

**ALASKA STATE LEGISLATURE**  
**HOUSE LABOR AND COMMERCE STANDING COMMITTEE**

April 14, 2003

3:22 p.m.

**MEMBERS PRESENT**

Representative Tom Anderson, Chair  
Representative Bob Lynn, Vice Chair  
Representative Nancy Dahlstrom  
Representative Carl Gatto  
Representative Norman Rokeberg  
Representative Harry Crawford  
Representative David Guttenberg

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 257

"An Act relating to the disclosure requirements for real estate licensees, to disciplinary action against real estate licensees, to private actions against real estate licensees, and to real estate licensee agency relationships, fiduciary duties, and other duties; and providing for an effective date."

- MOVED HB 257 OUT OF COMMITTEE

HOUSE BILL NO. 255

"An Act amending the Alaska Wage and Hour Act as it relates to flexible work hour plans, the provision of training wages, and the definitions of certain terms; and repealing the exemption in the Act from the payment of minimum wages for learners."

- HEARD AND HELD

**PREVIOUS ACTION**

BILL: HB 257

SHORT TITLE: REAL ESTATE LICENSEES: DUTIES & CLAIMS

SPONSOR(S): REPRESENTATIVE(S) ROKEBERG

Jrn-Date	Jrn-Page		Action
04/10/03	0912	(H)	READ THE FIRST TIME - REFERRALS

04/10/03 0912 (H) L&C, JUD  
04/14/03 (H) L&C AT 3:15 PM CAPITOL 17

BILL: HB 255

SHORT TITLE: WAGES: TRAINING/ FLEX-TIME/ DEFINITIONS

SPONSOR(S): REPRESENTATIVE(S) ROKEBERG

Jrn-Date	Jrn-Page		Action
04/09/03	0868	(H)	READ THE FIRST TIME - REFERRALS
04/09/03	0868	(H)	L&C, FIN
04/14/03		(H)	L&C AT 3:15 PM CAPITOL 17

**WITNESS REGISTER**

REPRESENTATIVE NORMAN ROKEBERG

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: As sponsor, presented HB 257 and HB 255.

PEGGY ANN McCONNOCHIE, Realtor;

Member

Agency Task Force

Alaska Association of Realtors

Juneau, Alaska

POSITION STATEMENT: As a member of an industry task force that is rewriting the real estate agency law, spoke in opposition to HB 257.

SHAWN PAUL, Associate Broker

ReMax of Juneau;

President-Elect

Southeast Board of Realtors

Juneau, Alaska

POSITION STATEMENT: Testified against HB 257 as president-elect of the Southeast Board of Realtors.

CAROLE WINTON, Licensed Real Estate Broker;

President

Alaska Association of Realtors

Juneau, Alaska

POSITION STATEMENT: Testified against HB 257 on behalf of the Alaska Association of Realtors.

TRACEY RICKER, Broker

Ricker and Associates;

President

Southeast Board of Realtors  
Juneau, Alaska

POSITION STATEMENT: Questioned why HB 257 would diminish protection of the public.

JEANNIE JOHNSON, Licensed Broker  
Juneau, Alaska

POSITION STATEMENT: Identified two concerns with HB 257 involving the low threshold for exempting commercial transactions and the retroactivity clause that affects a current lawsuit.

JEAN KAY, President  
Valley Board of Realtors;  
Real Estate Agent  
ReMax of Wasilla;  
Board Member  
Alaska Association of Realtors  
Wasilla, Alaska

POSITION STATEMENT: Opposed HB 257 which promotes commercial real estate interests.

PADDY COAN, Associate Broker  
Valley Office  
Prudential Vista Real Estate;  
Past President  
Valley Board of Realtors;  
Secretary  
Alaska Association of Realtors;  
President-Elect  
Wasilla Chamber of Commerce  
Wasilla, Alaska

POSITION STATEMENT: Spoke in support of HB 257, noting that buyers and sellers can still file complaints with brokers, make a claim against the surety fund, or file a lawsuit over fraud.

DON ZIMMERMAN  
RealEstateAlternative.com  
Wasilla, Alaska

POSITION STATEMENT: Testified in support of HB 257, noting that it does not harm consumers who are more sophisticated and can do their own research on the Internet.

