

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 20, 2004

1:10 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Jim Holm

OTHER LEGISLATORS PRESENT

Representative Norman Rokeberg
Representative Carl Gatto

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."

- MOVED CSSSHB 29(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 350

"An Act relating to adding personal injury, death, and property damage from arson in the first degree to the offenses compensable by the Violent Crimes Compensation Board."

- MOVED CSHB 350(STA) OUT OF COMMITTEE

HOUSE BILL NO. 342

"An Act relating to driving while intoxicated; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 334

"An Act relating to unlawful exploitation of a minor."

- 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
02/18/04 (H) Heard & Held
02/18/04 (H) MINUTE(JUD)
02/20/04 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 350

SHORT TITLE: CRIME VICTIMS' COMPENSATION FOR ARSON

SPONSOR(S): REPRESENTATIVE(S) GATTO, GRUENBERG

01/12/04 (H) PREFILE RELEASED 1/2/04
01/12/04 (H) READ THE FIRST TIME - REFERRALS
01/12/04 (H) STA, JUD
01/20/04 (H) STA AT 8:00 AM CAPITOL 102
01/20/04 (H) <Bill Hearing Rescheduled to 1/22>
01/22/04 (H) STA AT 8:00 AM CAPITOL 102
01/22/04 (H) Scheduled But Not Heard
01/27/04 (H) STA AT 8:00 AM CAPITOL 102
01/27/04 (H) Moved CSHB 350(STA) Out of Committee
01/27/04 (H) MINUTE(STA)
01/28/04 (H) STA RPT CS(STA) NT 6DP
01/28/04 (H) DP: GRUENBERG, SEATON, HOLM, LYNN,
01/28/04 (H) BERKOWITZ, WEYHRAUCH
02/20/04 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 342

SHORT TITLE: INCREASE DRIVING UNDER INFLUENCE PENALTY

SPONSOR(S): REPRESENTATIVE(S) GATTO

01/12/04	(H)	PREFILE RELEASED 1/2/04
01/12/04	(H)	READ THE FIRST TIME - REFERRALS
01/12/04	(H)	JUD
02/02/04	(H)	JUD AT 1:00 PM CAPITOL 120
02/02/04	(H)	Heard & Held
02/02/04	(H)	MINUTE(JUD)
02/04/04	(H)	JUD AT 1:00 PM CAPITOL 120
02/04/04	(H)	-- Meeting Canceled --
02/09/04	(H)	JUD AT 1:00 PM CAPITOL 120
02/09/04	(H)	<Bill Hearing Postponed>
02/20/04	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE NORMAN ROKEBERG

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified as the sponsor of SSHB 29.

PERRY UNDERWOOD, Member

Agency Task Force

Alaska Association of Realtors (AAR)

Eagle River, Alaska

POSITION STATEMENT: Answered questions about SSHB 29.

REPRESENTATIVE CARL GATTO

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified as the sponsor of HB 350;
testified as the sponsor of HB 342.

CODY RICE, Staff

to Representative Carl Gatto

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Answered questions about HB 342 on behalf
of Representative Gatto, sponsor.

DAVID REINEKE, Attorney

Public Defender Agency (PDA)

Department of Administration (DOA)

Anchorage, Alaska

POSITION STATEMENT: Answered questions about HB 342.

IAN MARPLES, Director

Interlock Division for Alcohol Countermeasure Systems

Mississauga, Ontario

POSITION STATEMENT: Answered questions about ignition interlock devices as they related to Version D of HB 342.

ACTION NARRATIVE

TAPE 04-19, SIDE A

Number 0001

CHAIR LESIL McGUIRE called the House Judiciary Standing Committee meeting to order at 1:10 p.m. Representatives McGuire, Ogg, Gara, and Gruenberg were present at the call to order. Representatives Anderson and Samuels arrived as the meeting was in progress.

HB 29-REAL PROPERTY TRANSACTIONS/LICENSEES

Number 0047

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).]

CHAIR McGUIRE mentioned that Perry Underwood from the Alaska Association of Realtors was online to answer questions.

Number 0091

REPRESENTATIVE NORMAN ROKEBERG, Alaska State Legislature, sponsor of SSHB 29, noted that a number of amendments have been distributed to the committee and he checked to make sure Mr. Underwood had copies. He offered to answer questions about the bill.

CHAIR McGUIRE said she only has three amendments in front of her.

REPRESENTATIVE ROKEBERG reminded Chair McGuire about Amendment 1.

Number 0231

REPRESENTATIVE GRUENBERG moved to adopt 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)."

There being no objection, it was so ordered.

Number 0261

REPRESENTATIVE GARA moved to adopt Amendment 2, which read [original punctuation provided]:

Insert at P. 3 line 24 after "person."

"The written consent must be provided on a separate form, not contained as part of another writing, titled "Waiver of Right To Be Represented."

Number 0269

CHAIR MCGUIRE objected for discussion purposes.

REPRESENTATIVE GARA thanked the sponsors of the bill and explained that [Amendment 2] addresses one of his concerns. He said:

The intent of the bill is, in most circumstances, to have real estate folks who used to be agents, but are now going to be licensees, to, in the normal case, represent somebody - represent a buyer or represent a seller - and uphold their interest. But they wanted

to make sure in another circumstances, they could engage in a non-representative capacity where they don't represent the person and where the person should have no expectation that they are representing them.

REPRESENTATIVE GARA continued to suggest a one-page form to be used in such circumstances that says, in essence, [the realtor] is not representing [the client]. He explained that Amendment 2 addresses this situation when [the realtor] is not representing [the client], "The written consent must be provided on a separate form, not contained as part of another writing, titled "Waiver of Right To Be Represented."

Number 0406

REPRESENTATIVE ROKEBERG said the intent of the amendment has merit. He pointed out that the title "Waiver of Right To Be Represented" concerned him. He asked for Mr. Underwood's opinion on the amendment.

Number 0425

PERRY UNDERWOOD, Member, Agency Task Force, Alaska Association of Realtors (AAR), stated that AAR has no objection to the amendment.

CHAIR McGUIRE asked Mr. Underwood if he has heard Representative Rokeberg's concern about the title and if [AAR] shares that same concern.

MR. UNDERWOOD answered that they did not share the same concern.

REPRESENTATIVE ROKEBERG thanked Representative Gara for presenting the committee with copies of [Amendment 2]. He maintained concern about the title, but added that he hadn't had time to get comfortable with it. He withdrew his objection.

