ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
February 18, 2004
1:04 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson, Vice Chair
Representative Jim Holm
Representative Dan Ogg
Representative Ralph Samuels
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 29
"An Act relating to real estate licensees and real estate transactions; and providing for an effective date."

- HEARD AND HELD

CS FOR SENATE BILL NO. 30(JUD) am
"An Act relating to information and services available to pregnant women and other persons; and ensuring informed consent before an abortion may be performed, except in cases of medical emergency."

- HEARD AND HELD

HOUSE BILL NO. 292
"An Act relating to information and services available to pregnant women and other persons; and ensuring informed consent before an abortion may be performed, except in cases of medical emergency."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 29
SHORT TITLE: REAL PROPERTY TRANSACTIONS/LICENSEES

SPONSOR(S): REPRESENTATIVE(S) ROKEBERG

01/21/03	(H)	PREFILE RELEASED (1/10/03)
01/21/03	(H)	READ THE FIRST TIME - REFERRALS
01/21/03	(H)	L&C, JUD
01/20/04	(H)	SPONSOR SUBSTITUTE INTRODUCED
01/20/04	(H)	READ THE FIRST TIME - REFERRALS
01/20/04	(H)	L&C, JUD
02/04/04	(H)	L&C AT 3:15 PM CAPITOL 17
02/04/04	(H)	Moved CSSSHB 29(L&C) Out of Committee
02/04/04	(H)	MINUTE(L&C)
02/05/04	(H)	L&C RPT CS(L&C) 6DP 1NR
02/05/04	(H)	DP: CRAWFORD, LYNN, GATTO, ROKEBERG,
02/05/04	(H)	DAHLSTROM, ANDERSON; NR: GUTTENBERG
02/18/04	(H)	JUD AT 1:00 PM CAPITOL 120

BILL: SB 30
SHORT TITLE: ABORTION: INFORMED CONSENT; INFORMATION
SPONSOR(S): SENATOR(S) DYSON

01/21/03	(S)	READ THE FIRST TIME - REFERRALS
01/21/03	(S)	HES, JUD, FIN
03/17/03	(S)	HES AT 1:30 PM BUTROVICH 205
03/17/03	(S)	Heard & Held
03/17/03	(S)	MINUTE(HES)
03/26/03	(S)	HES AT 1:30 PM BUTROVICH 205
03/26/03	(S)	Heard & Held
03/26/03	(S)	MINUTE(HES)
04/03/03	(S)	HES AT 5:00 PM BELTZ 211
04/03/03	(S)	Heard & Held
04/03/03	(S)	MINUTE(HES)
04/09/03	(S)	HES AT 1:30 PM BUTROVICH 205
04/09/03	(S)	Heard & Held
04/09/03	(S)	MINUTE(HES)
04/14/03	(S)	HES AT 1:30 PM BUTROVICH 205
04/14/03	(S)	Moved CSSB 30(HES) Out of Committee
04/14/03	(S)	MINUTE(HES)
04/15/03	(S)	HES RPT CS 2DP 1DNP 1NR SAME TITLE
04/15/03	(S)	DP: DYSON, GREEN;
04/15/03	(S)	DNP: DAVIS; NR: WILKEN
05/02/03	(S)	JUD AT 1:00 PM BELTZ 211
05/02/03	(S)	Heard & Held
05/02/03	(S)	MINUTE(JUD)
05/03/03	(S)	JUD AT 9:00 AM BELTZ 211
05/03/03	(S)	Moved CSSB 30(JUD) Out of Committee
05/03/03	(S)	MINUTE(JUD)
05/06/03	(S)	JUD RPT CS 3DP SAME TITLE

05/06/03	(S)	DP: SEEKINS, THERRIAULT, OGAN
05/12/03	(S)	FIN AT 9:00 AM SENATE FINANCE 532
05/12/03	(S)	Moved Out of Committee
05/12/03	(S)	MINUTE(FIN)
05/12/03	(S)	FIN RPT CS(JUD) 3DP 3NR 1AM
05/12/03	(S)	DP: GREEN, TAYLOR, STEVENS B;
05/12/03	(S)	NR: WILKEN, HOFFMAN, BUNDE; AM: OLSON
05/16/03	(S)	TRANSMITTED TO (H)
05/16/03	(S)	VERSION: CSSB 30(JUD) AM
05/16/03	(H)	READ THE FIRST TIME - REFERRALS
05/16/03	(H)	HES, JUD, FIN
05/17/03	(H)	HES AT 1:00 PM CAPITOL 106
05/17/03	(H)	Moved HCS CSSB 30(HES) Out of Committee
05/17/03	(H)	MINUTE(HES)
05/17/03	(H)	HES RPT HCS(HES) 4DP 1NR
05/17/03	(H)	DP: SEATON, COGHILL, WOLF, WILSON;
05/17/03	(H)	NR: CISSNA
02/18/04	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE NORMAN ROKEBERG
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of SSHB 29.

PEGGYANN McCONNOCHIE, Member
Agency Task Force
Alaska Association of Realtors (AAR)
Juneau, Alaska
POSITION STATEMENT: Assisted with the presentation of SSHB 29.

PERRY L. UNDERWOOD, Member
Agency Task Force
Alaska Association of Realtors (AAR)
Eagle River, Alaska
POSITION STATEMENT: Assisted with the presentation of SSHB 29.

DAVE FEEKEN, Chair
Legislative Committee
Alaska Association of Realtors (AAR)
Kenai, Alaska
POSITION STATEMENT: Assisted with the presentation of SSHB 29.

KIRK WICKERSHAM, Member
Agency Task Force
Alaska Association of Realtors (AAR)

Anchorage, Alaska
POSITION STATEMENT: Provided a comment during discussion of SSHB 29.

LINDA S. GARRISON, Broker
AAR #1 Buyer's Agency
Anchorage, Alaska
POSITION STATEMENT: Provided comments during discussion of SSHB 29.

STEVE CLEARY, Executive Director
Alaska Public Interest Research Group (AkPIRG)
Anchorage, Alaska
POSITION STATEMENT: Provided comments during discussion of SSHB 29.

DAVID A. GARRISON, Associate Broker
AAR #1 Buyer's Agency
Anchorage, Alaska
POSITION STATEMENT: Provided comments during discussion of SSHB 29.

SENATOR FRED DYSON
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of SB 30.

JASON HOOLEY, Staff
to Senator Fred Dyson
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Assisted with the presentation of SB 30 on behalf of Senator Dyson, sponsor, and answered questions.

VANESSA TONDINI, Staff
to Representative Lesil McGuire
House Judiciary Standing Committee
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Presented a proposed committee substitute for SB 30 on behalf of the House Judiciary Standing Committee.

REPRESENTATIVE NANCY DAHLSTROM
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Testified in support of SB 30.

JENNIFER RUDINGER, Executive Director
Alaska Civil Liberties Union (AkCLU)
Anchorage, Alaska
POSITION STATEMENT: Testified against the passage of SB 30.

DEBBIE JOSLIN, President
Eagle Forum Alaska
Delta Junction, Alaska
POSITION STATEMENT: Testified in support of SB 30.

SARA CHAMBERS
Juneau, Alaska
POSITION STATEMENT: Spoke in opposition to SB 30.

COLLEEN MURPHY, M.D.
Obstetrician/Gynecologist (OB/GYN)
Anchorage, Alaska
POSITION STATEMENT: Testified in opposition to SB 30 and answered questions.

ROBERT JOHNSON, M.D.
Kodiak, Alaska
POSITION STATEMENT: Testified in opposition to SB 30.

AMY BOLLENBACH
Homer, Alaska
POSITION STATEMENT: Testified in opposition to SB 30.

ROBIN SMITH
Anchorage, Alaska
POSITION STATEMENT: Testified in opposition to SB 30.

PAULINE UTTER
Anchorage, Alaska
POSITION STATEMENT: Testified in opposition to SB 30.

CATHY GIRARD
Anchorage, Alaska
POSITION STATEMENT: Testified in opposition to SB 30.

ROMA KOTTE, Student
University of Alaska Fairbanks
POSITION STATEMENT: Testified in support of SB 30 as part of a school project.

CAREN ROBINSON, Lobbyist
for Alaska Women's Lobby

Juneau, Alaska
POSITION STATEMENT: Testified on behalf of the Alaska Women's Lobby in opposition to SB 30.

ACTION NARRATIVE

TAPE 04-17, SIDE A
Number 0001

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at 1:04 p.m. Representatives McGuire, Anderson, Holm, Samuels, Gara, and Gruenberg were present at the call to order. Representative Ogg arrived as the meeting was in progress.

HB 29 - REAL PROPERTY TRANSACTIONS/LICENSEES

Number 0086

CHAIR McGUIRE announced that the first order of business would be SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 29, "An Act relating to real estate licensees and real estate transactions; and providing for an effective date." [Before the committee was CSSSHB 29(L&C).]

Number 0100

REPRESENTATIVE NORMAN ROKEBERG, Alaska State Legislature, sponsor, relayed that the concept of SSHB 29 was brought forth by the Alaska Association of Realtors (AAR), and that a task force - numbering 30 to 40 people - was formed by the real estate industry to draft the specifics of the legislation. He went on to say:

> I had the fortune to rewrite the entire title under the real estate code, some eight years ago, and at the time, this particular section of the law ... [AS 08.88.396] was fundamentally left substantially untouched because the industry was still struggling with the current statute and how it applied in the field and what remedial legislation needed to be done. So, in a nutshell, I rewrote the entire real estate law without this section.

REPRESENTATIVE ROKEBERG thanked the task force for all its work over the last two years in crafting SSHB 29, and said it is an excellent example of how the public process can work. He said

that the hallmark of SSHB 29 is that industry, in crafting the legislation, defaulted in favor of the consumer. He opined that the consumers of Alaska will be substantially more protected by this legislation than they are by current law, and said he is proud to bring the bill forward.

Number 0396

PEGGYANN McCONNOCHIE, Member, Agency Task Force, Alaska Association of Realtors (AAR), thanked Representative Rokeberg for his work on this issue. She went on to say:

> We're very proud to bring to you what we believe is the best consumer protection statute, or bill, that we could possibly provide in our area of real estate. First of all, you must understand that every licensee in the state of Alaska and all over the U.S. understands the need for consumer protection. After all, we're the ones who look in the eyes of the person buying their first home, or the person who's out to rent their very first property, or the person who's out looking at an investment property for the third or the fourth or the fifth time. We know they place their trust in us; we want that trust to be well placed.
>
> To give you a little bit of background, representation in our industry used to be, we all represented the seller - the buyer had no representation whatsoever. That, thank goodness, has gone by the wayside. We've moved to what the statutes currently allow now, where one agent may represent the buyer [and] one agent may represent the seller. But part of the problem with that process is this ugly thing that is called, within the statutes, dual agency.

MS. McCONNOCHIE, in response to a request, said:

> Up until the law that currently is in place passed, which was in [the late 80s, early 90s], the law said that all real estate agents worked for the seller. So you'd go to a real estate company - say, my firm - work with an agent in my firm to sell your property, and no matter what agent out there at every other firm worked with a buyer who [potentially] wanted to see my property, they all worked, still, for my seller. Which, if you think about it, that's a rather

difficult thing to do when you represent a seller who you've never met [and who] you have no personal feelings for. So consequently, trying to be a fiduciary for that seller, who works with somebody at another agency, was very difficult.