MARK LEE, CCIM (Certified Commercial Investment Member), Broker  
Lee Realty  
Wasilla, Alaska

POSITION STATEMENT: Testified in favor of HB 257, but recommended excluding all lease activity from any disclosure requirements.

HOWARD TRICKEY  
Prudential Vista;  
Prudential Jack White  
Anchorage, Alaska

POSITION STATEMENT: Testified in support of two sections and (two proposed amendments to) HB 257 that halt frivolous lawsuits on technicalities and affect pending lawsuits.

RICK FULLER, Owner, Broker  
Prudential Vista Real Estate  
Anchorage, Alaska

POSITION STATEMENT: As the owner of the company currently involved in the lawsuit that would be affected by HB 257, answered questions.

CHRIS STEPHENS, CCIM, President  
Bond, Stephens & Johnson  
Anchorage, Alaska

POSITION STATEMENT: Representing the largest commercial real estate firm in Alaska, testified in favor of HB 257 and described the problems with dual agency and disclosure under the current law.

TOM MARTIN, Broker,  
A+ Realty  
Kodiak, Alaska

POSITION STATEMENT: Testified against HB 257 and supported raising the threshold for commercial transaction exemptions.

DAVE FEEKEN, Chair  
Legislative Committee  
Alaska Association of Realtors  
ReMax of the Peninsula  
Kenai, Alaska

POSITION STATEMENT: Spoke in opposition to HB 257, describing some of the background of the current agency dispute.

DAVID GARRISON, Associate Broker  
AAR #1 Buyers' Agency;  
Member  
Anchorage Board of Realtors;  
Buyer Agent  
National Association of Exclusive Buyer Agents

Anchorage, Alaska

POSITION STATEMENT: Testified against HB 257, noting an agent's fiduciary responsibility to represent either the buyer or the seller.

LINDA GARRISON

AAR #1 Buyers' Agency

Anchorage, Alaska

POSITION STATEMENT: Spoke in opposition to HB 257.

FRANK ROSE, President

Alaska Hotel and Lodging Association;

Owner, Alaska Lodging Management

Fairbanks, Alaska

POSITION STATEMENT: Testified in support of HB 255.

JON FAULKNER, Owner/operator

Land's End Resort

Homer, Alaska;

Van Guilder Hotel

Seward, Alaska

POSITION STATEMENT: Spoke in support of HB 255, particularly the provisions clarifying the definitions of supervisory, professional, and executive employees.

KAREN ROGINA, Alaska Hospitality Alliance

Anchorage, Alaska

POSITION STATEMENT: Testified in favor of HB 255.

#### **ACTION NARRATIVE**

#### **TAPE 03-34, SIDE A**

Number 0001

**CHAIR TOM ANDERSON** called the House Labor and Commerce Standing Committee meeting to order at 3:22 p.m. Representatives Anderson, Lynn, Dahlstrom, Gatto, Rokeberg, Crawford, and Guttenberg were present at the call to order.

#### HB 257-REAL ESTATE LICENSEES:DUTIES & CLAIMS

Number 0045

CHAIR ANDERSON announced that the first order of business would be HOUSE BILL NO. 257, "An Act relating to the disclosure requirements for real estate licensees, to disciplinary action against real estate licensees, to private actions against real

estate licensees, and to real estate licensee agency relationships, fiduciary duties, and other duties; and providing for an effective date."

Number 0080

REPRESENTATIVE LYNN disclosed that he is a licensed real estate agent, associate broker licensee with Prudential Vista Real Estate of Anchorage.

Number 0097

REPRESENTATIVE ROKEBERG, as sponsor of HB 257, disclosed that he is a licensed real estate broker. He said that if the bill passes, it could give some benefit to his business, although he is not actively pursuing real estate at this time. He explained that he is still licensed and could sell real estate in the future.