REPRESENTATIVE OGG suggested the amendment would be clearer if it stated, "The written consent must be provided on a separate form titled 'Waiver of Right To Be Represented'," and it omitted the words, "not contained as part of another writing." He said it looks like it would have to be a separate form and couldn't be in this form.

Number 0562

CHAIR McGUIRE responded that she does not read [the amendment] the same way [Representative Ogg] does. She said she sees it as saying, "We want it on a separate sheet of paper, not part of another writing, so that it's clear to the consumer and highlighted to them, and at the top it will say 'Waiver of Right to Be Represented'."

REPRESENTATIVE GARA said [Representative McGuire's interpretation] is how it is intended, but if Representative Ogg still has a concern [the amendment] could be reworded. He said with the commas around the words, "not contained as part of another writing", the intention is that that part stands alone. What it says is the written consent must be provided on a separate form titled "Waiver of Right To Be Represented", he added.

REPRESENTATIVE ROKEBERG said that he now understands the amendment's intent. He said he is concerned that waiver rights are represented and added he would be more comfortable if [the amendment] has a relationship to the neutral licensee relationship because that is part of the statute being inserted in the bill.

Number 0671

REPRESENTATIVE GARA restated the purpose [of the amendment]:

A customer is going to go into a realtor's office. They're not going to know what a neutral is, what all these different forms of agents are. They're going to think the person's there to get them the best deal possible. What you're doing is you're creating a whole new category of people who are not there to get you the best deal possible, who are not there to represent you, who are not there to uphold your interests, who are there to provide you neutral informational advice that they might provide to the other side, too. My endeavor is to, in very short language, because people - you know from campaigning - read one sentence, maybe two, and then often don't go beyond that. It's to say, right up front, this person is not representing you. If you want someone to represent you, that person is available, too.

REPRESENTATIVE GARA concluded that he and the sponsor felt that the best way to be clear about the intent was to include the wording, "Waiver of Right to Be Represented".

REPRESENTATIVE ROKEBERG said he is aware of the number of forms and changes in representation in real estate. He suggested there should be a way to insure that the neutral licensee form is used and that the title refers to a neutral relationship somehow.

Number 0805

CHAIR MCGUIRE opined that people would use common sense in drafting this [document]. She said [the committee] isn't saying what has to be contained in the document itself, just the title. She added there may be caveats or explanations added to point out that the right may change at points in the transaction. She emphasized that the document will be dated and signed, so the fact that the relationship may change is not relevant.

REPRESENTATIVE ROKEBERG suggested modifying the amendment to include that wording.

CHAIR MCGUIRE stated that the amendment is clear and declined to spend any more time on it. She removed her objection to Amendment 2.

Number 0870

CHAIR MCGUIRE asked if there was any further objection. There being no objection, Amendment 2 was adopted.

CHAIR MCGUIRE noted the arrival of Representative Anderson.

Number 0888

REPRESENTATIVE GARA moved to adopt Amendment 3, which read [original punctuation provided]:

Insert at page 3 line 3 after "also", the following language: ", with written consent of the parties,"

CHAIR MCGUIRE objected for discussion purposes.

Number 0903

REPRESENTATIVE GARA explained that [SSHB 29], as written, allows the realtor to be a party to the transaction, but sets up a situation where a realtor may have a strong conflict of interest with the consumer. Amendment 3 allows for written consent from

the consumer when the realtor is a party to the transaction, he said.

REPRESENTATIVE ROKEBERG said he defers to Mr. Underwood for the official position, but that he believes written disclosure is already law, so he would have no objection to Amendment 3.

MR. UNDERWOOD agreed that state statute requires disclosure and he has no objections to the amendment.

Number 0987

CHAIR MCGUIRE removed her objection to Amendment 3, and asked if there was any further objection [to the motion to adopt Amendment 3]. There being no objection, Amendment 3 was adopted.

Number 0993

REPRESENTATIVE GARA moved to adopt Amendment 4, which read [original punctuation provided]:

Insert at page 3 line 4 after "writing", the following language: "except that a licensee cannot engage in dual agency, or dual representation."

(Note: Dual agency or dual representation to be defined per sponsors).

CHAIR MCGUIRE objected for discussion purposes.

REPRESENTATIVE GARA explained that the purpose of the bill is to get rid of dual agency possibility, yet, he continued, the bill, as written, on page 3, line 4, allows the parties to agree that the realtor can engage in dual agency. He said the bigger problem is that the bill allows the consumer to consent to [dual agency] in a 10-20-page document not knowing they've agreed to dual agency. He explained that line 4 [as amended] says dual agency is not allowed, and pointed out that the sponsor could define dual agency. He concluded by saying that the parties can agree in writing to other matters, but not to dual agency, [in other words], represent one party and then engage in dual agency against that party.

Number 1102

REPRESENTATIVE ROKEBERG strongly objected to Amendment 4 because he said it deletes the concept of dual agency from the statute. He said he does not want to "re-define what we're getting rid of." He said he was "very concerned about the courts making assumptions, as they have in other jurisdictions, about whether or not we have, in fact, truly abrogated agency law." He also said he does not see the practical application of the amendment. "If someone is informed to the point by the instruction from the licensee, the presentation of a pamphlet, [given] the time to review the types of relationships available, and the creation in the bill of the neutral relationship, to even suggest somebody would be so foolish to agree to change his position is [unlikely]," he opined.

REPRESENTATIVE GARA said he thinks that the carrier of the bill misperceived the amendment. He said that dual agency is fraud and he does not want anybody to engage in dual agency, "to say that they're representing you when they're also representing someone who has adverse interests."

REPRESENTATIVE ROKEBERG said that dual agency is authorized under the statutes and he took exception to Representative Gara's statement which indicated that it is fraud.

CHAIR MCGUIRE reminded Representative Gara to refrain from allegations of criminal activity.

REPRESENTATIVE GARA restated, "I believe that it's very bad conduct that we shouldn't tolerate."

REPRESENTATIVE ROKEBERG explained, "That's exactly the point of the bill. We are changing the law, in order to remove that concept from our statutes, which is legally permissible right now."

Number 1263

REPRESENTATIVE GARA responded:

It doesn't really matter what the bill says, it doesn't matter what kind of conduct you ban, it doesn't matter how many times you say we don't want dual agency ..., if you insert this line on line 4 of the bill that says, [paraphrased] except the parties may agree otherwise in writing, you've now just gutted the bill with that line.... And, I want to say that the parties cannot agree to dual agency.

REPRESENTATIVE GARA emphasized that people are not going to read large documents to find out what their rights are.

MR. UNDERWOOD said he feels that the bill is fine as written, but if the committee feels that the amendment is needed, [AAR] would not object to it.