We went away from that, thank goodness. So, if you and I were at different firms, [and] your firm had a seller who wanted to sell their house [and] my firm had buyer who wanted to buy your house - different firms - each party was equally represented, and that was better. We still, in our law today, have something called dual agency, where, in the same firm you can have one agent dealing with the buyer [and] one agent dealing with the seller and that buyer wants to buy that seller's property, ... we have to go to something called dual agency. The statutes and regulations we operate under now have a paragraph "about this long" that explains what the duties and responsibilities are, of the agents, to that seller and that buyer, and it's wholly inadequate.

Number 0627

MS. McCONNOCHIE continued:

With the passage of this bill, we will throw out dual agency. You must understand that we believe if lawyers can't practice dual agency, surely we can't either. So consequently, our goal, with this law, is to make the duties and responsibilities to the consumer more clear to the consumer and also to the licensee. To give you just a little bit of information, ... most of the agents - licensees - within the state belong to [the] National Association of Realtors [NAR]; they are, we are, a trade organization now of almost 1 million people. This is an organization that has looked at this whole issue of representation for many years.

Back in about 1986, the [NAR] put on a survey; they surveyed people who have bought and sold, using a realtor, and asked them who they thought the realtor worked for. At that time, they thought the realtor worked for them, whether they were buying something or whether they were selling something; in point of fact, in 1986, the realtor usually worked for the seller.

You could see how scary it was to get back that information. There are a couple [of] major lawsuits that talk about vicarious liability at that time, the Federal Trade Commission [FTC] got involved and they said, "You have to start to figure out how you're going to protect the consumer."

Consequently, the law started changing and allowing, in fact encouraging, representation of each party. So [the] buyer had somebody there to help them look after their best interests, the seller had somebody there to look after the seller's best interests. In 1990, Representative Rokeberg worked with the [AAR], with our first task force, to put in the agency law we currently have in force today. One of the things you need to understand is that the laws and how we work with buyers and sellers throughout the United States has been in place, in many instances, since 1990, but in many instances, other states have gone through two, three, and four changes to their laws, recognizing that you don't necessarily get it right the first time.

Number 0772

MS. McCONNOCHIE went on to say:

We at the [AAR] have recognized [that] there need to be changes in the law since 1990; this, in fact, has been the third if not maybe the fourth major task force that we put together in order to try to figure out how to fix it. In many ways, we looked at this ... [to see if there were] some simple things we could do to make this better for the consumer, better for the person coming in, whether they're working with an agent to buy, sell, rent, or lease. It took us a long time to realize that we needed to do what many states - particularly the states of Washington, ... Nebraska, Montana, and ... Colorado - have done, where we have to start from scratch; we have to throw everything out and go from the beginning, saying, "What does a consumer need and want to know, how can we provide that information and protect their right for service, [and] protect their right to have trust?"

Consequently we put together this task force. We had members from all over the state of Alaska. We had

members from residential real estate - that practice in big firms and small firms - we had members ... from the commercial area, [and] from the property management area. And we looked very, very carefully at what was happening in Nebraska, for one, for example, because Nebraska is a state not unlike Alaska, where you have ... [a few] big towns and lots of little towns [and] big huge firms [and] very small firms. And we looked at how their laws have worked and whether or not the consumer has been protected in that state. We also looked at Colorado, ... Montana, and ... the state of Washington.

Number 0869

MS. McCONNOCHIE also said:

When we did, we saw that some of the commonality in those states, that worked well for the consumer, [was], for example, something called, "designated agency within a firm." In the current law and in the upcoming law, ... the broker will be the owner of the listings. But one of the things [other states] did to change it, to help protect the consumer, was when a consumer came in, and let's pretend that they wanted to buy something from you, then they were looking [at] another property that somebody wanted to sell ... [through] you, that consumer who had a relationship with you to buy would not need to forego your expertise to help them negotiate if they wanted to buy something that was also listed in the office. The broker could say [to two licensees], "You're designated to work for the buyer, you're designated to work for the seller."

The rules and regulations say the [Real Estate Commission] will establish policy and procedures that the broker will have to have to prove that there is a firewall between the two agents, that the broker can properly supervise both agents [to] make sure that the two individuals are getting the best possible representation in that particular instance in that one office. It's called designated agency. And in the states that we looked at - Montana, Nebraska, Washington ..., and Colorado - it has worked extremely well in making sure that, number one, we get away from this ridiculous dual-agency thought process, and,

number two, ... that the buyer, the seller, the landlord, [and] the tenant has an understanding of what the duties, rights, and responsibilities of the agent are to them.

The second thing that we thought was incredibly important about what these other states were doing has to do [with] informing the public of what's going on. In each of those states, they have, within their statutes or regulations, the requirement for one, and I mean only one, pamphlet - and I hope many of you have this pamphlet that we worked on as far as a draft - that would be handed to everyone before they ... contract with [an] agent to use their services. One of the problems that you have today - it doesn't matter where you go, if you go ... from Juneau to Nome, Fairbanks to Kenai - [is that] every agency, every agent has a different form that they use. Imagine how confusing that is, especially when you're in a state where we all travel around all the time.

Number 0992

MS. McCONNOCHIE relayed:

In all of those [aforementioned] states there is one form - there is only one interpretation of what the law is, and it's very specific as far as what it requires from all of us - and it gives good notice, reasonable notice, hopefully in plain-English notice, to buyers, sellers, landlords, and tenants [regarding] what they can expect from their real estate agent. ... And we have found in all of those states, the buyers, sellers, landlords, and tenants found that this document, the fact it was [the] same everywhere, helped to protect them; they didn't have to worry about what was trying to [be] pulled on them ..., they could spend the time doing what they needed: finding a property that met their needs.

We as an association, if you should be so kind as to pass this through, are making a huge commitment to you, because one of the things that we want to do and has been worked out through this bill, is we believe that there's two aspects of education that need to go on. First of all is the education of our licensees; they need to understand. We will be working with the

[AAR], through the ... Real Estate Commission, in order to ... educate the licensees, [and] we ... have put together a team. Gordon Schadt, who's the attorney for the [AAR], and myself have volunteered to go throughout the state to every, what we call local board, which means every region, and teach all the licensees, whether they be a member of the [NAR] or not; if they have a real estate license, we want to teach them what this law requires of them and how they are to protect the public by using these forms.

Number 1089

MS. McCONNOCHIE explained:

The second thing we will do is we will also go throughout the state and train the people who turn around and train new real estate agents, because we know that unless a common educational format is put together and then passed out throughout the state, there is a chance that people may not necessarily be teaching other people how to do this correctly. That's just one part. The other part has to do with a public relations campaign, because, after all, it's in our best interest to make sure that we inform the public as to what this does to them, for them. We want to make sure the public understands how they're going to be better protected through this, that we get away from this ridiculous, antiquated idea of dual agency that can't work anywhere, that we make sure that they understand that they have a duty, right, and responsibility to get this form and it clearly outlines what the ... licensee can or cannot do when dealing with them.

This, we believe, will be a campaign waged in a public relations format, using PSAs - public service announcements - throughout the state, and we're committed to help out with that. The other thing that we're going to be doing is working with the Real Estate Commission because, after all, there are several things that [it] ... will need to do. We have in this bill the requirement that a real estate broker must have on file, and made available to the Real Estate Commission and ... to the public, [documentation] on how they in their office deal with this idea of designated agency, keeping things

confidential, [and] understanding the protection of the buyers', sellers', landlords', [and] tenants' rights.

Number 1174

MS. McCONNOCHIE added:

We don't want them necessarily to develop this in a vacuum, and we as an Alaska Association of Realtors are willing to work with the Real Estate Commission, as we're doing some drafts here, and to put together some draft policies. Understanding what will work in my office - my office is comprised of me, myself, and I - or what will work in Perry Underwood's office, where he has 80-plus agents, is not necessarily the same thing. So we will help them by providing some suggested ideas on how to work with small, medium, [and] large policies for small, medium, [and] large offices in small, medium, [and] large locations, because the Real Estate Commission will need to get that out to the "licensing public" so that the brokers will know where to go to get ideas on properly ... [providing] that firewall in designated licensees.

We're also understanding [that] it is the Real Estate Commission's responsibility to give direction to real estate companies as far as supervising. Right now, if you take a look at [the subject of] supervision in our current statutes, it has maybe two sentences. And one of the things that this bill will do [is] it will direct the Real Estate Commission to more properly flesh out the supervision requirements, because, after all, we can put all the laws in the world in place today, but unless we tell brokers specifically how they need to supervise the ... licensees underneath them, we will have failed in our duties to properly protect the customer. So all those things are a part of this bill; this bill ..., I recognize, is not necessarily the easiest thing to digest, but there [are] several of us here and ... on line to answer any of your questions.

Number 1277

PERRY L. UNDERWOOD, Member, Agency Task Force, Alaska Association of Realtors (AAR), relayed that in 2003, the

National Association of Realtors (NAR) conducted a survey of 25,000 households that had recently purchased or sold a home. He elaborated on the findings from that survey:

> When buyers were asked, "How'd you find the real estate professional that assisted you," 58 percent responded with, "I had used that professional before," or, "I had been referred to that professional by a friend or relative." When asked the question ..., "Would you use that professional again," 74 percent of the respondents said, "Definitely," 15 percent said, "Maybe." That's an overall customer satisfaction rate of 89 percent. They also surveyed sellers as well: 83 percent of sellers ... of homes in real estate used a real estate professional.
>
> When sellers were asked, "How'd you find the real estate professional that assisted you," ... 67 percent said that they had used that professional previously or had been referred to them by a friend or relative. When asked the question ..., "Would you use this same professional again," 70 percent of the respondents said, "Yes," they would definitely use that person again, and ... 15 percent said, "Maybe," for an overall satisfaction rate of 85 percent for our industry. When asked the number one factor in determining who they would use for assistance in buying or selling homes, 47 percent of buyers and 62 percent of sellers listed the person's reputation as the number one criteria in selecting who they would they use to help purchase or sell their home.
>
> Why do I share these findings with you? It's simply this: Our [industry] is ... dependant upon repeat and referral business. We are in the ultimate consumer protection business. People hire us to take care of them, and if we don't take care of them, it's the end of our business. Now, are there people in our industry who sometimes forget why they're here and who they're supposed to be taking care of? Yes, there are. Will this bill eliminate that possibility? No, it will not. But ... today ... we are shackled with a 14-year-old statute that is burdensome to our industry and to the public, and it's time that we made a change. ...

Number 1454

MR. UNDERWOOD continued:

I just want to give you five points on what [SSHB 29] will do. [Sponsor Substitute for House Bill 29] requires a more thorough and timely disclosure of a licensee's relationship with the consumer. [Sponsor Substitute for House Bill 29] eliminates the implied requirement that a licensee must act as an agent for the consumer, while permitting the traditional client/agent relationship if the parties so choose. In short, it gives the consumer more options and choices. ... Third thing - huge - it eliminates dual agency and the problems inherent in dual agency, yet it allows licensees to sell their own listings. Dual agency is an antiquated concept that we need to get rid of, that, again, we're shackled with in the exiting statute.