REPRESENTATIVE ROKEBERG recalled that several years ago he sponsored a bill which rewrote most of the Alaska real estate law. With the help of the Alaska Association of Realtors and local [real estate] boards, the occupational licensing laws [for real estate] were substantially updated and rewritten. One section of the real estate law, AS 08.88.396 [Disclosure of agency to prospective buyers and sellers] was not revised in anticipation of industry input. Representative Rokeberg said he has been working with an industry task force for the last year and a half, waiting for an overall fix for this part of the law. Because of the complexity of this issue, an industry-generated solution is not yet available, he noted. Members of the real estate industry are currently working on a draft of a different bill, which will eventually come before this committee.

Number 0333

REPRESENTATIVE ROKEBERG testified that HB 257 exempts licensees acting on commercial real estate transactions from the current disclosure requirements. In addition, the bill provides that licensees handling exempt transactions have the duty to act with honesty, fairness, and good faith in representing both parties. He explained that these [three terms] are legal standards which are commonly used in the uniform commercial code and in other commercial transactions. These standards protect the interest of the parties in the commercial activity.

REPRESENTATIVE ROKEBERG also noted that HB 257 provides that if a licensee fails to properly disclose a relationship, [the injured party] can file a claim against the Real Estate Surety Fund but [cannot file a lawsuit] in court. A retroactivity clause in the bill applies to any actions pending in court for which a final judgment has not been rendered.

Number 0503

REPRESENTATIVE ROKEBERG said he sponsored HB 257 because the industry is facing vexatious litigation. He pointed out that 25 percent of Alaska's domestic product involves the sale of real estate, commercial brokerage appraisal, construction, and similar activities. He said that this legislature should take note of these activities and their importance to the state's [economy]. He said there's a potential class action suit against every real estate broker and licensee in the state that could cost millions of dollars and bring the real estate industry to its knees.

REPRESENTATIVE ROKEBERG pointed out that some members of the real estate profession are not happy with HB 257. He said he has alerted the task force that if it could not craft a comprehensive solution for this matter, he intended to proceed on a small version of the bill, until the industry can work out the larger solution. He said he is happy to work with all folks in the industry to resolve this issue. However, he didn't believe it is prudent for the legislature to wait until the industry crafts a final resolution.

Number 0663

REPRESENTATIVE CRAWFORD asked about Section 7, page 5, lines 6-15, which deals with applicability and retrospectivity. He also asked if there were any pending lawsuits that this bill would impact.

REPRESENTATIVE ROKEBERG said he was aware of only one [court] action that HB 257 would affect, and indicated he supported that [intervention] because the legislature has the right to [write laws that affect pending lawsuits].

Number 0719

REPRESENTATIVE GATTO asked who will be the winners and the losers if HB 257 passes.

REPRESENTATIVE ROKEBERG replied that the winners will be the people of Alaska if commerce can be conducted in the way it was before the current law was written in the early 1990s. He said that the current law has never worked properly. Witnesses will testify today about the barriers erected by the current law, such as the [excessive] amount of paperwork it requires. For example, one commercial real estate brokerage firm has developed 17 pages of forms to meet the disclosure requirements as to what type of agency relationship the broker has with the buyer, the seller, or both.

REPRESENTATIVE GATTO clarified his question to ask who would gain and who would lose monetarily under this bill. He said he guessed that the people who would gain monetarily would be the people who engage in the transactions.

REPRESENTATIVE ROKEBERG said that is not the case. He said the current losers are the public and perhaps the licensees. The only winner [under the current law] is the person who's bringing the lawsuit [against the commercial brokerage firm]. He said the interests of the consumer should be paramount in this statute. Therefore, this bill specifically deals with commercial agents, [under circumstances] where there is no defensible consumer protection theory. [Clients of commercial real estate transactions are] sophisticated and knowledgeable parties. The other [impetus behind HB 257] is to cut off the class-action litigation on a law that was poorly drafted, difficult to implement, and has needed fixing for a number of years. [Even though the industry] couldn't reach general consensus [on how to repair this law], this bill cuts off the massive litigation that is occurring in the Lower 48.

Number 0932

PEGGY ANN McCONNOCHIE, Realtor; Member, Agency Task Force, Alaska Association of Realtors, explained that she has been a realtor since 1982. She testified that [HB 257] does not reflect realtors' standards of practice in Alaska. Furthermore, no other state in the country exempts commercial real estate agents from disclosing whom they work for to the buying, selling, renting, or leasing public.