Number 1386

REPRESENTATIVE OGG said the language in [the bill] is similar to language in state statutes for commercial operations such as limited partnerships and corporations. He added that [the bill] is an example of "freedom to contract," and stated his opposition to Amendment 4.

CHAIR MCGUIRE agreed with Representative Ogg and said that the amendments and discussions have gone a long way toward highlighting rights to the consumer in addition to allowing for freedom of contract.

REPRESENTATIVE GARA explained that the problem to be faced, if line 4 is not amended, will be a situation when a realtor gives a client a 10-page packet which includes a statement that the realtor can represent anyone else against the client's interest, and the client signs off without reading the material. He suggested a one-page form to end dual agency.

CHAIR MCGUIRE pointed out that it is not necessarily to the consumer's detriment that they have dual agency. She gave an example. She said the consumer has the right to decide.

REPRESENTATIVE ROKEBERG said defining dual agency is a possibility, but it would take a substantial definition. It is not currently fully defined in the statute. He labeled dual agency a "term of art", whereas "dual representation" is not a term of art, he opined. He said the size of the bill could double for very little value. The possibility of these types of relationships are highly unlikely, except for commercial activity where people would create a unique relationship by contract, he continued. He said he envisions the following as likely: "A commercial real estate broker would develop a contract that would meet the needs of their particular-type situation."

REPRESENTATIVE ROKEBERG told of his own experience of 20 years dealing with office leasing space. He spoke of his right to

create a hybrid relationship, permissible under this law, and to modify a contract as it related to traditional fiduciary duties and other duties related to common law agency. His concern is that the court might interpret [that relationship] to be dual agency under the terms of Amendment 4. He stated that Amendment 4 could have a chilling effect on the creation of representational contractual relations that it should not otherwise have. To suggest a title caveat warning people defeats the purpose of any kind of relationship that could be created by contract, he concluded.

CHAIR McGUIRE stated that this happens a lot in the residential world, not just in the commercial world. She said that in her district, 70 percent of the people in her neighborhood bought their homes under dual agency, many without an understanding that there could be an alternative.

REPRESENTATIVE ROKEBERG opined that even the people who are engaged in marketing, the licensees, don't want to be in dual agency. They'd rather be in another defined relationship such as what is in this bill. He stated that the people are not going to go out of their way to create the relationships because of the fiduciary responsibilities that go with it.

Number 1784

CHAIR McGUIRE termed it "3 percent and 6 percent" on a dual agency transaction. She said the 3 percent does make a big difference. She maintained her objection and asked for further discussion.

REPRESENTATIVE GARA stated he did not wish to withdraw his amendment.

Number 1824

A roll call vote was taken. Representatives Gruenberg and Gara voted in favor of Amendment 4. Representatives Anderson, Ogg, and McGuire voted against it. Therefore, Amendment 4 failed by a vote of 2-4.

The committee took a brief at-ease.

REPRESENTATIVE GRUENBERG agreed to defer his amendment until Representative Gara was done presenting his amendments.

Number 1890

REPRESENTATIVE GARA moved to adopt Amendment 5, which read [original punctuation provided]:

Insert at page 3, line 5

(5) If a licensee represents a person with potentially adverse interests to the represented person, the licensee must obtain the represented person's consent, on a signed form that is not part of another writing, titled: "Consent to allow Representation of other Parties with Potentially Conflicting Interests".

REPRESENTATIVE GARA explained that Amendment 5 says, "If we're going to allow a realtor to represent two parties who may have conflicting interests, they have to be very clear, on a separate page, that they're getting the consent of those parties to represent the conflicting interests." He repeated the proposed title.

REPRESENTATIVE GRUENBERG said he would hope this [amendment] would be acceptable because it provides consumer protection and disclosure.

REPRESENTATIVE ROKEBERG objected to the amendment as being redundant and adding paperwork.

CHAIR McGUIRE asked Mr. Underwood if he has heard the amendment, and she repeated it for him.

MR. UNDERWOOD agreed with Representative Rokeberg and restated that he would leave the decision up to the committee.

CHAIR McGUIRE asked Mr. Underwood if there were other sections of the bill that address this issue.

MR. UNDERWOOD replied that [proposed AS 08.88.620] addressed this issue.

CHAIR McGUIRE clarified that would be page 5, line 10.

MR. UNDERWOOD quoted page 5, line 16, "(2) disclosure of a conflict of interest to the represented person in a timely manner;". He continued to say, "All these duties are owed to a represented person. If you're representing more than one party they agree to it by their freedom of contract."

Number 2073

REPRESENTATIVE GARA said he agrees with what Mr. Underwood said, except that he believes page 3, line 4, reopens the door to withhold the protections that are otherwise contained in the bill. He said he is trying to close this glaring loophole.

MR. UNDERWOOD, in response to what Representative Gara added, "these duties cannot be waived, only additional duties can be added."

REPRESENTATIVE GRUENBERG asked Mr. Underwood where it says that those duties cannot be waived.

REPRESENTATIVE ROKEBERG responded, "Page 6, line 6."

REPRESENTATIVE GARA agreed it did say that on page 6, but added, "On page 2 it gives you an out when it says on line 26, 'a real estate licensee who provides real estate services to one party in a real estate transaction represents only that party unless the parties to the transaction agree otherwise in writing.'" He said that makes it so a realtor can represent two parties. He said, "If the intention is not to allow dual agency, let's do that ... and if we do want to allow it, we've got to be pretty clear to people when they're waiving their rights."

Number 2174

CHAIR MCGUIRE said [the committee] has heard that the majority of real estate agents do not want to continue dual agency, and there are some that do for commercial purposes only. She said that she and Representative Ogg wanted the consumer to have the ability to agree to the type of relationship that they want. She said she still thinks that, "On page 2, line 26-28, whether you're representing one or two, the duties listed on page 5, line 10, still apply, and include [line 16], 'disclosure of conflict of interest to the represented person.'" So, whether the licensee represents one person or two persons, each person is represented and owed the duty of disclosure of a conflict of interest, she said. There's nothing in page 6, line 5 that says it can be waived, she added.

REPRESENTATIVE GARA replied that if that is the intention, it comforted him, but that it should be made clear on page 2, "the writing cannot waive the debate in [proposed AS 08.88.620] on page 5."

Number 2273

REPRESENTATIVE GRUENBERG said it is a complicated bill and, if the committee has this much trouble understanding it, the average homeowner and the average real estate agent will have more trouble. He suggested the addition of a simple sentence on page 2 would alleviate the problem and cause no harm.