Dual agency - we just came off of the super bowl, and dual agency is like having a quarterback playing for both teams - it's just an impossibility that you can represent both sides [of] the transaction totally impartially; you just cannot do it. What [SSHB 29] does [is] it moves the licensee, in those rare situations where they are selling their own listings and they have a relationship established with both sides, away from the quarterback position into the referee's uniform - they are no longer the quarterback, they are the referee. So as a referee, you can be a neutral party, you can make sure that the game is played fairly and all sides are ... taken care of and assisted in a proper manner.

The fourth thing that this bill does [is] it moves the relationship with the consumer to the level of the licensee actually representing the consumer, rather than the relationship being with the broker, who may never meet or have any conversation with the consumer. Yet the bill maintains the broker's requirements of supervision. Fifth, [SSHB 29] grants consumer protection from vicarious liability the consumer would normally assume [in a] traditional client-agent relationship.

Number 1591

DAVE FEEKEN, Chair, Legislative Committee, Alaska Association of Realtors (AAR), offered the following comments:

> I was also involved with the 1990 bill. At that point it's important to understand that the industry was moving from a point of ... the agent [representing] the seller only. The point of the 1990 legislation was to put the seller and the listing agent on notice that the agent was probably representing the buyer. That was the whole point of it, that's why it's only a paragraph long. The industry has moved a long ways in the last [13] years. ... The task force that was created to do this ... piece of legislation that's in front of you has worked, I think, since June of 2001 on this issue; it's reviewed the statutes of 30 states.
>
> In 1990, when we passed that legislation, we were on the very cutting edge of it; we were the 13th state in the country to pass agency disclosure laws. The law that we passed in 1990 was Maine's law - we just took that bill and introduced it - they were the 2nd state in the country to pass agency disclosure laws. So that was at the very infancy of the entire process of public disclosure of agency. The [AAR] recognized ... the importance and value of legal input through ... this entire process; Gordon Schadt has been retained through all of the Agency Task Force meetings, of which, at the lower committee level, there were eight meetings that lasted a minimum of eight hours to come to this bill. At the end of every one of those [meetings] the drafts were circulated throughout the industry for input.
>
> So there's been a lot of chewing on this to get to this point. There was also input from NAR's legal staff ... so that we could review agency lawsuits from around the country to try [to] keynote the issues that were problems. ... We think we've [come] forward with a very good bill ... and I would like to conclude my testimony at this point.

Number 1722

KIRK WICKERSHAM, Member, Agency Task Force, Alaska Association of Realtors (AAR), mentioned simply that he'd testified in favor

of SSHB 29 in the House Labor and Commerce Standing Committee, and that he is available for questions.

Number 1754

LINDA S. GARRISON, Broker, AAR #1 Buyer's Agency, opined that SSHB 29 does not give the consumer a course of action for any violations of [the bill], and that because of this, the state will end up getting involved in defending the rights of the consumer. She relayed that one of the definitions of dual agency is where, in a single company, one agent represents the buyer, while another agent represents the seller; in looking at the definition of designated agency, she pointed out, the broker appoints one agent to represent the buyer and one to represent the seller. She opined that the two are the same, and said she views designated agency as a rehash of "what went on years ago, and basically a smoke screen so the consumer will get away from the term, 'dual agency.'" Designated agency is more harmful, she remarked, because the consumer will not have protections, adding that she views designated agency as undisclosed dual agency.

MS. GARRISON offered her belief that under designated agency, if the broker appoints a new agent to represent one of the parties and an experienced agent to represent the other party, the party with the less experienced agent will be at a disadvantage; in addition, there could be questions regarding whether the records are being "kept pure." She referred to page 11 of CSSSHB 29(L&C), lines 5-7, which read:

> **Sec. 08.88.675. Common law abrogated.** The common law of agency related to real estate licensee relationships in real estate transactions is expressly abrogated to the extent inconsistent with AS 08.88.600 - 08.88.695

MS. GARRISON opined that the entire bill will abrogate most of [the common law of agency]. Part of the protection that the consumer has, she remarked, is established by that common law: fiduciary duties, confidentiality, accountability, diligence, loyalty. By abrogating the common law of agency, a course of action for the consumer is being taken away.

MS. GARRISON, in conclusion, pointed out that although the bill has a zero fiscal note, the Real Estate Commission is going to incur costs for creating the aforementioned pamphlet. If SSHB 29 passes, she added, "and we eliminate the rights of the

consumer, I think we're going to have the state defending consumers against sections of this bill."

Number 1945

STEVE CLEARY, Executive Director, Alaska Public Interest Research Group (AkPIRG), noted that there are recent newspaper articles regarding a real estate agent who is going to be suspended and fined quite a bit of money for failing to disclose dual agency. He said he is having difficulty determining whether SSHB 29 will actually get rid of dual agency or is merely purporting that disclosure of dual agency eliminates any harm to consumers. He indicated that his concern is that designated agency might be a way for large brokerages to delude consumers and ensure a larger commission. He opined that having two [agents] in the same firm acting for both the buyer and the seller would not be representing consumers to the fullest extent that they should be.

MR. CLEARY said he is not sure that SSHB 29 puts back in the consumer protections inherent in [the common law of agency], pointing out that the legislative findings language purports that application of the common law of agency has resulted in misunderstandings and consequences that are contrary to the best interest of the public. He indicated that this language causes him to question whether all of the consumer protections inherent in the common law of agency - including the fiduciary responsibilities of agents - are going to be put back into effect by the bill. He remarked that a bill developed by a task force comprised solely of industry professionals might be tilted towards the side of industry and may not actually include the best interest of consumers. In conclusion, he said he would be happy to work with the sponsor and interested parties in order to see some of his concerns addressed.

Number 2078

DAVID A. GARRISON, Associate Broker, AAR #1 Buyer's Agency, characterized designated agency as dual agency with "sheep's clothing on." He turned attention to page 11, lines 15-26, proposed AS 08.88.685, and opined that this language allows each company to come up with its own plan of how to implement "their agency." He remarked that this sort of activity is already occurring in Anchorage and offered an example. He said he believes that an agent should disclose whom he/she represents in much the same way that an attorney is required to disclose whom he/she is representing. He opined that better guidelines need

to be developed so as to prevent each individual company from coming up with its own method of identifying and describing its relationships with consumers. "As we go further away from common law, we're getting more confusing for the consumer, and I think that we should stick with the common laws of agency," he concluded.

CHAIR McGUIRE, after ascertaining that no one else wished to testify, closed public testimony on SSHB 29.

REPRESENTATIVE GARA said it seems to him that the problem is that in almost every circumstance, "you want an agent to represent one side, and one side exclusively."

REPRESENTATIVE ROKEBERG interjected to explain that it has been his intention to remove the word "agent" from all of AS 08.88 and replace it with licensee and/or broker. He said it is important to do this because the agency relationship is between a broker, as the principal, and a licensee, as an agent of the broker, not of the client, but there is a common misunderstanding regarding who a real estate agent is an agent of. The proper term should be licensee or broker, he concluded.

REPRESENTATIVE GARA opined that it's not a simple matter of "just not calling them agents anymore." He elaborated:

> If you are an agent, you owe all these fiduciary duties to somebody. Once we stop calling you an agent, you don't owe them anymore. So it's not a simple matter of semantics - and that's going to be one of the issues I'd like to discuss - but right now, they're still agents. ... There is a problem that the folks who support this bill are trying to address, and I guess my question is, why couldn't it be addressed in a much more simple fashion, like this: Generally we want an agent to do what agents have historically done throughout the history of agency relationship, which is represent one party, exclusively, with due care, without hiding conflicts of interest. That's what we want them to do.

Number 2311

> In the real estate world, as it turns out, in some circumstances you will have an agent who works for a company where they represent both sides, and so we've got to come up with a fix for that problem. And at

times you might want to have a real estate agent who sort of works as a mediator, as a neutral licensee who represents both sides. Why can't we just simply retain the [common] law of agency, say ... your ultimate obligation is to your client, and say that within big brokerages, where one broker within the brokerage might represent one party and another [broker] within the house might represent another, ... as long as there's a firewall between those two agents, it's okay. So, that solves the problem within big brokerages.

And then why not say, very simply, [that] at times we will abrogate the duty of agency that the agent has to the client because you might want to hire a neutral agent. With a one-page document, you could sign something - both sides could sign something - saying we're hiring this [person] as a neutral .... So why couldn't the bill just be: you can sign this one-page piece of paper so [that] you can have a neutral in the circumstance where somebody wants a mediating agent. In a big brokerage you can have one broker who represents one side and the other broker who represents the other side, as long as there is a firewall between the two, and just be on with it, but then preserve all of these fiduciary duties that agents owe to the public, without abrogating them. Why couldn't we ...

MR. UNDERWOOD, in response, said:

I would ask each of you here to ..., in your mind, identify who you're insurance agent is. ... Now that you have someone in mind, let me spring the news on you: that agent is not your agent. That agent is an agent for [the] insurance company for whom he sells policies - travel agents, same thing. ... Because of the common use of the agent term, [the whole thing has gotten way out of line, and now we're getting our industry and the consumers saddled with the responsibility, and the vicarious liability, that goes along with the common law of agency.] [The previous bracketed portion was taken from the Gavel to Gavel recording on the Internet.]

TAPE 04-17, SIDE B
Number 2393

MR. UNDERWOOD continued:

... It's important to understand what an agent is. An agent is someone who has been hired by a principal to act on behalf of the principal. We in the real estate industry have never been able to act on behalf of a principal, to make decisions for them; that would require us to have a power of attorney. Under the common law of agency, we could make those decisions for people. That's why it's bad for the consumer to have this agency situation. Who does the agent act on behalf of? Who is the ... principal for the agent? The agents are empowered to act on behalf of someone. That someone is their broker. They can take listings on behalf of their broker, they can take earnest money checks, they can handle closings, they can negotiate transactions - all on behalf of their broker.

But because of the use of the term "agent" over many, many years, it has gotten to the point where the public perceives that the agent is their agent. Now, I beg you to look at the other professions out there: ... attorneys, doctors, accountants. They represent people without becoming an agent for the parties they represent. They have a fiduciary duty to these clients; they have ... obligations of accountability, to protect their interests, to act on their behalf. That's what this law does; it says ... [that] when you're representing someone, these are your responsibilities: to act on their behalf, to represent them, to take care of their interests.

Number 2324

MR. UNDERWOOD concluded:

That's what this is all about, is to identify the responsibilities when people are ... representing another party. ... That's exactly what this bill does. It creates three different areas, or ways, in which we can serve the public. It creates that firewall, under the designated agency; it creates the ... opportunity for someone to serve as a neutral licensee; and it requires full disclosure and consent of all parties prior to them going into the transaction. ... Also, ... the default position is that they represent the

person. ... [If someone] is working with a buyer or ... working with a seller, the default position is that they represent that person and have all these responsibilities - fiduciary and otherwise. You only move outside of that default position when you have informed consent.