MS. McCONNOCHIE noted that [Section 1, the Legislative Findings and Intent, page 1, lines 8-12] reads,

- (1) the purpose of the requirement that a real estate licensee make certain disclosures about the licensee's

representation is to provide consumer protection to those people who may not be familiar with their legal responsibilities and rely in part on real estate licensees for advice when buying, selling, and leasing real estate;

MS. McCONNOCHIE disagreed with the description of a commercial real estate transaction [on page 4, lines 16-23] that involves the sale or lease of a four-plex or larger structure, the sale of commercial property worth \$100,000 or more, or the sale or lease of real estate having a gross lease revenue that exceeds \$12,000 a year. She asked why a person buying, selling, renting, or leasing [under these circumstances] needs less protection than a person buying a \$300,000 residence.

MS. McCONNOCHIE said that the "Agency Task Force" has spent almost 11 months rewriting [real estate] agency laws. She said the law is very complex; the rewrite is not going to happen in a day, and her group wants it done correctly. She said her group appreciates the past revisions to the agency law and has long recognized that the current agency law does not work as well as it should. However, [commercial agent disclosure] needs to be thought through and planned very carefully; her group does not want to come back in another year, saying "Whoops, we forgot something; we'd like to change it." The Agency Task Force has proposed regulation changes that the Department of Law is reviewing. She said she hopes those changes will go through quickly because those changes will take care of some of the problems evident in the industry. She predicted a wholesale change in agency law in the near future, saying "If we could have it to you today, we would, but we don't." She said the [Alaska Association of Realtors] should complete its review by the end of the month and she guaranteed that it will be back to the committee with a completed bill. In the meantime, [HB 257] does not do it, she said.

MS. McCONNOCHIE cautioned against the retroactive part of the bill because it does not protect the public. She said her group believes that real estate statutes must do two things: protect the buying, selling, leasing, and renting public and assure accountability on the part of real estate agents. She commended Representative Gatto's question about identifying the winners and losers [of HB 257]. She said the winner would be a small group of [commercial] real estate agents who don't want to follow the agency laws. She reminded committee members that buying a \$100,000 commercial property or four-plex is no

different than buying a \$300,000-\$350,000 house. She urged the committee not to pass the bill out of committee.

MS. McCONNOCHIE, in response to Representative Rokeberg, replied that she is speaking for the Alaska Association of Realtors, whose president will testify today that the association is opposed to the bill. The Agency Task Force and the [association's] legislative committee met again today to review the bill and voted against HB 257.

Number 1217

SHAWN PAUL, Associate Broker, ReMax of Juneau; President-Elect, Southeast Board of Realtors, explained that board had an emergency meeting today and voted against supporting [HB 257] for many of the reasons outlined by Ms. McConnochie. He addressed the question of who wins and who loses [with the passage of this bill]. He reiterated that the losers will be the buying, selling, renting, and leasing public; the winners will be those agents who aren't following the disclosure laws or the [real estate industry's] standards of practice. He highlighted the bill's change of "agent" to "licensee" and cautioned against doing away with the concept of agent. He said [the Southeast Board of Realtors] is opposed to the "get out of jail free" clause at the end of the bill [Section 7, page 5].

REPRESENTATIVE ROKEBERG asked if a person getting a real estate license has to know Alaska real estate law.

MR. PAUL replied yes.

REPRESENTATIVE ROKEBERG asked what other part of the real estate law uses the word agent.

MR. PAUL said he understands that the term agent is a commonly used term.

REPRESENTATIVE ROKEBERG pointed out that when the rest of the real estate statutes were revised six years ago, the word "licensee" replaced the use of "agent". He also asked whether commercial realtors in Anchorage and larger cities practice differently than those in Southeast Alaska.

Number 1376

MR. PAUL said he doesn't practice in Anchorage so doesn't know if there are differences in day-to-day practices. He said he

does refer clients to Anchorage professionals who have high ethical standards and who perform a good service. He said realtors in [Southeast Alaska] do a fine job of disclosure [to clients]. In response to Representative Rokeberg's question about the amount of commercial activity in Juneau and Southeast Alaska, he deferred to other witnesses.