REPRESENTATIVE ROKEBERG suggested that the [current] debate is based on the idea that provisions in [proposed AS 08.88.620] are unable to be waived and are applicable throughout AS 08.88. He said it is a drafting issue, and he would concede the point that statutory drafting should be as clear as possible. He noted that [proposed AS 08.88.600] is a recitation of types of relationships that can be established and the balance of the bill explains the relationships. He stated that [Amendment 5] is unnecessary.

CHAIR MCGUIRE responded by saying, "I think what's clear is we all agree that the duty to disclose representation of someone else, a conflict of interest, it's not even stated as potential, it's stated as a conflict of interest, which gets you even further than your language. That duty we want to be throughout." She said her concern is if it is specified on page 2, line 28, and it is not specified in other places, it could be read in an improper way.

TAPE 04-19, SIDE B

Number 2390

CHAIR MCGUIRE suggested that the committee stick with the drafting in the bill "which makes it clear that those duties are owed throughout, whether it is one or two, and they're not waiveable." She added that then it would be up to the real estate community, which Mr. Underwood has made very clear to the committee in a draft document, that what [the real estate community] will do is synthesize [the information] for the consumer. "In the draft document there was a summary of duties owed, your rights, the types of relationships that can be formed, and so on," she explained. Talking to Representative Gara, she said, "The problem that you've highlighted, which is a very important problem, is addressed in the bill."

REPRESENTATIVE ANDERSON stated he maintained the objection.

REPRESENTATIVE GARA said he is not worried about the neutral licensee situation because it has been addressed with a separate document. He pointed out that he is focused on the issue where the real estate person represents somebody and he referred to page 2, line 27. He said that situation is then detailed in [proposed AS 08.88.620]. He suggested adding a sentence on page 2, line 28 which reads ", except that the duties stated in AS 08.88.620 cannot be waived." He added that he is not comfortable without that addition.

Number 2272

REPRESENTATIVE GARA withdrew Amendment 5.

REPRESENTATIVE GRUENBERG responded to Representative Gara's last suggestion and asked if such an amendment could be added. He wondered if there was anything else that could not be waived other than in [proposed AS .08.88.625].

REPRESENTATIVE ROKEBERG said he thought it was [proposed AS 08.88.620] that could not be waived.

MR. UNDERWOOD responded that, for all practical purposes, [SSHB 29] would "kill" dual agency. He said he has no problems with Representative Gara's suggestion.

Number 2223

REPRESENTATIVE GARA moved to adopt Amendment 6, which read:

On page 2, line 28
After the word "writing"
Insert ", except that the duties stated in AS
08.88.620 cannot be waived."

REPRESENTATIVE GRUENBERG proposed Amendment 6 as a conceptual amendment.

REPRESENTATIVE GARA accepted Representative Gruenberg's suggestion.

CHAIR McGUIRE asked if there was any objection to [Conceptual] Amendment 6.

Number 2175

REPRESENTATIVE OGG suggested adding the same idea in other parts of the bill, not just in (a).

REPRESENTATIVE ROKEBERG said there are "20 other places in the bill."

REPRESENTATIVE ANDERSON objected.

CHAIR McGUIRE asked for clarification from Representative Ogg, as to where else the wording in [Conceptual Amendment 6] would go. She said this has been a problem all along, because "the duty" runs throughout the entire bill.

REPRESENTATIVE ROKEBERG stated that the amendment was redundant.

Number 2135

MR. UNDERWOOD suggested [Conceptual Amendment 6] be placed on page 3, line 4 and the end of (4), because "what we're talking about is other agreements in writing."

REPRESENTATIVE GARA agreed.

CHAIR McGUIRE agreed. She clarified where the committee was in the amendment procedure and restated [Conceptual] Amendment 6:

On page 3, line 4
After the word "writing"
Insert ", except that the duties stated in AS
08.88.620 cannot be waived."

REPRESENTATIVE OGG pointed out that the language [on page 3, line 4] and on page 2, line 28 retains the right for freedom to contract. He wondered if [Conceptual Amendment 6] would have to be applied throughout the bill wherever that language appears, and therefore spoke in opposition to the amendment.

REPRESENTATIVE GARA said, "If you state it once, you don't have to state it over and over again." He said [Conceptual Amendment 6] clarifies the bill and meets everyone's intention.

CHAIR McGUIRE asked Mr. Underwood if he could think of another place where there is the right to contract outside of the traditional relationships, other than page 3, line 4 and, potentially, page 2, line 28.

MR. UNDERWOOD said he could not.

REPRESENTATIVE GRUENBERG suggested putting the amendment in both places.

CHAIR McGUIRE objected, saying she did not feel [the conceptual amendment] was necessary on page 2, line 28, and she restated her reasons.

Number 1975

REPRESENTATIVE ANDERSON opined that there has been enough discussion and suggested a vote be taken.

CHAIR McGUIRE asked Representative Gara if he thinks the amendment should be in both places.

REPRESENTATIVE GARA replied he thinks it only needs to be stated once.

CHAIR McGUIRE removed her objection to [Conceptual] Amendment 6; however, Representatives Ogg and Anderson maintained their objections.

Number 1933

A roll call vote was taken. Representatives Samuels, Gara, Gruenberg, and McGuire voted in favor of Conceptual Amendment 6. Representatives Ogg and Anderson voted against it. Therefore, Conceptual Amendment 6 passed by a vote of 4-2.

Number 1902

REPRESENTATIVE GARA moved to adopt Amendment 7, which read [original punctuation provided]:

At page 11 line 6-7, delete everything after "transactions", insert after "transactions" the following language: "is not abrogated except to the extent inconsistent with AS 08.88.600-08.88.695."

CHAIR McGUIRE objected for discussion purposes.

REPRESENTATIVE GARA said he has previously met with sponsors regarding the amendment. The intent [of Amendment 7] is to preserve the common law of agency, except to the extent that it is inconsistent with the new provisions of [SSHB 29], he explained. The way page 11, line 5 is written, he opined, the

court would interpret that the law of agency should be interpreted very restrictively. He said it almost seems as if the bill cautions the courts not to retain any of the principles of agency. He explained that the amendment "says the same thing, but in a way that, I think, would protect consumers more strongly." It would state that the common law of agency related to real estate licensee relationships in real estate transactions is not abrogated, except to the extent it is inconsistent with this bill, he continued. He added that that's the way a savings clause is generally written throughout the statutes - in a positive way. He said he wanted to prevent the court from interpreting "agency" much more narrowly.