CHAIR McGUIRE asked Mr. Underwood to walk the committee through a hypothetical residential real estate transaction under SSHB 29.

MR. UNDERWOOD indicated that the first step is when someone approaches a licensee to provide what's called, in SSHB 29, specific assistance; that person wants the licensee to find him/her a piece of property. At that point, the licensee becomes the person's representative and has full fiduciary duty to that person. He offered an alternative: the same person walks into an "open house." The licensee in that situation is responsible for letting that person know, right up front, when he/she walks in, that the licensee represents the seller or the builder. In the latter situation, he could not, in clear conscience, portray that he is a neutral party or is able to work for the buyer, nor would a jury believe him, he added. He explained that in such a situation, a licensee is required to disclose, right at that time, that he/she is representing the seller. The buyer in that situation may still choose to work with that licensee, or he/she may choose to seek out a licensee that can fully represent him/her as a buyer.

Number 2193

CHAIR McGUIRE said it is important for a licensee to know that in the example of the open house, he/she should not attempt to encourage or sway the buyer toward going through him/her under the guise of perhaps getting a better deal. She said that she hopes the training for licensees includes that information. She relayed that she knows of instances in her district where the licensee has said something along the lines of, "You're free to go with somebody else, but I know the seller [or builder] pretty well ... and I can get you a good deal."

MR. UNDERWOOD reiterated that from time to time, there will be licensees who "forget who they're here to serve and they forget why they're here." He said that although SSHB 29 will not cure that problem, it clearly sets forth what a licensee's duties to the consumer are.

REPRESENTATIVE GARA, referring to the example of the licensee representing the buyer, asked why the common law of agency, along with its inherent fiduciary duties, should be abrogated. It's the [common] law of agency that establishes fiduciary duties, he added, so once that law is abrogated, so too are the fiduciary duties. He went on to say: "I understand that you put some back in, in this bill, but if the goal is to say, for you people who represent only one party, the law of fiduciary duties still applies, why take it out in this bill? Why not just leave it in place?"

MR. UNDERWOOD replied: "It doesn't .... If you read, it says the common law of agency is specifically abrogated only where it is in conflict with this. So, if it's not addressed in this bill, then the common law of agency would then still apply."

CHAIR McGUIRE noted that that language is on page 11, lines 5-7.

REPRESENTATIVE OGG pointed out that language on page 11 [lines 11-14] limits recovery to actual damages. He asked whether the sponsor or the AAR would have any problems with adding language that allows recovery of more than actual damages in instances where the licensee acts with reckless disregard or behaves in a manner that is fraudulent or grossly negligent.

MR. UNDERWOOD opined that such is not necessary because that language merely pertains to cases in which the licensee fails to make timely and proper disclosure regarding the licensee's relationship with the consumer; in any ensuing [civil] case, recovery is limited to actual damages. If, however, the licensee sold a home and didn't make proper disclosures about a physical condition of the property and it causes tremendous damage, he added, then there is the potential for the consumer to recover punitive damages in addition to actual damages. He noted that the language on page 11 [lines 11-14] does not limit a person's ability to take any other action or pursue any other remedy to which the person may be entitled under other law.

Number 1953

REPRESENTATIVE OGG suggested, however, that there might be instances wherein the licensee intentionally fails to disclose.

MR. UNDERWOOD remarked that such would be very difficult to prove, but if such is proved, then the licensee could be subject sanctions from the Real Estate Commission, which still maintains authority over licensees.

REPRESENTATIVE OGG indicated that he would prefer to see language in the bill that provides for punitive sanctions against those who intentionally fail to disclose.

REPRESENTATIVE ROKEBERG noted that actual damages are intended to make the consumer whole, and suggested that a separate cause of action could be brought in instances where a licensee's actions warrant it, for example, if there is fraudulent activity "under a different theory of law." He, too, noted that the Real Estate Commission can still place sanctions against a licensee in addition to the bill's allowing the consumer to recover actual damages. He opined that SSHB 29 contains adequate consumer protection. In response to a further question, he relayed that licensees already know the possible sanctions that could be placed against them by the Real Estate Commission; thus there is no need to place additional language in the bill reminding them of those possibilities.

REPRESENTATIVE OGG noted, however, that in addition to serving as punishment, the award of punitive damages can also serve as a deterrent.

REPRESENTATIVE ROKEBERG offered his belief that the punishment should fit the crime, and suggested that current statutory and regulatory sanctions sufficiently address a licensee's failure to disclose his/her relationship in a timely manner.

Number 1675

REPRESENTATIVE GARA offered his belief that current statutory language does provide for the recovery of punitive damages when a licensee engages in reckless disregard of another person's rights or in intentional misconduct, but that SSHB 29 seeks to remove that current right. He added that he did not see how taking that right away protects the consumer. Turning attention back to the issue of fiduciary duties, he said:

> I've looked at the bill more closely and I don't agree that we're preserving fiduciary duties. Fiduciary duties only exist if you're an agent. On page 1 of the bill, it says, on line 7, the application of the common law of agency is "... contrary to the best interests of the public". Then you go to page 11 and it says the common law of agency is expressly abrogated to the extent inconsistent with this new statutory scheme. Well, this new statutory scheme,

essentially, makes most of the common laws of agency - the fiduciary duties - inconsistent. We've come up with a new scheme that's inconsistent with the old common law scheme.

So the two statements, that the common law of agency is against the public's interest and that the common law of agency is expressly abrogated to the extent inconsistent with the thirteen pages of this bill, I guarantee you probably takes away most the duties of agency unless they're put back in, in this bill. And so that's the question. Are they put back in some other way in this bill? And I'm going to run through some of the common law rules of agency that I'm concerned we need to retain. ...

The Restatement of Agency ... is a book that ... compiles the rules that apply in the law of agency. Alaska law follows them pretty closely; maybe there are a few extra duties that agents have under Alaska law that aren't in the Restatement of Agency and visa versa, but largely Alaska law follows the Restatement of Agency. ... The general principal is that unless otherwise agreed, an agent is subject to a duty to act solely for the benefit of the principal in all matters connected with his agency. That's the current duty; you act solely for the benefit of the person who hires you. I think that's an important duty. ...

Number 1541

REPRESENTATIVE GARA continued:

Section 389 of the Restatement of Agency [says] you're not allowed to act for an adverse party without the principal's express consent; unless otherwise expressly agreed, you work for one party - the person who hires you. ... I guess I do have trouble with saying that you can work for both parties if you give the consumer a seven-page document, that they may or may not read, that says, somewhere within the text of that seven-page document, that I'm going to represent two parties. I'd be much more comforted if it was a one-page document that was really express that hit the consumer over the head. But a seven-page ... form document worries me.

> Section 391 of the Restatement of Agency [speaks to] another fiduciary duty: unless otherwise agreed, an agent is subject to a duty to the person who hires him not to act on behalf of an adverse party in a transaction connected with his agency without the principal's knowledge. Section 392 [says] you can only act for an adverse party with principal's express consent - same concept. ... Section 394 [says] you can't act for somebody who's got conflicting interests to the person who hired you, again, unless otherwise agreed. Section 395 [says] you can't disclose confidential information, that the person who hires you gives you, to somebody else. And then there are a list of remedies that are retained.

REPRESENTATIVE GARA concluded:

> The concern that I have with this bill is that a lot of those duties can be waived by a consumer by signing this sort of "form" five- or seven-page document that will be provided to consumers. And it will, in truth, be regarded as a form document that the consumer will sign. ... As I look through this document, nothing really hits me over the head that I'm letting somebody represent both sides of the transaction, [but] I'm much more comfortable with the current law that says the presumption is you're only representing one side.

Number 1429

CHAIR McGUIRE remarked that a recent case in Anchorage has highlighted that under current law, there is some confusion for both consumers and licensees. In other words, she indicated, the points listed by Representative Gara have not been recognized. The purpose of SSHB 29, she opined, is to come up with a solution to the current state of confusion, and suggested that members bring specific amendments addressing their concerns to the bill's next hearing. She thanked the Agency Task Force members for their work on this issue.

REPRESENTATIVE ROKEBERG, in conclusion, opined that the aspects of the Restatement of Agency that Representative Gara referred to are included in SSHB 29, and suggested that any "holes" created by the partial abrogation of the common law of agency are being filled via the bill. One of the practical problems, he remarked, is that neither consumers nor licensees know what the Restatement of Agency says. However, licensees are required

to know the law as it pertains to them, and SSHB 29 is intended to codify the duties, obligations, and responsibilities of licensees, and doing so will also allow consumers to know what to expect from licensees.

REPRESENTATIVE ANDERSON noted that restatements are not codified laws; they are simply "professorial statements."

REPRESENTATIVE GARA pointed out, however, that most of the duties outlined in the Restatement of Agency are part of Alaska case law; "these aren't just sort of arcane things." He also remarked that one does not have to be a lawyer to recognize the basic fiduciary duty to exercise the utmost care to represent one party, and that most people who have duties under the [common law of] agency aren't lawyers but follow the duty of agency anyway.

CHAIR McGUIRE referred to Mr. Underwood's comments regarding travel agents and insurance agents, and remarked that she agrees that there are still common misperceptions regarding "agency." She reiterated her request for members to bring amendments addressing their concerns to the bill's next hearing.

Number 1141

REPRESENTATIVE ROKEBERG noted that in members' packets is [Amendment 1], labeled 23-LS0189\X.1, Bannister, 2/18/04, which read:

> Page 4, line 19:
> Delete "a pamphlet issued by the commission"
> Insert "a copy of the pamphlet established under AS 08.88.685(b)(2) and produced under AS 08.88.685(c)"
>
> Page 11, line 23, following "contents":
> Insert "and format"
>
> Page 11, lines 23 - 24:
> Delete "issued by the commissioner and provided"
> Insert "provided by a licensee"
>
> Page 11, following line 26:
> Insert a new subsection to read:
> "(c) Based on the content and format for the pamphlets established under (b)(2) of this section, a real estate broker shall produce and pay the costs to produce the actual pamphlets to be provided by

licensees in the broker's business under AS 08.88.615(a)(6)."

REPRESENTATIVE ROKEBERG remarked that [Amendment 1] would ensure that the private sector, rather than the state, pay for the cost of producing the aforementioned pamphlet.

Number 1106

REPRESENTATIVE GRUENBERG remarked that Alaska is a common law state as opposed to a code state like California or New York, where everything is codified by the legislature. Accordingly, it is very unusual to have a provision in law such as proposed AS 08.88.675, which abrogates the common law. He characterized having such as very dangerous because of the potential for unintended consequences. There are so many different decisions on so many different points, and so many of these cases are factually driven, that the law is a different result because the facts are slightly but crucially different. He said:

> I have concern about that section. I don't have concern about codifying stuff, but I do have concern about throwing out the common law if its not exactly codified, because you can have all kinds of [problems]. So I would like us to be thinking about something in place of [proposed AS 08.88.675] so [that] you can have this stuff codified, and it's probably excellent material, don't get me wrong, but I don't want to throw out the common law that may be absolutely vital given a slightly different set of facts, because these judges actually, in some ways, are mini legislatures in the sense that they look at the best policy given the framework of the historical law and the statutory law and how it should be applied in a given circumstance.
>
> I'm very reluctant to throw out hundreds of years of [common law]; I don't have a problem with the bill, but I do have a problem with throwing out hundreds of years of [common law]. And that's kind of a general statement, and I'd like us to keep that in mind. We have immense power, in this legislature, and ... I'd want us to think carefully because ... if we're not really careful, we can do too much, and that can have serious problems on the development of the law, and I'd just urge us to be conservative.