REPRESENTATIVE CRAWFORD asked about the difference between "agent" and "licensee" and asked why it was necessary to change these terms in the real estate statutes.

REPRESENTATIVE ROKEBERG replied that there was concern about what agency means in common law principle of agent and its application to real estate brokerage. It's a great source of confusion between the practitioners, the public, and the courts. There's no use of the agency principle laws in the creation of fiduciary relationships between any kind of marketer of any kind of commodity in the world, except real estate brokerage where the term agent comes into play, where one is actually an agent. When the words "broker" and "agent" were used in real estate law, the original intention was to indicate the broker as the principle and the agent as the subagent, or the relationship between the licensee and the broker, not the client and the licensee. This is where there's been a corruption. The courts have corrupted that. It's a very unique situation under the common law where there's been applications such as that. What "we" did actually compounded the confusion by statute over the years. That's why when the law was rewritten the language was changed from "agent" to "licensee" because the agent is the agent of the broker, the principle; if there's an agency/principle relationship, it exists between the broker and the licensee. Otherwise the individual client, if there is in fact an agency/principle relationship under the law, will be vicarious liable for the act of the licensee, an issue that came up on the floor of the House just last week. He explained that vicarious liability is actually being created on the part of the clientele, which isn't the intent. It gets complicated, he said.

REPRESENTATIVE ROKEBERG explained that [HB 257] removes the requirement that commercial agents make disclosure and allows an injured client to [seek financial redress] through the real estate surety fund. It's a simple approach, he said, an "interim stop-gap measure." He noted his disappointment with the testimony [in opposition to HB 257].

Number 1533

REPRESENTATIVE GATTO confirmed that Mr. Paul works for ReMax [of Juneau], that he is an associate broker, an agent, and a licensee. Representative Gatto asked if Mr. Paul uses the words agent and license interchangeably.

MR. PAUL replied that an agent has received a license through the state and that every licensee is an agent.

REPRESENTATIVE ROKEBERG explained that under Alaska statute, [real estate professionals] are licensees, which is the source of the confusion.

Number 1586

REPRESENTATIVE CRAWFORD said that when he has contracted with an agent to buy property, that person was acting as his agent. He said he doesn't understand why the legislature changed the term [agent] to licensee.

Number 1613

REPRESENTATIVE ROKEBERG clarified that the real estate person is not his agent but his contractee. He said Representative Crawford contracted with this person to perform a service. So the person has a contractual obligation with him. To establish the agency/principle relationship is not accurate other than the superior courts in Alaska corrupted the [distinction] by using that common law principle. The real estate person is not your agent, the person is your contractee that performs duties that arise out of the nature of the relationship. They don't have a common law principal/agency relationship. In Alaska law, the [real estate] listings belong to the broker; they don't belong to the licensee, which is problematic because it gets into an area called "subagency." He indicated the need to eliminate that [area of law]. Part of the problem is public perception, the public believes that special duties arise out of the fact that they're dealing with this licensee. Although duties do exist, the question is with regard to the scope of duties and whether the agency/principle relationship exists.

Number 1672

REPRESENTATIVE CRAWFORD recounted occasions when he has bought houses and never communicated with the sellers. He said he thought the real estate licensee was working as his agent. He noted that when he represents his fellow ironworkers as a job

steward, he's acting as their agent. He said he didn't understand [why agent is not an accurate term for a person selling real estate]. This bill appears to take some of the [disclosure] responsibility away from the licensee.

REPRESENTATIVE ROKEBERG said that Representative Crawford may be confused because of the way this one section of the law still reads. In Representative Crawford's case, [the real estate licensee] would be a buyer's agent because that's what the statute says. However, the point is that the courts and the practice has been that there's been this artificial agency/principle relationship established. Under the real estate statutes written around 1991 or 1992, there could arise situations of dual agency in which the buyer's agent is also the seller's agent. He said there are duties between the client and the particular licensee; those duties should be defined not as an agent/principle relationship but as a contract relationship. He pointed out that one issue in HB 257 is to help consumers understand what they'll get [from a real estate licensee handling commercial property]. [The issue] is pretty complicated, he admitted. All [HB 257 does] is exempt commercial agents [from disclosure requirements].