CHAIR MCGUIRE called the amendment, "Much ado about nothing."

REPRESENTATIVE ROKEBERG voiced his disagreement with the amendment and opined that the language contained in the bill is the hard abrogation and the language contained in the amendment is the soft abrogation, as far as how the courts would view it. He said he prefers the current language in the bill.

Number 1801

REPRESENTATIVE GRUENBERG, in response to Chair McGuire's statement, said he did not think the amendment was "much ado about nothing," because of the language on page 11, lines 11-14 which deals with the issue of remedies. He said in actions under this new chapter, [proposed AS 08.88.600 through proposed AS 08.88.695], the damages are limited to actual damages. He pointed out that the next sentence says that that limitation doesn't limit the claimant's ability to take any other action or pursue any other remedy to which the person may be entitled under other law. He said he is not aware of any other statutory law that would allow a remedy, so that mainly means the common law. Lines 13-14 would appear to allow somebody to pursue a common law action; however, the common law is previously abrogated making the second sentence in lines 13-14 meaningless, because there is nowhere else to pursue a remedy, he concluded.

CHAIR MCGUIRE said that is not true. She said it is saying that it is only abrogated to the extent that it is inconsistent with the very specific section. It's not saying it is abrogated entirely.

REPRESENTATIVE OGG said it is not just common law, but common law of agency, so [the meaning] is very particular. He stated his opposition to [Amendment 7].

CHAIR McGUIRE maintained her objection to [Amendment 7].

Number 1677

A roll call vote was taken. Representatives Gara and Gruenberg voted in favor of Amendment 7. Representatives Samuels, Anderson, Ogg, and McGuire voted against it. Therefore, Amendment 7 failed by a vote of 2-4.

Number 1668

REPRESENTATIVE GARA moved to adopt Amendment 8, which read [original punctuation provided]:

Insert at p. 5 line 16, and renumber remaining sections accordingly:

"(2) diligent performance in the represented person's best interest and, when applicable, to act with reasonable care in a transaction to achieve the person's best interests."

CHAIR McGUIRE objected [for discussion purposes.]

REPRESENTATIVE GARA explained that a few weeks ago he asked [Legislative Legal and Research Services] to list the current common law fiduciary duties in order to compare them to the ones being created in the bill. He said his intention was to make sure an important fiduciary duty was not mistakenly deleted. Legislative Legal and Research Services was only able to produce a preliminary list, so he stated he could, later, address accidentally deleted duties on the House floor.

REPRESENTATIVE ROKEBERG objected saying Amendment 8 is redundant and unnecessary.

CHAIR McGUIRE asked Representative Rokeberg where the duties are addressed in the bill.

REPRESENTATIVE ROKEBERG responded, "diligent performance in representing the person's best interest." He said they are generic duties addressed in the bill.

MR. UNDERWOOD said, as a task force, his agency went over those duties owed under common law agency with an attorney and felt that they were outlined thoroughly in the bill.

Number 1567

REPRESENTATIVE SAMUELS said [the amendment] seems to say the same thing as line 14 on page 5.

REPRESENTATIVE GARA stated that [SSHB 29] does a very good job of preventing realtors from engaging in conduct that is detrimental to a client, but the law of fiduciary duty says the realtor has to go one step further and act strongly in favor of the client. He said [Amendment 8] tries to state that affirmative duty. He listed the duties explained in the Legislative Legal and Research Services [Memorandum]: utmost fidelity, utmost good faith, the duty to get the best bargain possible, and the duty to scrupulously avoid conflicting interest.

CHAIR MCGUIRE asked if Mr. Underwood, his attorney, and the task force had discussed affirmative duties.

MR. UNDERWOOD replied that they did, but warned against "opening up a can of worms" if an attempt is made to list all utmost, positive duties. He gave an example where ambiguity came into play.

Number 1426

CHAIR MCGUIRE asked Mr. Underwood if he agrees that the law of agency is already applicable to the realty profession.

MR. UNDERWOOD said [realtors] have never really been agents in a common law capacity; they've been called agents by the public, but the agency has been to the broker. The bill sets forth duties for licensees representing the people.

CHAIR MCGUIRE informed Mr. Underwood that Representative Gara is no longer planning to offer the wording about the "best deal." She explained Amendment 8 adds in the requirement for "diligent performance in the represented person's best interest, and when applicable, to act with reasonable care in a transaction to achieve the person's best interest."

REPRESENTATIVE ROKEBERG said the words "diligent performance" are a subjective judgment rather than an objective judgment. He pointed out that on page 5, [proposed AS 08.88.620] duties (1), (5), and (6), say to make a good faith and continuous effort to represent that particular person. Throughout this section of

"non-waiverable" duties, duties give rise to the requirement of performance. He said "diligent" performance should not be added.

REPRESENTATIVE SAMUELS agreed with Mr. Underwood that it would be difficult during bad business decisions on the part of the client, to determine where to draw the line, as far as to what the realtor should have told the person, and as far as to how much responsibility should have been on the person. He maintained his objection to [Amendment 8].

Number 1250

REPRESENTATIVE GARA said the question is whether or not realtors are going to be held to a professional standard. He disagreed with the statement that agents are currently not subject to the law of agency. "A court would say that if you advertised to a customer, that you're their agent," he said, and added, "Currently the law says you have the duty of utmost fidelity, the duty of utmost good faith, the duty to find the best bargain possible." He said these are stated very affirmatively. He argued that subjective duties could be added to the bill and cited "reasonable care" as an example. [Amendment 8] is a reasonable duty to add, he concluded.

CHAIR MCGUIRE maintained her objection.

Number 1199

A roll call vote was taken. Representatives Gara and Gruenberg voted in favor of Amendment 8. Representatives Samuels, Anderson, Ogg, and McGuire voted against it. Therefore, Amendment 8 failed by a vote of 2-4.

The committee took an at-ease from 2:30 p.m. to 2:31 p.m.

Number 1145

REPRESENTATIVE GRUENBERG moved to adopt Amendment 9, which read [original punctuation provided]:

Page 7, line 13: Amend subsection (f) as follows:

(f) A real estate licensee who discloses confidential information to the licensee's broker for the purpose of seeking advice or assistance for the benefit of the person to whom the licensee is

providing specific assistance does not breach the licensee's duty of confidentiality to the person[.] ,if the confidentiality of the information is retained by the licensee's broker.

CHAIR MCGUIRE objected [for discussion purposes].

REPRESENTATIVE ROKEBERG asked if Mr. Underwood had a copy of the amendment.