REPRESENTATIVE ROKEBERG remarked that Representative Gruenberg has made his case as to why the legislature should adopt the current version of SSHB 29, adding that there has been past discussion regarding whether to totally abrogate [the common law of agency] or abrogate only those aspects of it that are being codified via CSSSHB 29(L&C). He suggested that the judiciary will still have the flexibility to make allowances for unintended consequences.

REPRESENTATIVE GRUENBERG said, "You have to be very, very careful or they'll feel they can't."

CHAIR McGUIRE announced that SSHB 29 would be held over.

SB 30 - ABORTION: INFORMED CONSENT; INFORMATION

[Contains mention that HB 292 might be incorporated into SB 30, companion bill to HB 292.]

Number 0812

CHAIR McGUIRE announced that the final order of business would be CS FOR SENATE BILL NO. 30(JUD) am, "An Act relating to information and services available to pregnant women and other persons; and ensuring informed consent before an abortion may be performed, except in cases of medical emergency." [Before the committee was HCS CSSB 30(HES)].

CHAIR McGUIRE noted that SB 30 is the companion bill to HB 292, which has been heard previously by the House Judiciary Standing Committee. She relayed that individual testimony on SB 30 would be limited to 3 minutes, and asked that those who've spoken previously on HB 292 limit their testimony to new points rather than repeating their previous comments.

Number 0701

SENATOR FRED DYSON, Alaska State Legislature, sponsor, relayed that since the last House Judiciary Standing Committee meeting he'd had a committee substitute (CS) created to address the concerns brought forward by a letter from the attorney general. He offered his understanding that Chair McGuire is also preparing a CS for SB 30, and remarked that because of the modifications in the committee substitutes, a title change was necessary.

CHAIR McGUIRE shared that there was a title change resolution coming from Legislative Legal and Research Services, and it was her intent to further discuss SB 30 after the title change resolution had arrived.

SENATOR DYSON suggested that both he and Chair McGuire explain the changes that their respective offices are proposing to SB 30. He said that some of the concerns from the testifiers may already be addressed in those changes.

The committee took an at-ease from 2:30 p.m. to 2:32 p.m.

CHAIR McGUIRE brought attention to the proposed House CS for SB 30, Version 23-LS0193\N, Mischel, 2/18/04. She asked Senator Dyson to explain the changes in Version N.

Number 0201

JASON HOOLEY, Staff to Senator Fred Dyson, Alaska State Legislature, sponsor, explained, on behalf of Senator Dyson, Version N. He referred to the concerns brought forth from the attorney general's letter dated February 11, 2004. The first change in Version N deals with the concern stated on page 2 of the letter. Under Section 1 of [HCS CSSB 30(HES)], the letter points out that there are inconsistencies with the immunity language within the bill; Mr. Hooley stated that Version N has addressed this concern by adding immunity language to Section 4.

MR. HOOLEY referring again to the attorney general's letter, he noted that it raises some concern about the potential psychological damages that might be incurred to women that are pregnant from rape or incest. He stated that on page 6, subsection (d), of Version N, the language has been added to exclude the requirement of informed consent to women that are pregnant due to rape or incest. He also relayed that because of the concern raised in the attorney general's letter, language has been added to page 3, lines 4-5, that addresses the issue of obtaining child support.

REPRESENTATIVE GRUENBERG asked if the text concerning child support in [HCS CSSB 30(HES)] had been changed, adding that he felt that that language looked pretty good.

Number 0324

MR. HOOLEY stated that the intent hadn't changed, but the language had been streamlined to say the same thing more

clearly. He then referred to the attorney general's recommendation that the provision in [HCS CSSB 30(HES)] regarding showing pictures of unborn children in two-week gestational increments may be too graphic and burdensome. He stated that on page 3, paragraph (6), of Version N the provision has been changed from showing photos at two-week increments to showing photos at four-week increments, and the access to these photos would be by a link on the web site rather than on the web site itself.

CHAIR McGUIRE clarified that the description of the fetal development is presented on the web site, but the photographs were available by a link if someone wanted to see them.

MR. HOOLEY said that the attorney general pointed out in his letter that that the information relaying the risks and benefits of having an abortion, carrying a pregnancy to term, and contraceptives, may be found to be unconstitutionally vague. He said that because of this, the language had been aligned with the informed consent requirements in AS 18.16.060.

CHAIR McGUIRE said that part of the attorney general's concern has been addressed in a CS that she will be proposing, in that it removes the section that refers to contraception and psychological or other harm. She said she felt that that information didn't need to be a part of SB 30, and relayed that on page 2, line 23, of Version N there is new language which she feels better handles the contraceptive options issues.

TAPE 04-18, SIDE A
Number 0001

MR. HOOLEY referred to the concerns raised on page 4 of the attorney general's letter that deals with the specific informational requirements that a doctor has to provide a woman before she has an abortion. He said that because of these concerns, language has been added that gives the doctor the ability to tailor the information provided to the woman based on the specific circumstances of her pregnancy. He offered that the doctor has the flexibility to use the information presented on the web site, or use appropriate information specific to the circumstances of the pregnancy if the web site information is not used. He pointed out that this new language is found on page 5, in subsection (b), paragraphs (1) and (2).

CHAIR McGUIRE commented that she felt that this was a good addition to the bill, that doctors may have more information

based on certain situations that they have witnessed and which the web site might not have access to.

MR. HOOLEY noted that the attorney general mentioned that the provisions for parental consent and judicial bypass have recently been found unconstitutional. He stated that the sections dealing with these issues have been left in Version N, but a severability clause has been added if those things are found to be unconstitutional by the Alaska Supreme Court. He said that if those provisions need to be stricken from SB 30, it will have no effect on the rest of the bill.

MR. HOOLEY again referred to page 4 of the attorney general's letter, the portion which raises the concern about the imposition of a 24-hour waiting period. He said that this concern is addressed in Version N on page 6, subsection (c), where the language has been changed to allow the information to be distributed by other means including fax, email, Internet, and standard mail. He stated that there is usually a one to three week time period between the initial contact and the actual procedure. He said that all the rural public health facilities have Internet access, which would enable those communities to access this information as well.

Number 0279

CHAIR McGUIRE stated that the 24-hour waiting period seems to be one of the parts of SB 30 that is controversial. Stating that based on testimony that the House Judiciary Standing Committee has heard that there are no cases that an abortion has been performed within 24-hours of the initial consultation, Chair McGuire asked if this requirement is really solving a problem.

SENATOR DYSON responded that he has received the same information regarding the amount of time that lapses between the initial consultation and the actual procedure. He said that it is his belief that the 24-hour grace period imposes no burden on the patient, provider, or process. He said that because no one knows what the future will bring, and based on the medical records and what people have seen over the last 40-50 years, he believes that this is a serious medical procedure. He said that with the current process, where there is a time lapse between the initial consultation and the procedure, that waiting period has proven to be beneficial.

SENATOR DYSON stated that this issue has engaged him all of his adult life. He shared a story about when he was a member of the

Anchorage Assembly and participated in protests and went to jail two separate times. He stated that one night while participating in the Anchorage Assembly meeting, a woman testified during the public comment section of the meeting that six months previous to that date, she was going to get an abortion. She'd told them that she saw the people protesting and getting arrested, and that some nice ladies came and talked to her. She'd said that those ladies informed her of the alternatives that she had available to her, and told her that she would have sources of support if she decided to carry her pregnancy to term.

SENATOR DYSON stated that the woman had the baby with her while she was testifying. He stated that [the legislature] doesn't want to make laws based on anecdotes, but the time lapse that happened before this woman got an abortion proved to be extremely valuable. He commented that he found it hard to argue with the point that having a minimum amount of time to consider the information pertaining to [pregnancy options] would be beneficial. He stated that the child that the woman chose to carry to term was now 17 years old and goes to school in Alaska.

Number 0547

SENATOR DYSON stated that [the legislature] doesn't know what technological advances in medical science will enable doctors to do in the future. He emphasized that because of the potential risks and consequences that could occur, he feels that having a waiting period is valuable. He said that he believes what makes abortion different than other medical procedures is that there is a human rights issue involved. He said that when human rights and life are involved, [the legislature] has an added burden and must be careful and be thoughtful of the decisions that are made, particularly about irreversible procedures.

REPRESENTATIVE ANDERSON stated that he held the same concerns as Chair McGuire in regard to the 24-hour waiting period. He said his initial concern with passing SB 30 and maintaining the 24-hour waiting period was that very rarely, if ever, were there times when a woman could get an abortion within 24-hours of her initial visit. He noted that the attorney general stated that there is no other procedure where there is a mandatory waiting period, and that brings up equal protection issues. He said he wonders if it is necessary to keep that language in the bill, and if it is kept, would there be [equal protection] cases in the near future. He acknowledged the point, however, that in the future there may be advancements in technology that would

speed up medical procedures and so it might be possible for a woman to receive an abortion within 24-hours of her initial consultation.

SENATOR DYSON relayed that there were other states where a mandatory waiting period has been enacted, and it has stood up to legal challenge.

MR. HOOLEY referred again to the attorney general's letter, stating that Version N addresses concerns raised about medical emergencies. He noted that on page 6, subsection (d), the language has been changed to clarify this issue.

REPRESENTATIVE GARA asked about waiving the 24-hour waiting period requirement when the harm relates to a major bodily function of a woman. He stated that he thought it should be waived if there were any substantial risks to the health of a woman.

Number 0868

SENATOR DYSON surmised that people who are familiar with the abortion issue will understand the subjective nature of the issues and that the language can be interpreted in more than one way. He said that language in Version N is attempting to be as objective as possible when talking about the physical problems that would allow waiving the 24-hour waiting period. He stated that there is language in the bill that also waives the mandatory 24-hour waiting period to get an abortion in cases of rape, incest, or if there is a medical necessity.

REPRESENTATIVE GARA asked if Senator Dyson would be open to broadening the language to include a risk of significant injury [to the woman].

SENATOR DYSON stated that he would have to think about it, but he feels that would be agreeable. He stated that he doesn't want anyone to get hurt.

CHAIR McGUIRE said she felt that Representative Gara made a good point, though she understands the balance that Senator Dyson is trying to achieve. She also said she felt that the language [in Version N] is a little too specific.

REPRESENTATIVE ANDERSON suggested taking out "of a major bodily function of" from page 6, line 18, and inserting "to".

CHAIR McGUIRE said that was a good suggestion and asked for a written version to be presented at the next hearing on SB 30.

SENATOR DYSON stated that he wanted to go back and look at the history of that particular phrase, and the specific reasoning behind choosing it.