Number 1765

REPRESENTATIVE GUTTENBERG asked if Representative Rokeberg is changing the word "agent" to "licensee" because of some court decisions.

REPRESENTATIVE ROKEBERG replied yes, in part. He added that this change [in terminology] will make this part of the [real estate] law conform with the rest of the statute, which uses the term licensee not agent. This bill is really pretty innocent, except for what it does for commercial agents, he remarked.

Number 1809

REPRESENTATIVE DAHLSTROM inquired as to how the public is best served by removing the disclosure [requirement].

REPRESENTATIVE ROKEBERG explained that the bill does not remove disclosure [responsibility from all real estate licensees]; it just exempts commercial agents from disclosure. [A forthcoming] bill will change that, but this bill doesn't. It only exempts commercial agents and makes any [subsequent] lawsuits subject to surety fund recoveries.

REPRESENTATIVE DAHLSTROM confirmed that a regular licensee [selling residential real estate] is not exempt [from disclosure], only [a licensee selling] commercial property.

REPRESENTATIVE ROKEBERG confirmed that [HB 257] won't affect most of the people testifying today unless they do commercial work.

REPRESENTATIVE DAHLSTROM asked what percentage of [real estate] business is commercial.

REPRESENTATIVE ROKEBERG said it depends on the locale.

Number 1872

CAROLE WINTON, Licensed Real Estate Broker; President, Alaska Association of Realtors, informed the committee that she has been licensed since 1974 and does [residential] sales as well as commercial leases and sales. She noted that she has been a member of the [association's] Agency Task Force since its inception June 2002. The group has met almost weekly, with Representative Rokeberg in attendance most of the time. She said she appreciates his sponsoring a bill handling the agency changes that are necessary for the real estate industry. She clarified that all real estate brokers are licensed under the same license; there is no separate license for people selling commercial real estate. Therefore, it would be very difficult for some licensees to abide by rules of agency while others did not.

MS. WINTON said [the Agency Task Force] has tried [addressing the problem] through two directions; the first was through regulation changes. Those changes passed the board of directors [of the Alaska Association of Realtors] last September and were forwarded to the Real Estate Commission, which approved them. The Department of Law is now reviewing the changes. She said that Representative Rokeberg had alerted the association that he would take action. She emphasized that she would like to see [the solution] done right the first time, [thereby avoiding a subsequent request] to the legislature for a revision. Ms. Winton explained that the second part of the proposed solution is a statute change, which would reflect the standards of practice in the industry today. This bill does not reflect the industry's current standards of practice, she observed.

MS. WINTON noted that a real estate licensee must disclose whether he or she is the agent of the buyer, the agent of the

seller, or a dual agent. She said that most licensees don't have any problem doing that; it is the law. She said she's not sure why some realtors doing commercial work in other parts of the state have a problem with disclosure. She said that clients want to know up front who the licensee is working for -- the buyer, the seller, or both. The law has a provision for [notifying the client of dual agency]; it is clearly described and is used all the time, she said.

MS. WINTON explained that consumer protection and public awareness are the primary goals of the changes in the regulations and statutes. The public should be well informed and should know for whom the licensee works.

Number 2011

REPRESENTATIVE ROKEBERG noted that he removed the [reference to] rental activities from [HB 257] based on his earlier conversation with her. He asked why Ms. Winton stated that this bill doesn't reflect standards of practice in the industry and questioned if it is because the bill exempts commercial transactions from disclosure.

MS. WINTON confirmed his statement.

CHAIR ANDERSON restated Ms. Winton's position that this standard of practice [of disclosure] is relevant to all realtors and this bill exempts one group of realtors [those doing commercial business].

MS. WINTON agreed. She said all of a sudden in this bill, commercial realtors don't have to tell their clients for whom they are working.