REPRESENTATIVE GRUENBERG explained that Amendment 9, on page 7, line 13, adds the phrase "if the confidentiality of the information is retained by the licensee's broker." He stated his intention is to be sure that if the licensee talks to his or her broker about a confidential matter, the broker has to be confidential about it, too.

Number 1064

REPRESENTATIVE ROKEBERG said he is trying to analyze the content of the amendment for practical applications. He said it does not seem to be harmful.

REPRESENTATIVE GRUENBERG said there seems to be an oversight.

REPRESENTATIVE ROKEBERG said [the amendment] could be redundant and asked for Mr. Underwood's opinion.

MR. UNDERWOOD said he has no problem with the amendment. He said the restrictions placed on a licensee are also placed on the broker and vice versa.

REPRESENTATIVE ROKEBERG asked Mr. Underwood if he agrees that the broker, under Title 8, has the obligation to confidentiality already.

MR. UNDERWOOD agreed with Representative Rokeberg's assessment, but stated he still has no objections to the amendment.

CHAIR MCGUIRE agreed to keep the amendment.

Number 0953

REPRESENTATIVE OGG said, as he sees it, if the licensee, who is an agent of the broker, discloses the information to the broker and then has no more control over it, the action of the broker could make him liable for something he has no control over, if

[the committee] accepts the amendment. He said is not willing to accept [the amendment].

REPRESENTATIVE ROKEBERG agreed with Representative Ogg and said the word "if" creates a condition of subsequent action. The concept may not be objectionable, but the wording may be, he added.

Number 0890

REPRESENTATIVE GRUENBERG changed his amendment to say Conceptual Amendment 9.

CHAIR MCGUIRE removed her objection to [Conceptual Amendment 9].

Number 0874

CHAIR MCGUIRE asked if there was any further objection [to adopt Conceptual Amendment 9]. There being no objection, Conceptual Amendment 9 was adopted.

REPRESENTATIVE GARA said the process is a very substantial re-write of a very large body of law, and requires a lot of attention. He referred to page 11, lines 11-14, and said, "Your technical violation of any of these new statutory provisions doesn't, by itself, raise a cause of action for punitive damages, but if your conduct under other tort law justifies an award for punitive damages, then those rights still remain." He asked if his understanding was correct.

REPRESENTATIVE ROKEBERG said he believes [Representative Gara] is correct and added that the intention [of the bill] is to limit the breach of duties, and a breach of the statute, under these sections, to that limited cause of action. That's why the language specifically indicates that there are other legal remedies available, he added.

REPRESENTATIVE GARA suggested "recklessness or fraud or other intentional misconduct" be left to the courts under common law.

REPRESENTATIVE ROKEBERG said the intention is not to allow punitive damages for a breach of this section, but to maintain the remedy to the limit of actual damages.

Number 0738

REPRESENTATIVE GARA gave an example where someone engages in dual agency, and they didn't tell the consumer they were representing the seller at the same time they were representing the buyer. "Then, the buyer finds out, later on, and realizes that the realtor got them a very bad deal because they had conflicting interests. That's a violation of this statute, right? But, it's also a violation of the common law which would justify an award of punitive damages, probably." He said his understanding is that just the violation of the statute, by itself, doesn't entitle [a person] to punitive [damages], but if there's another common law theory that would entitle [a person] to punitive [damages], then the punishment is warranted. He asked if his example was correct.

REPRESENTATIVE ROKEBERG said the limitation as to actual damages is covered in [SSHB 29]. The ability to use another remedy is also provided. He used fraud as an example and said the person would be limited to a cause of action for actual damages, but could also make a claim, if there was fraudulent activity on the surety form.

REPRESENTATIVE GARA offered another example of a person using fraud to violate a statute, and asked if that person's right to damages would be retained.

REPRESENTATIVE ROKEBERG said it is the intention of the sponsor to limit to actual damages if it is, specifically, a breach of the statute. He said Representative Gara is talking about the quality of the level of the conduct of the person. Negligence versus gross negligence, etc. He said he is not trying to qualify the standard, but keep it level.

REPRESENTATIVE GARA asked if another theory of law would justify the punitive damages, and added, "This bill is not trying to get rid of [them]."

REPRESENTATIVE ROKEBERG said that is a very important question and he is going to get a legal opinion to answer it.

CHAIR MCGUIRE said the question is similar to [the discussion of] HB 340 where the committee said, "For these specific activities, there'll be a limit, unless it's grossly negligent or intentional."

REPRESENTATIVE GRUENBERG voiced a concern. "If somebody [acted] either recklessly or grossly negligently or intentionally, some of these could be intentional torts, and they could violate this

in an intentional manner, and I don't want to limit someone's damages if that occurs."

Number 0285

REPRESENTATIVE SAMUELS moved to report [CSSSHB 29 (L&C), as amended] out of committee with individual recommendations and the accompanying fiscal notes.

REPRESENTATIVE GARA objected for purposes of discussion. He commented that the way the bill is written it preserves the right to punitive damages if the conduct rises to the level that the courts would normally award punitive damages. He added if the sponsor has a different intention, then he thinks the language should be changed.

Number 0243

REPRESENTATIVE GARA withdrew his objection.

CHAIR McGUIRE indicated CSSSHB 29(JUD) was reported from the House Judiciary Standing Committee.

HB 350-CRIME VICTIMS' COMPENSATION FOR ARSON

Number 0220

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 350, "An Act relating to adding personal injury, death, and property damage from arson in the first degree to the offenses compensable by the Violent Crimes Compensation Board."

Number 0215

REPRESENTATIVE CARL GATTO, Alaska State Legislature, sponsor of HB 350, explained [CSHB 350(STA)]. He noted that on page 2, (K) is added to the list of violent crimes. He said he has talked to the chair of the Violent Crimes Compensation Board (VCCB) who has agreed that this definition of violent crimes was omitted by accident.

Number 0099

REPRESENTATIVE ANDERSON moved to report [CSHB 350(STA)] out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 350(STA) was reported out of House Judiciary Standing Committee.

HB 342-INCREASE DRIVING UNDER INFLUENCE PENALTY

Number 0029

CHAIR McGUIRE announced that the next order of business would be HOUSE BILL NO. 342, "An Act relating to driving while intoxicated; and providing for an effective date."

REPRESENTATIVE CARL GATTO, Alaska State Legislature, sponsor of HB 342, suggested the committee adopt the committee substitute (CS), Version D, as the working document.

The committee took an at-ease from 2:47 to 2:50.

TAPE 04-20, SIDE A

Number 0001

CHAIR McGUIRE restated that HB 342, Version D, was before the committee.