CHAIR McGUIRE, after ascertaining that there were no immediate questions for Senator Dyson and Mr. Hooley, asked them to stay at the meeting to address issues later.

SENATOR DYSON noted his appreciation for the cooperation that he has received from the attorney general's office, Legislative Legal and Research Services, and Representative Dahlstrom's office. He predicted that the final version of SB 30 will be excellent, adding that he appreciates all the effort put forth in its formation.

Number 1048

VANESSA TONDINI, Staff to Representative Lesil McGuire, House Judiciary Standing Committee, Alaska State Legislature, relayed that she would be further explaining the changes in Version N. She said that there were two sections taken out of HCS CSSB 30(HES), one of them being on paragraph (9) on page 4. She said that that paragraph had been removed because Chair McGuire felt that the contraception information had been adequately addressed on page 2, subparagraphs (B) and (C) of Version N. She then relayed that the dated, time-stamped signature form described on page 4, paragraph (10), of HCS CSSB 30(HES) had been removed. She also noted that the only other changes were to Section 4 of HCS CSSB 30(HES) dealing with civil liability.

CHAIR McGUIRE added that she felt that the changes regarding the civil liability provision were necessary because she has never seen a cause of action created without an ensuing harm. She stated that with the changes that have been made, there has to be some type of harm in order to warrant a civil action.

MS. TONDINI clarified that in order for a doctor to prove that he/she obtained informed consent, instead of using the dated, time-stamped signature form, the doctor would have to present the written certification that is required under the bill.

Number 1213

REPRESENTATIVE NANCY DAHLSTROM, Alaska State Legislature, testified in support of SB 30. She said that she has been working extensively on the companion bill, HB 292, and appreciates the effort that has gone into the development of these two bills. She asked the committee to move forward and pass SB 30 out of the House Judiciary Standing Committee.

REPRESENTATIVE GRUENBERG asked Representative Dahlstrom if she was going to suggest any amendments for SB 30.

REPRESENTATIVE DAHLSTROM stated that she and her staff have been going through Version N and haven't found anything thus far that would necessitate an amendment. She relayed, however, that she hasn't finished that process, but will continue to go through SB 30 and suggest any needed amendments.

Number 1365

JENNIFER RUDINGER, Executive Director, Alaska Civil Liberties Union (AkCLU), stated that she'd just recently received a copy of Version N, so she hasn't been able to go over it as thoroughly as she'd like, though at this point she did have some concerns that she would like to present to the committee. For example, the AkCLU believes that Version N is still unconstitutional. She said that it is unfair to single out this one constitutionally protected choice and place hurdles in front of women who are seeking to exercise that choice. She referred to page 1, paragraph (1), where it states that this is a critical area of medical practice. She said that the AkCLU believes that this is where the bill is attempting to single out this procedure. She shared that she felt that this phrase is legally insufficient, and stated that the language should be removed to avoid privacy and personal protection problems.

MS. RUDINGER noted that Version N removes language from the HCS CSSB 30(HES) that referenced circumstantial criteria - page 2, paragraph (3) - and said that the AkCLU wondered why that section was removed. Next, she cited page 3, paragraph (5), of Version N, where providing information regarding child support is mentioned, and noted that there are difficulties that exist in the reality of the process of collecting or enforcing child support; she indicated that this provision is necessary if the intention is to give women full information. She moved onto page 3, paragraph (6), where the information provided describes the fetal development of a typical, healthy fetus in two-week gestational increments. She stated that this information is not necessarily relevant to women who may have problem pregnancies.

She also stated that although the graphic photographs would be accessible by a link instead of on the web site, there might be information at that link that is not relevant to the woman who is looking at it.

Number 1537

MS. RUDINGER shared her concern with the removal of the requirement that all the information presented had to be reviewed by obstetricians and gynecologists designated by the State Medical Board. She opined that doctors are certainly in the best position to ensure the accuracy and objectivity of this information. She mentioned that on page 3, paragraphs (7) and (8), there are references to psychological effects, but opined that there has been no proof that psychological harm is incurred because of an abortion. She cited a 1987/1988 investigation by the former United States Surgeon General, DR. C. Everett Koop, whom she said was no champion of [pro-choice issues], and she cited a study from the World Health Association. In each of these cases, it was determined that there is no medical evidence that abortions cause psychological injury. She said that when women undergo a voluntary abortion, relief is the most common reaction.

MS. RUDINGER said that the information provided to patients who want to have an abortion should be determined by doctors who are in the best position to assess the risks involved and the specific circumstances that are relevant. She then pointed out some incorrect definitions contained in SB 30. Specifically gestational age and the term "unborn child", which she said isn't even a medical term. She stated that she would let the doctors who are testifying speak more about these incorrect terms and definitions.

MS. RUDINGER cited page 4, Section 4, and stated that the information dealing with liability and immunity is very vague. She pointed out that the only way for physicians to protect themselves is to use the information from the web site which has information that hasn't been reviewed for accuracy by obstetricians and gynecologists or by the State Medical Board. She said that the AkCLU feels that this liability section is very problematic.

MS. RUDINGER shared that the AkCLU has the biggest issue with the 24-hour waiting period required by SB 30. She stated that the waiting period is unconstitutional, and emphasized that the attorney general and the AkCLU have pointed out to the

legislature, every time an issue like this has been before it, that the waiting period is unconstitutional. She opined that the waiting period is a violation of equal protection, and noted that there is no other medical procedure for which a mandatory waiting period is imposed. She said this concludes her testimony, and thanked the committee for their latitude.

Number 1656

CHAIR McGUIRE thanked Ms. Rudinger for her testimony, and explained that the State Medical Board had asked to be removed from reviewing the information on the web site. She said that the State Medical Board did not feel that reviewing the information was the appropriate purview for them mainly because it isn't their duty to review information. She clarified that the State Medical Board's duty is to spend time managing those doctors who do good and bad, and, if the doctors are doing bad, to protect the public from them. She further explained that the State Medical Board is voluntary, they only meet quarterly for a few days, and the members do not have enough time as it is to address the negligent doctor cases that exist.

MS. RUDINGER stated that to avoid a future lawsuit, it will be important that the information on the web site be medically accurate. She stated that there is language within [Version N] that is medically inaccurate and that could create some problems in the future.

Number 1728

DEBBIE JOSLIN, President, Eagle Forum Alaska, shared that she has been in a situation where she was pregnant and encouraged to get an abortion. She stated that she did have an abortion in 1976 and it was her experience that abortionists will see a patient, go through preliminary discussion, and within a half hour perform an abortion. She expressed her concern that the House Judiciary Standing Committee has suggested waiving the 24-hour waiting period for something as ambiguous as impairment to a women. Ms. Joslin stated that impairment could mean just about anything. She referred to her pregnancy in 1999, where she was encouraged to have an abortion and stated that it would be easy for a doctor to use any reason to waive the 24-hour waiting period and the informed consent and say that there was an impairment to the woman.

MS. JOSLIN stated that setting up the law as proposed isn't taking into consideration what is happening to women in Alaska.

She said that she feels that the legislature is aligning itself on the side of the abortion industry and not on the side of women. She shared that she believes that women do undergo psychological effects when they have an abortion. She referred to the comments from Ms. Rudinger where she referred to the investigation by Dr. C. Everett Koop. Ms. Joslin stated that although the investigation done in the late '80s found no medical evidence of psychological damage to a woman that has an abortion, there have been numerous studies since that do show psychological aftereffects in women after they have an abortion, adding that those effects aren't known immediately.

MS. JOSLIN shared her concern regarding the removal of the photographs of the fetal development. She noted that there was discussion that a woman whose fetus had anomalies might look at a photo of a normal fetus and that would have no relevance to her situation. She stated that she had a child that had very serious fetal anomalies and seeing the photographs of a healthy fetus was very relevant to her. She said that by looking at the healthy fetal development, she could better grasp the status of the fetus developing inside of her. She felt that it was unfair for women to be denied access to these pictures just because there might be an abnormality in fetal development.

MS. JOSLIN urged the committee to uphold the 24-hour waiting period and the requirement of informed consent for women who want to have an abortion in cases of rape or incest. She stated that the psychological effects of rape and incest are great, and to compound those effects by a woman undergoing an abortion, another traumatic experience where she is really being violated again, would be the wrong thing to do. She shared her concern that in the future, if these requirements are waived, that a woman will come back after an abortion and say "I wish you had told me the options, and I wish you had told me what the immediate and long term effects were of having an abortion, even though this wasn't by any means a planned pregnancy." Ms. Joslin thanked the committee.

Number 1898

SARA CHAMBERS spoke in opposition to SB 30. She stated that she is a voter, a mother of a 16 week old son, and that as a woman of child-bearing age, she has given a great deal of thought to the pro-choice/pro-life debate. She shared that during her consideration of each side of the issue, one constant has remained: the belief that if a woman is informed of the medical consequences of her decision to terminate her pregnancy, she

will make the decision against abortion. She stated that this belief is predicated by the concept of free, unforced access to unbiased information developed and governed by professional medical science. She stated that SB 30 and HB 292 do not meet these two criteria. She said that passing these bills would be dangerous because it would place the Alaska State Legislature in ultimate control over the medical information provided to the public. Ms. Chambers commented that the medical staff selected to serve on the governing board put forth by this legislation will ultimately be beholden to the legislature, and more disturbingly, the party that holds the majority at any given time. She stated that most of those people are not medical doctors. She said that she is further disturbed that there is no medical oversight in Version N. She shared her concern that enacting this legislation will coerce one small segment of the population into listening to this potentially biased advice.

MS. CHAMBERS relayed that when she became pregnant a year ago, she had the opportunity to choose to receive medical care or not. She said that she could choose the level of medical care provided during her child's birth, at home, birthing center, or hospital. She pointed out that the state never contacted her to discuss her options, her prenatal care, or the health of the fetus. She stated that she was free to learn about her medical condition, just like every American. She said that she had the opportunity to consult a doctor, a free clinic, web sites, or books. She also stated that she had the option to do none of these things. She declared that SB 30 and HB 292 propose to discriminate between classes of pregnant women, which is an offensive, if not unconstitutional, practice. Ms. Chambers inquired why the state would want to spend funds to create a medical web site when many already exist.

MS. CHAMBERS emphasized that these bills were redundant and a wasteful use of much needed public funds, especially in these times of fiscal crisis within Alaska. She conveyed her belief that there were more efficient ways to help Alaskan families than to create another web site offering government control [and] pseudo-medical advice. Ms. Chambers expressed her concern with the statement by any legislator supporting this legislation that he/she believes it is acceptable for government to force its citizens to receive biased government advice on any medical procedure. She stressed that this is not the role of government, and she finds it frightening that there are legislators who want to place what should be a private discussion between a doctor and patient under public duress.

Number 2035

MS. CHAMBERS commented that this is a slippery slope, and she urged the legislators to think about the message and consequences of these bills before they vote. She stated that SB 30 and HB 292 are dangerous proposals because they would force Alaskans to listen to biased information that isn't rooted in science, but party politics. She reiterated that these bills were a waste of public funds, and they place the legislators between a patient and a doctor or other freely chosen medical professional. She then urged the committee to vote against SB 30 and HB 292.

