and his bill exempts the legitimate businesses they are familiar with, like Avon and Amway and Mary Kay.

If they don't pass this bill, these scams will continue and it will take a great deal of time and money to track them down. It will protect Alaska businessmen and women and will let the Department of Law take preventative action before people are scammed.

SENATOR LEMAN said they had talked privately about this and his opinion is that the change made on the House floor on page 13, lines 5 - 8, are unnecessary and probably damage this legislation. He intended to offer an amendment at the appropriate

time to delete it. Another item is that he thought they should raise the exemption from \$250 to \$500, as it is in other states. Finally, after reviewing some letters that he received, he said a lot of these are legitimate businesses and the exemptions in line 15 - 17 don't cover them adequately. "You say they do; they say they don't. I want to make sure that gets clarified."

Someone pointed out that product inventory may be sold to the buyer at something other than a wholesale price and that may then cause that exemption not to activate.

TAPE 02-27, SIDE A

REPRESENTATIVE STEVENS said the amendment on page 13, line 5, begins with "except" and that establishes an aggregate up to \$10,000. He has a hard time defending that and wouldn't be concerned if they deleted it.

The \$250 - \$500 is more interesting. Some people have told him that there shouldn't be any level and, if people are scammed, they should be protected whatever the amount is over. But he thought that you have to draw a line somewhere and he thought \$250 was a reasonable line to draw. If you draw it at \$500, you would have a lot of companies who are targeting people at \$495 and still do quite well financially, but be taking advantage of lots of people. They have found states that have gone to the higher figure of \$500, but now wish they were at \$250.

On Senator Leman's third point regarding the exemption on lines 15 - 17 he explained that those were legitimate businesses like Mary Kay and Avon. He understands this does indeed protect those people and takes them out of this section entirely saying he talked extensively with the Direct Sellers Association and they agreed that this section does exempt the direct sellers.

SENATOR TORGERSON asked if the Attorney General was the one who brings the complaint in relation to the court rule amendments copies section (page 17). He asked if they are assuming someone else brings the complaint.

MS. CYNTHIA DRINKWATER, Assistant Attorney General, said the indirect court amendments they are referring to specifically address AS 45.6.120. When you look at that section of the bill, you'll see that that is a reference to claims against the escrow account. These complaints most likely would be brought by a purchaser of busop who had been defrauded and the department wants copies of those complaints. Similarly, in the preceding section there is also a requirement that sellers who do escrow accounts provide notice of where those escrow accounts are to the Department of Law. This section is just for an additional tracking mechanism.

CHAIRMAN STEVENS asked her to address the concern about the \$500 threshold.

MS. DRINKWATER said that originally they had requested a \$200 threshold because they wanted to provide as much protection for consumers as they could while at the same time recognizing that there has to be a diminimous level where it wouldn't be cost effective for the department to monitor all these kinds of business opportunities. This is a line that is based on what other states have done, although \$200 is at the lower end. However, nine states have thresholds of \$200 - \$300. Thirteen states have a \$500 threshold amount. A model Business Opportunity Act has a \$250 amount. Several states have started with either \$500 or \$300 thresholds and have found that it is advantageous to consumers to lower it to \$250.

SENATOR AUSTERMAN asked if they pass this law, could he call the Department of Law to see if the stack he was just handed were licensed to do whatever in the state.

MS. DRINKWATER said yes. The registration requirement would work similar to the telemarketing statute that's in effect now, as well as our charitable organization statutes. In both of those cases there is a requirement that solicitors register with the department. That information is available on their website, so consumer can look it up and see which telemarketers, charities or solicitors are registered.

SENATOR AUSTERMAN asked what happens if they are not registered.

MS. DRINKWATER replied then it would be reasonable to think that activity wouldn't be a good idea to be involved in.

SENATOR AUSTERMAN said his point is what does the department do when someone isn't registered.

MS. DRINKWATER responded that they would probably first of all send out a cease and desist letter, which informs the business entity that they are in violation of a law and that they have to be registered in the state. Sometimes they get immediate response and sometimes they don't. Depending on the complaint that's filed, they would take additional action. "One of the advantages of this legislation is that it would give us an ability to take action prior to consumers loosing money..."

REPRESENTATIVE STEVENS said that someone asked about page 13, number 5, which gives an exemption for the legitimate Mary Kay type of business and asked her to comment.

MS. DRINKWATER said:

Almost all the other states that have a business opportunity registration statute like this one have an exemption that is designed to exempt out direct sellers such as we've been discussing. The language in our proposed statute is very similar to every other state. It's also language that the direct sellers requested be included in a federal trade commission rule on business opportunities and franchises. Certainly our intent is to provide an exemption that would allow Mary Kay folks and Tupperware folks to carry on their business...

SENATOR LEMAN moved on page 13, line 5, to delete everything from the comma following the \$250 up to the semicolon and asked for unanimous consent. There were no objections and it was adopted.

CHAIRMAN STEVENS explained that the amendment returned the bill to its original state as it came to the House Judiciary Committee. He said they would set the bill aside until Thursday and adjourned the meeting at 3:30 pm.