REPRESENTATIVE GATTO said he had two witnesses online, Dr. Marples, an expert on ignition interlock, and Dr. Marques who has done research on the same subject.

REPRESENTATIVE GATTO explained changes to the bill. For levels of intoxication that are greater than twice the lower legal limit, and up to three times the [legal] limit [.16 - .24], the fines have been doubled, and a requirement of having an ignition interlock on a vehicle for six months has been added. The alcohol level is greater than tripled [.24 or greater], the fines have been tripled, and a one-year requirement of the interlock system has been added, he explained. He said those changes were a decrease from the previous version [of the bill].

REPRESENTATIVE GATTO reported that after many discussions with the National Transportation Safety Board, the bill is trying to follow recommendations that work to reduce the number of drunks on the road. The goal is to remove the most egregious offenders responsible for the most accidents from the roads. Drivers with double the legal limit of alcohol are responsible for 50 percent of fatalities, he said.

REPRESENTATIVE GATTO explained that the [ignition interlock device] is a significant part of the bill.

Number 0208

REPRESENTATIVE SAMUELS asked if there is a penalty for .08 to .16 [percent by weight of alcohol in the person's blood] on the first offense.

REPRESENTATIVE GATTO replied that the bill has no affect on that level and the consequences remain unchanged.

REPRESENTATIVE SAMUELS asked when [this proposed law], using the sliding scale, would take affect.

CODY RICE, Staff to Representative Gatto, responded, "This bill doesn't make distinctions based on first, second, third, fourth, or tenth offense. This bill solely makes a distinction based on your breath or blood alcohol content." He continued to say that .16 to .24 is double the fines and a six-month ignition interlock; .24 and above is triple the fines and a one-year ignition interlock.

REPRESENTATIVE SAMUELS repeated his question, "From .08 to .16 you're doing nothing?"

MR. RICE nodded the affirmative.

REPRESENTATIVE SAMUELS mentioned the interlock device and asked, "What good does it do to take the driver's license away when they're not driving their own car, anyway."

Number 0317

REPRESENTATIVE SAMUELS REPRESENTATIVE moved to adopt CSHB 342, labeled 23-LS1292\D, as the working document. There being no objection, Version D was before the committee.

REPRESENTATIVE GATTO explained that from zero to .08 there is no fine, but the existing structure is maintained. This bill addresses "level 2 and level 3."

REPRESENTATIVE GARA said he is having a hard time understanding the current fine structure and the recent increases. He requested more information.

MR. RICE referred Representative Gara to the bill, pages 1, 2, and 3, and read the penalties in current statutes.

REPRESENTATIVE OGG asked what the maximum fine is under [the current statutes].

MR. RICE said he thinks that is up to judicial discretion.

REPRESENTATIVE GARA said he thinks there is a maximum fine. He added that he thinks the bill stated the minimum, but that a maximum does exist.

REPRESENTATIVE OGG said the new language says the maximums no longer apply.

Number 0526

REPRESENTATIVE GRUENBERG asked Representative Gatto why there is an effective date of July 1, 2004.

REPRESENTATIVE GATTO replied he thinks it has to do with the ability to implement the device. There is currently only one distributor in the state who can install the device, and more time is needed to implement the law.

REPRESENTATIVE GRUENBERG suggested that, since the bill was introduced last year, the date should actually be for next year, 2005. He noted, for the record, that he is the author of the ignition interlock law. He said it has been difficult getting the bill implemented, since it passed in 1988. He spoke strongly in favor of the bill.

REPRESENTATIVE OGG asked if clarity is needed regarding the requirement [of when] to use the interlock device. He suggested adding, "upon return of the driving privileges".

[CHAIR McGUIRE turned the gavel over to Representative Samuels and left the room.]

Number 0711

REPRESENTATIVE GATTO replied that he could accept that idea, but suggested a "weaning off" of the device might work, also.

REPRESENTATIVE OGG suggested that people should use the device for six months after getting their driving privileges back.

REPRESENTATIVE GATTO said he could accept that.

REPRESENTATIVE SAMUELS [acting as chair] said he has several questions about the interlock. He asked whose car it goes on.

REPRESENTATIVE GRUENBERG suggested that the people testifying might be able to answer those questions.

Number 0814

DAVID REINEKE, Attorney, Public Defender Agency, Department of Administration, said he was asked to give a rough overview of the increases in financial penalties [in the bill]. He explained that the state felony DWI law was adopted in 1996, and in 2001 there was a reduction in blood alcohol content from .1 to .08. He said the "look back period" for determining prior offenses was increased from 5 years to 10 years. In 2002, financial penalties were increased, a mandatory vehicle forfeiture for felony DUI and refusal [was implemented], and there was an increase in the presumptive sentencing for manslaughter DUI from 5 years to 7 years. The license reinstatement fee was doubled for repeat offenders, and the mandatory minimum fine for a first offense was raised from \$250 to \$1,500.

[Representative Samuels returned the gavel to Chair McGuire.]

Number 0928

REPRESENTATIVE GARA asked for clarification because he missed most of Mr. Reineke's testimony.

MR. REINEKE repeated his testimony for Representative Gara. He continued with new information: The fine for second offenders went from \$500 to \$3,000 and the felony DUI went from \$5,000 to \$10,000.

Number 1020

MR. REINEKE followed up on the question about maximum fines by referring to AS 12.55.035, which sets forth fines for all criminal offenses. For Class A misdemeanors, which include most first and second DUI's, the maximum fine currently is \$10,000. A felony DUI, generally, is a Class C felony and the maximum fine is \$50,000. In 2002, the license revocation period increased to "permanently" for felony DUI's, and loss of vehicle registration for any vehicle registered to a defendant charged was implemented. A \$2,000 increase in the cost of imprisonment also came into effect in 2002. He said he wasn't sure if the

PFD revocation happened during 2002, but that currently for many offenses, especially felonies, the PFD is revoked. He concluded by saying that those changes are a rough summary of what has happened in the last several years to increased fines and penalties.

REPRESENTATIVE SAMUELS asked if the per capita rates for DWI have gone down.

MR. REINEKE said he is not familiar with the rates of arrest.

REPRESENTATIVE SAMUELS wondered if [the tougher penalties] worked.

MR. REINEKE said it is a question he is not prepared to answer.

REPRESENTATIVE GRUENBERG said he has read an article about a problem that has risen in other states, where people are using devices to obtain false readings from urine samples. He asked if that is a crime.

MR. REINEKE said he believes it is a crime, but couldn't give it a title.

REPRESENTATIVE GRUENBERG said he has heard it being done in paternity cases, as well.