REPRESENTATIVE GARA commented that the pro-life/pro-choice debate is one that doesn't involve industries that would come in and try to garner support by spending money. He pointed out that it was a debate with public citizens on both sides, and that it was a wrenching debate. He stated that he took exception to the comment made be Ms. Joslin referring to the "abortion industry"; he reiterated that the people who participate in the abortion debate tend not to be people that are throwing money at the issue. He offered his belief that the people who align themselves with the pro-choice side do not make a lot of money [on this issue].

CHAIR McGUIRE mentioned that reference to the State Medical Board ought to be put back into SB 30 because she wasn't sure if there was a way to have unbiased, medically accurate information if it just came from the government.

Number 2103

COLLEEN MURPHY, M.D., Obstetrician/Gynecologist (OB/GYN), shared that she has been a doctor since 1981, came to Alaska in 1987, and is an abortion provider. She stated that she had performed three abortions today and a follow up, so she knows the procedures that are involved with abortions. She commented that SB 30 represents an anti-privacy movement. She said that she doesn't use the terms pro-life or pro-choice anymore because the real issue deals with privacy. She emphasized that she is a multi-year member of the Alaska State Medical Association's Legislative Subcommittee, and relayed that this subcommittee examines different bills that are of medical interest. She stated that the subcommittee has taken an opposing position to SB 30 because of the manner in which it disrupts the patient/provider relationship and inserts the government into that care.

DR. MURPHY shared that she had recently been discussing a bill that the Alaska State Medical Association and Alaska Physicians and Surgeons, Inc., are working on in effort to produce caps on non-economic damages as it relates to medical malpractice. She stated that she isn't too familiar with that bill, but she does know that there is information pertaining to informed consent. She emphasized that SB 30 is redundant, and it focuses on a very specific aspect of health care. She expressed her view that SB 30 was discriminatory against women seeking a particular health care option. She suggested that SB 30 was a very exhaustive exercise that would be challenged in the court system to a considerable extent because of the repetitive parallels that are present in the bill that have been involved in previous court cases and been struck down.

DR. MURPHY indicated that she would be available for any questions and expressed that the 24-hour waiting period for an abortion proposed by SB 30 has no medical basis. She commented that she thought the 24-hour waiting period is obstructive and she felt that SB 30 is an attempt to create barriers for women attempting to have an abortion. In conclusion, she reminded the committee that the number one cause of death relating to maternal mortality, before Roe v. Wade in 1973, was illegally performed abortions.

CHAIR McGUIRE thanked Dr. Murphy for her testimony and pointed out that she has included [in a forthcoming proposed CS] the exact language from the bill dealing with medical malpractice that Dr. Murphy had mentioned. Chair McGuire relayed that a previous version of SB 30 created a cause of action without having any harm done at all, just failing to provide informed consent, and that has been changed in Version N.

Number 2251

DR. MURPHY stressed that SB 30 is totally inappropriate for a woman that comes in for new OB care. She referred to a woman who came in at nine weeks of pregnancy and was diagnosed with twins. She stated that what she should do, according to the concept embodied in SB 30, is wait 24 hours and confirm that the woman wants to continue with her pregnancy because the woman with twins has a 40 percent chance of pre-term labor, a higher risk of malformations, twice the risk of genetic abnormalities, twice the risk of preeclampsia, and a much higher rate of caesarian section. Dr. Murphy remarked that despite all of these potential risks, she didn't wait 24-hours to treat her

patient. She used this example as a reason that the 24-hour waiting period makes no sense for any form of health care.

DR. MURPHY commented that access to health care in Alaska is horrendous, and in particular, access to abortion clinics is only available in major population centers. She observed that women who seek abortions must now take time off work and displace themselves. She stated that an additional 24-hour waiting period is not necessary or cost-effective. She reiterated that enacting the waiting period is discriminatory because there is no other medical procedure that is subject to the travails that are suggested by SB 30. She pointed out that these steps are only applied to women and there are parallels between this proposition and contraceptive equity and health care needs that women require.

DR. MURPHY referred to tort reform, stating that this issue is much larger than abortion. She stated that informed consent needs to be guaranteed for every type of health care need and consultation that is delivered. She expressed that this issue should not be micromanaged, especially by people that are not involved with health care.

CHAIR McGUIRE asked Dr. Murphy if there are situations when a woman will decide to have an abortion, come in for her initial consultation, and have the abortion on the same day.

DR. MURPHY stated that the majority of abortion procedures can be offered on the same day. She shared that this is how she currently offers her health care. She explained that generally patients will call a hotline or look up the information about an abortion online. She noted that she asks every woman who comes into her clinic how they heard about her services. [Not on tape, but taken from the Gavel to Gavel recording on the Internet, was: She stated that usually they have used one of these outside resources and thought long and hard about their decision to either follow through with the pregnancy, adopt the child out,] or terminate their pregnancy.

TAPE 04-18, SIDE B
Number 2393

DR. MURPHY commented that the amazing thing about women seeking abortion services is that the woman is thinking about what she needs. She shared her opinion that in this society, a woman is not allowed to consider her own needs first. She hoped that this was a sobering thought for the audience to think about, for

a woman to actually think about what she needs [when she is pregnant] for the next nine months to one year in terms of what she is able to tolerate in her life and what she can do. Dr. Murphy stated that this is a psychosocial issue, where women are not allowed to put their needs first. Dr. Murphy stated that by the time a woman presents, there is no benefit to waiting; by such time, a woman is already feeling the effects of her pregnancy and wants to move on and use an effective form of family planning.

REPRESENTATIVE GARA asked if one of the burdens of the 24-hour waiting period is that it forces women who come from rural areas to stay an extra day away from their home.

DR. MURPHY stated that was absolutely true. She said that 88 percent of all counties in the United States do not have abortion services available, so women must travel anywhere from 50 to 150 miles to seek termination services.

REPRESENTATIVE GARA asked Dr. Murphy, based on the informed consent section in SB 30, what information she would provide to women who decide to carry their pregnancy to term.

DR. MURPHY responded that she alluded to this when talking about the woman that had conceived twins. She went on to add that the woman already has two children, ages one and two, and one of those children has neurofibromatosis, also known as elephant man's disease, and that there is concern that the twins she is carrying may have the same condition. Dr. Murphy stated that in Afghanistan the average woman has eight children and the mortality rate for those children is 50 percent. She stated that the United States takes [infant mortality] for granted because it has a relatively low "parity state".

DR. MURPHY also noted that in Ethiopia, 1 in 25 women die during childbirth. She commented that there are complications that could happen with carrying a pregnancy to term in the United States, and she talks with her patients as a conscientious board certified professional medical provider and doesn't need legislation to tell her how to take care of pregnant women. She added that Cuba has a lower infant mortality rate than the United States and they spend a lot less money on their medical system. She opined that lay people can trust the medical community because it has a lot of oversight.

Number 2193

REPRESENTATIVE GARA ascertained that one of the consequences of SB 30 would be that medical practitioners would have to discuss all of these issues with every woman that decides to carry her pregnancy to term. He then asked for some documentation that would illustrate the explanations that those women will receive from the doctors under SB 30.

DR. MURPHY stated that many people expect the "perfect child" with every pregnancy, that technology will save all. She commented that even in the best instances, that possibility is not reasonable. She shared that a lot of lawsuits originate because people expect to have no complications during their pregnancy. She relayed that she has 40-45 books related to healthcare and isn't sure how she could distill it into a short document.

REPRESENTATIVE GARA responded that he would like to get something that is about a page and a half long, but if she couldn't create something like that, then not to worry about it.

DR. MURPHY referred him to the American college of OB/GYN web site that would provide the information that he was inquiring about and the standards that she has to adhere to.

CHAIR McGUIRE thanked Dr. Murphy for her testimony.

Number 2139

ROBERT JOHNSON M.D., began his testimony with his definition of the task of the legislature. He said that the legislature's task is to protect the right of the individual to engage in whatever activity he/she pleases, as long as there is no harm to anyone else. He added that it is not the business of legislators to restrict or limit individual choice, or to determine what is or isn't morally right or wrong. He said that abortion bills do both of these things.

DR. JOHNSON stated that he felt the issue of abortion was an important enough subject for each of the committee members to consider his expert opinion. He added that the committee has been exposed to a number of lay opinions. Dr. Johnson explained that he is retired and has nothing to gain from his testimony against SB 30. He clarified that his purpose for testifying is to prevent obstacles being placed before women who, for a variety of reasons, need an abortion.

DR. JOHNSON said that SB 30 would not only limit the options for women who seek an abortion, but also the physicians who would choose to provide the service. He commented that use of the term "unborn child" is declaring the fetus a person, and pointed out that this has not yet been determined.

DR. JOHNSON explained that he was a physician in Kodiak before the passage of Roe v. Wade, and that at that time, women who became pregnant and did not want children had no alternative. He said that unwanted children faired poorly, many were abused, and most became wards of the state. He shared that he applauded the passage of Roe v. Wade, and noted that it was quickly adopted by the state, which, he opined, indicated that it was sorely needed.

DR. JOHNSON informed the committee that he has done approximately 700 abortions, and his experience does not support many of the problems that many of those who oppose the procedure would lead others to believe occur. He said that his experience with abortion is not exceptional, and each of his patients was presented with options available to them in addition to the abortion. He stated that each patient was told as much as they wanted to know about the procedure, including the risks and the outcome. He noted that each patient had a follow up visit two-weeks after the procedure.

DR. JOHNSON disclosed that only two of his patients developed post-abortion depression that required treatment, noting that this was less than the incidents of post-partum depression. He stated that both of those patients recovered from their post-abortion depression. He shared that none of his patients lost enough blood during the abortion to require a transfusion; only two patients had minor post-abortion infections and those responded promptly to treatment. Dr. Johnson emphasized that those women who had an abortion and later desired to have a child went on to have normal pregnancies. He said that he found no fertility problems associated with having an abortion.

Number 2061

DR. JOHNSON shared his opinion that there is no indication for this type of legislation. He said that legislators have no business telling patients what they must know, what advice they receive, or from whom they receive the advice. He stated that it is an insult to the intelligence of a woman who, in his opinion, knows exactly what she wants to have information about and will make sure that her physician provides her with that

information. He offered the question, "Do you think that physicians are not familiar with their responsibility to explain the options, risks, benefits, and procedures of any treatment?" He stated that SB 30 would place more obstacles in the path of those who need an abortion. He expressed that this bill, along with the issue of cost, complicates the decision and is intended to make women who elect to have an abortion feel guilty. Dr. Johnson cited that there are occasional suicides after a woman has an abortion and he felt that they were directly related to this point.

DR. JOHNSON asked the committee if they felt that anyone had the right to make a decision for others regarding their choice. He asked if anyone should have the right to set up rules and procedures to serve as an impediment for another's exercise of choice. He asked if anyone should have the right to determine what is, or is not, morally right for someone else. In the name of compassion for women who cannot manage to bear or raise a child for whatever reason, Dr. Johnson implored the committee to reject SB 30 and any legislation that has to do with abortion.