MR. REINEKE said he has heard of it happening, also.

Number 1258

IAN MARPLES, Director, Interlock Division for Alcohol Countermeasure Systems, said his company has received approval for the use of the WR2 ignition interlock device in Alaska, and he has been trying for the past five years to implement an ignition interlock program. He said the reality is that the use of such devices is up to judicial discretion, and judges are reluctant to be pioneers in this area.

MR. MARPLES indicated there is growing evidence that ignition interlocks are very effective in separating drinkers from driving. He cited studies from the 1980's that show the effectiveness of preventing repeat DWI behavior while the interlock device is installed in the vehicle. He suggested mandating the use of these devices so that the burden is not on the courts.

Number 1373

MR. MARPLES pointed out that Florida has a mandatory ignition interlock program for all repeat offenders and for some first-time offenders in cases where there are aggravated circumstances such as a high blood alcohol level, or if there is a minor in the car at the time of the offense. Judges are required to order interlocks, and the offender must participate in an interlock program in order to reinstate their licenses.

MR. MARPLES emphasized the need to couple the use of the interlock device with an effective program of monitoring and supervision. He opined that [such a program] could best be accomplished by [Department of Motor Vehicles (DMV)] administration, rather than by the courts, because DMV is a state authority that typically handles traffic safety issues, and could deal with non-compliance quicker than the courts could. There would also be an advantage of uniform application across the jurisdiction, he added.

REPRESENTATIVE GRUENBERG said, in the 1980s, sixteen states had ignition interlock laws in place, and there was only one known case of recidivism. He recalled that then-Senator Coghill from Fairbanks added an amendment so that the device would be checked out for very cold weather. He said the reason he did not press the court to implement [the device] in Anchorage was because there was no company there to install it. He offered to work with the bill's sponsor and Mr. Reineke to see how the bill could be implemented, and he restated strong feelings about the positive aspects of the device.

Number 1570

MR. MARPLES made reference to the cold weather issue. He stated that the WR2 interlock device is specifically designed for extremely cold weather, meets all standards, world-wide, and has been used in northern Alberta since 1984. He said it is currently being used in the Yukon Territory.

REPRESENTATIVE SAMUELS asked how other states designate [the requirement to use the ignition interlock device] on drivers' licenses. He asked if it needs to be done in statute.

REPRESENTATIVE GRUENBERG asked a question that former-Representative Smith previously had asked. "What kind of volume would there have to be in a given location to make this economically viable?"

MR. MARPLES replied that he is more concerned about providing a service than making money in Alaska. He said he makes money in other heavily populated states. He said there needs to be a level of use that enables the people delivering the program services to keep their skills up, somewhere around 30-50 devices installed and serviced in a particular interlock facility.

REPRESENTATIVE GRUENBERG asked if the level of use for 30-50 devices would be on a continuous basis.

MR. MARPLES said that is correct.

REPRESENTATIVE GARA said he has heard of zebra-striped stickers that go on the license plates of offenders. He said there are "scarlet letters" that can be associated with the vehicle. He wondered about the success of such [markers].

REPRESENTATIVE SAMUELS asked, if the bill were to pass, how the implementation would work. "Something from DMV?"

Number 1740

REPRESENTATIVE GRUENBERG said he believes the court would issue a limited license and it would be a violation of probation to drive without it. If someone manipulates the device and allows the person to use the car, that would also be a crime, he said. He asked Mr. Marples what the cost would be to the offender.

MR. MARPLES answered that the cost to install the device and train a new user is about \$120-\$125, and the procedure takes about two hours. He said installation is a complicated process to prevent the device from being tampered with.

Number 1819

MR. MARPLES explained that the cost to the offender would be about \$3 a day, or roughly the price of a drink a day. The fail level on the interlock device is well below the legal limit. The most effective programs are those that operate on a zero tolerance basis, he opined. The message is, "If you're going to be drinking, that's your business, but don't even think about driving." He said the intent [of the program] is to get people, over time, to separate [drinking and driving].

REPRESENTATIVE GRUENBERG said, when the original bill was passed, he was told it would cost around \$700 per year. The law

currently says, in the case of financial need, rather than paying the fine, the money can go toward installing the device. He said he has heard recently that the cost would be \$2,000-\$3,000 per year. Using \$3 per day times 365, plus \$125, Representative Gruenberg figured the cost would be \$1,220 and wondered if his estimation is accurate.

MR. MARPLES replied that it is.

REPRESENTATIVE GARA asked if Mr. Marples knew what the cost of the program would be in various regions of Alaska.

MR. MARPLES asked if Representative Gara means cost of living.

REPRESENTATIVE GARA said he means the cost of implementing the interlock system to a defendant in Alaska.

MR. MARPLES mentioned that his company has been trying for five years to implement an interlock program in Alaska under discretionary legislation. He said the fee schedule is in line with the remarks he has just made, rather than the myths that are "out there." He said the fee schedule would apply across the jurisdiction.

REPRESENTATIVE GARA asked if Mr. Marples had [implemented the program] in any of the rural communities in Alaska.

MR. MARPLES said that the challenges in Alaska are similar to those in rural Canada and in the Australian outback where his company has operations. He says his company is able to work creatively to cover those areas.

Number 1994

REPRESENTATIVE GARA asked what could be done for extremely rural areas such as Good News Bay.

MR. MARPLES suggested that [people] might have to travel some distance to have the device installed and to be trained, but that the on-going monitoring and compliance reports could be done closer to home or done by mail.

REPRESENTATIVE GARA said he is in favor of making the interlock provision mandatory, but feels there needs to be more information about how practical [the device] is and what is keeping the court system from authorizing it now. He said he is

more interested in this provision of the bill than in the large increases in fines.

Number 2060

CHAIR McGUIRE said that HB 342 would be held over. She said she wants more information about an "escape valve" for rural areas and wants to know the number of DUI's in rural areas.

REPRESENTATIVE GARA suggested alternatives for rural areas.

REPRESENTATIVE GRUENBERG said that rural areas would be more difficult. He said he would like to see snow machines included.

CHAIR McGUIRE said she thinks [the bill] is directed mainly at urban areas and she suggested trying a pilot program.

REPRESENTATIVE GRUENBERG said he thinks someone is piloting the program in Juneau.

MR. MARPLES said there was no demand in Juneau and only one unit was sold, but there is a service provider in Anchorage; however, the judges would not "make interlock orders."

Number 2158

CHAIR McGUIRE thanked Mr. Marples for his participation.

[HB 342 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:30 p.m.