Number 1937

AMY BOLLENBACH stated that she agrees with both Dr. Johnson and Dr. Murphy and doesn't think that SB 30 is needed. She said that if the legislature is going to pass SB. 30, the term "unborn child" needs to be removed because it is not a medical term. She said that the 24-hour waiting period needs to be removed as well. She pointed out that transportation is very difficult in Alaska and so adding the 24-hour waiting period is an attempt to put another obstacle before women who want to have an abortion. She stated that if a minor wants to get an abortion, she must first get a judicial review, parental consent, and take other steps just to be permitted to have it. She said she feels that sometimes abortions need to be done quickly, and when someone is staying in a hotel for that specific reason, that is one of those times.

MS. BOLLENBACH reminded the committee that many of the women and girls who are going to have an abortion will be living in remote villages, and noted that there are girls who need to get an abortion because they have been abused in their home. Many of these girls may not have a telephone in their home, and the only access they may have to a computer will be at school. She added that many have to travel long distances to Anchorage or another city just to be able to get the procedure done. She asked the

committee not to add another hurdle to women seeking an abortion.

Number 1865

ROBIN SMITH spoke in opposition to SB 30 and HB 292. She referred to the letter from the attorney general dated February 11, 2004, where he stated that HB 292 and SB 30 will have legal problems and may not be able to survive a constitutional challenge. She stated that the way she understood it now is that SB 30 failed to address the 24-hour issue and continued to include the parental consent judicial bypass issue. She added that according to the attorney general, there are also other issues beyond that. She observed that because of these issues, the bill before the committee still raises several constitutional concerns.

MS. SMITH shared her opinion that over the last decade the legislature has insisted on passing bills that they know are unconstitutional. She stated that these laws end up getting challenged in court and eventually get turned down. She stated that four court cases have resulted in hundreds of thousands of dollars of state money being wasted. She commented that in this time of major financial cutbacks and a huge fiscal gap, the people of Alaska will be very upset to have more money wasted in this way.

MS. SMITH urged the members to keep SB 30 and HB 292 within the committee until they have an opinion from the attorney general that the bills will survive constitutional scrutiny.

CHAIR McGUIRE thanked Ms. Smith for her testimony and informed her that the committee would be asking the attorney general to look over Version N and any forthcoming proposed committee substitutes.

MS. SMITH thanked Chair McGuire and said that it is really important to her that the committee not move the bill out if it thinks the bill is unconstitutional, adding that it is a waste of the people's money. She stated that [wasting money on unconstitutional bills] has happened time and time again and she would hate to see it happen again with the current financial crisis facing Alaska.

Number 1735

PAULINE UTTER urged the committee to not pass SB 30 or HB 292. She opined that Dr. Johnson and Dr. Murphy eloquently stated the reasons for not allowing the passage of these bills.

CHAIR McGUIRE stated that she was going to close testimony today, but the committee would take written testimony; written testimony could just be e-mailed and will get distributed to the committee. She stated that the next time the committee hears SB 30, the new letter from the attorney general with his recommendations for the bill will also be available as well. She reiterated that after today, she will be limiting public testimony to written testimony. She also reiterated that there is a title change resolution forthcoming.

Number 1653

CATHY GIRARD stated that it is unethical for the legislature to interfere in such a private and personal matter regarding a woman's decision to bring a pregnancy to term. She added that imposing a schedule on the choice to terminate a pregnancy is insulting to Alaskan women, Alaskan families, medical professionals, and spiritual communities; all of the aforementioned will undoubtedly have a role in that woman's ultimate decision regarding whether or not to bring a pregnancy to term. She related her own decisions regarding reproductive issues, stating that she never considered that the legislature would participate in her decision making process. She noted that she is an Alaskan woman, and is testifying that she does not need the legislature's help in making her own reproductive decisions.

MS. GIRARD said that SB 30 does not address the values and morality of all Alaskan woman, and certainly does not address her own personal values or her morality whatsoever. She commented on some of the previous testifiers' statements focusing on the psychological impact of abortion on women. She stated that SB 30 is quite misguided and insulting to women because it presumes that women have not given significant thought to the entire situation in the first place. She shared that the women that she has known that have had abortions are definitely saddened at the thought that they have put themselves in the position of needing an abortion. She said that when she asked these women if they wished that they had made a different choice, the answer is very clear; abortion was absolutely the right choice given the situation that they were in at the time. She said that everyone makes decisions that they look back and reflect upon with sadness, but to think that women have been

psychologically scarred by an abortion is certainly not true of all women.

MS. GIRARD referred to the assertion that doctors are misguiding their patients by having a lack of information about all of the options available. She stated that patients often follow up with doctors because the patients have used the information that the doctors have provided. She referred to a shoulder surgery that she'd recently had, acknowledging that shoulder surgery is in no way like having an abortion, and stated that she got a second opinion because she didn't feel the information that she received from the first doctor was adequate for her to make an informed decision on what she wanted to have done with her shoulder. She said that she struggled with whether or not she wanted to have this invasive surgery, but ultimately she made her own decision as to what she wanted to happen to her body. She emphasized that this decision should be private regardless of whether it is something as unemotional as a shoulder, or as emotional as it can be when dealing with an abortion.

MS. GIRARD stated that the access to information is a two-way street; if a patient is not getting information, and there certainly is a lot of information out there, then he/she needs to be more forthcoming in asking the doctor to provide more information. She said that the patient could also move on to other doctors until satisfied with the information received. She opined that doctors already know about their legal obligations to provide a full-scope of information before a procedure of any type is offered to a patient. She referred to Dr. Murphy's testimony that SB 30 would only get in the way of a practice that is already in effect. Ms. Girard opined that passing SB 30 is redundant and unnecessary.

MS. GIRARD then pointed out to the committee that the [Alaska State Medical Association (ASMA)] is also against SB 30 because it believes that the services it provides are already adequate, and said she feels that to be true. She stated that if a patient feels that they are not receiving adequate information, they need to find a practitioner that is right for them. Ms. Girard added that an unplanned pregnancy is an extremely emotional experience that cannot be characterized by stereotyped feelings.

MS. GIRARD said she accepts that the woman that Senator Dyson referred to in his earlier testimony is glad that she made the right decision for herself. However, Ms. Girard expressed that a 24-hour waiting period is no guarantee that a light bulb is

going to go off in a woman's head and totally change her decision-making process. She explained that a long, hard decision-making process has already occurred before a woman shows up in a doctor's office, and it isn't up to the legislature to make that decision for a woman anyway.

Number 1411

ROMA KOTTE, Student, University of Alaska Fairbanks, testified in support of SB 30 as part of a school project. She said that SB 30 made good sense because it encourages people to thoroughly think out a decision that will (indisc.) Turning attention to Section 5, subsection (d)(2), of Version N, and the suggested change to remove "of a major bodily function of" and replace it with "to", she opined that this change would open up [the definition of] impairment to include any psychological and emotional impairment that could come from not being able to have an abortion.

MS. KOTTE, contrary to Representative Gara's comment that people who align themselves with the pro-choice side do not make a lot of money by performing abortions, offered her belief that the abortion industry is a multi-million dollar industry and does make a considerable amount of money by performing these services.

MS. KOTTE referred to Dr. Murphy's testimony. She said that Dr. Murphy was encouraging the thought that it was okay to be selfish in America. She stated that it is a very scary society when people encourage others to be selfish and to not think about the common good of others. She continued to refer to Dr. Murphy's testimony and stated that Dr. Murphy used extreme examples, such as women in Afghanistan who die during childbirth, and the woman who had twins with elephant man's disease. Ms. Kotte stated that anyone could use extreme examples but, in truth, many of the abortions that are occurring today are being done to healthy babies.

Number 1297

CAREN ROBINSON, Lobbyist for Alaska Women's Lobby, stated that the Alaska Women's Lobby is strongly opposed to SB 30. She said that the bill may be rewritten or redrafted, but it is currently unconstitutional. She said the best way to ensure that women get good information is to continue with the education process through doctors and web sites, but not need to this extreme. Ms. Robinson shared that she moved to Juneau from Texas in 1976,

when abortion services were not readily available. She stated that the legislature doesn't understand the consequences that women in rural areas and places that do not have abortion services have to go through. She stated that in order to get an abortion, a woman must first go to a doctor in her area before she can go to a place where abortion services are provided.

MS. ROBINSON said that after that initial doctor visit, women have to take their information to yet another doctor to get an abortion. She stated that many times women have to buy tickets to Seattle or Anchorage, and that is very costly. She used these examples to illustrate that women have already evaluated their situation and made a decision before they have left their home to seek out abortion services. She stated that adding an extra 24-hour waiting period to this process makes no sense.

MS. ROBINSON referred to her growing up in Texas when abortion was not legal, stating that women had to go to California or Mexico, where the situation was dangerous, to get an abortion done. She commented that she doesn't think that this is the direction that the legislature is trying to go towards, but the information should be left up to the doctors, nurses, and other professionals that women go to, to obtain the information that they desire before making their decision. Ms. Robinson stated that [in situations like these], very few women make their decision on a whim. She noted that she has friends that are coming in contact with the children that they had put up for adoption years ago. She stated that it was important for women to have the right to make those kinds of choices, and not be burdened by the types of decisions that SB 30 would put in place. She expressed her appreciation for all the time and effort that has gone into forming SB 30, but added that she feels the committee should table the bill and allow the current process to continue.

Number 1103

CHAIR McGUIRE thanked Ms. Robinson for her testimony and added that she was not around when abortions were illegal, but her father was a physician that practiced medicine during that time. She stated that abortion was definitely an emotional issue, and assured Ms. Robinson that the committee was not proposing to go back to that time period. She clarified that the committee is trying to decide if there is an appropriate role the legislature should take in providing women with information. She stated that there are well meaning people on both sides of the issue, but there is also misinformation on both sides. She

acknowledged that one of the arguments against SB 30 is that doctors are already providing the information and are already required, by medical malpractice [insurance] providers, to obtain informed consent from patients. She stated that there is a regulation on the books that requires informed consent before providing an abortion, and noted that the State of Alaska has treated abortion differently than other types of procedures. She then thanked Ms. Robinson for her very personal and thoughtful testimony.

MS. ROBINSON stated that she was a member of the House Judiciary Standing Committee in 1996, so she understands the difficult decisions that the committee has to grapple with. She expressed that she was very fortunate to have a son and grandchildren, and stressed that it is very important that both men and women get good information and help to be good parents. She shared that it is important to put money into programs like the Denali Kid Care program, which she feels is extremely successful, and said programs like that are worth investing in because they truly give people choices.

Number 0939

CHAIR McGUIRE, noting that there were no further witnesses, closed public testimony on SB 30. She stated that she would be happy to take any written testimony that anyone has to offer as a result of the changes that would come about with the new version of SB 30. She reiterated that the committee is still awaiting the attorney general's opinion on Version N, and that she expects some further amendments to be made. She said that the committee is moving slowly so that the people that are interested could keep in touch. She then thanked everyone for his/her testimony.

[SB 30 was held over.]

ADJOURNMENT

Number 0906

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 4:05 p.m.