Number 2046

REPRESENTATIVE GATTO referenced the applicability and retrospectivity clause in Section 7, page 5, and asked Ms. Winton her opinion of this provision, which reads:

"(a) The provisions of this Act apply to a real estate transaction that occurs before, on, or after the effective date of this Act, and to that extent, are retrospective...

(b)...applies to an action pending in a court in the state in which a final judgment has not been rendered

before the effective date of this Act and, to that extent, is retrospective..."

CHAIR ANDERSON confirmed that Ms. Winton is president of the Alaska Association of Realtors. He asked how many members are commercial realtors versus residential realtors.

Number 2130

MS. WINTON said that realtors don't distinguish between people who deal in commercial or residential property.

CHAIR ANDERSON cited the letter in the members' bill packet from the company of Bond, Stephens & Johnson, which offers commercial real estate services. He asked if any members of that firm were active in the Alaska Association of Realtors.

MS. WINTON said she did not have a list of association members at hand.

CHAIR ANDERSON confirmed that the association includes realtors who handle commercial and residential property, and that the association members voted, urging the [House Labor and Commerce Standing] Committee to vote against this bill.

REPRESENTATIVE ROKEBERG asked whether the association's legislative committee or the full membership voted against the bill.

MS. WINTON explained that the legislative committee with the approval of the president is tantamount to getting the approval of the board of directors.

Number 2179

REPRESENTATIVE ROKEBERG said he has been a broker in Alaska for almost 30 years. He asked if commercial real estate licensees are active in the Alaska Association of Realtors.

MS. WINTON replied that the association includes quite a few commercial brokers. She said she doesn't know how many commercial brokers are licensed in the state. There are licensees who are not realtors, she said. Realtors conform to a higher code of ethics.

REPRESENTATIVE ROKEBERG asked if, generally speaking, commercial realtors are not involved in the association.

MS. WINTON responded that she has no way of knowing that, since the association doesn't distinguish between realtors handling residential and commercial property.

REPRESENTATIVE ROKEBERG said that in Anchorage, there are realtors who specialize in commercial activity. In his experience, commercial brokers are not active in the association, which tends to focus on residential brokerage activities.

CHAIR ANDERSON asked if there's a commercial brokerage association.

MS. WINTON replied yes; it's a subsidiary of the National Association of Realtors. She explained that the Alaska Association of Realtors is one of the 50 state members of the National Association of Realtors.

Number 2249

REPRESENTATIVE CRAWFORD explained that he is looking at buying some acreage for commercial purposes. When he called the realtor listed on the sign, the person asked if he would be using his own agent or if he would like this company to be his agent for a dual agency. He noted that this is a typical conversation in his experience and asked what would change if [HB 257] passed.

MS. WINTON replied that the realtor wouldn't have to advise him that he has the option of using his own agent or of working with that realtor. According to current state law, the broker needs to inform the client during the first main contact that the broker is working for the seller, or can work for both with the approval of the seller and the buyer.

REPRESENTATIVE CRAWFORD asked if the bill takes away the right of [court] action against a realtor who doesn't disclose [these options].

Number 2329

CHAIR ANDERSON asked for an example of how HB 257 would adversely affect the consumer.

Number 2370

MS. McCONNOCHIE said a consumer would call a broker whose sign was posted on a commercial property. The broker would give some information about the property. The consumer might have concerns about the use of the property and the required zoning for the commercial enterprise. The broker would have no responsibility to tell the seller whether the current zoning is applicable for the client's use.

**TAPE 03-34, SIDE B**

Number 2380

MS. McCONNOCHIE explained that the broker would have no responsibility to the owner or the seller -- only to the broker's own pocketbook. She described that [lack of responsibility] as the fatal flaw [in HB 257].

REPRESENTATIVE ROKEBERG said he took exception to Ms. McConnochie's description; he said that's not the intention of the bill.

REPRESENTATIVE CRAWFORD said that he learned from other sources that a good portion of this property was listed as wetlands. The first agent he talked to said he could use his own agent. He asked if there's any wrong doing since that broker didn't have a responsibility to disclose the wetland status of the property.

MS. McCONNOCHIE said disclosing information about the property is a separate issue than disclosing agency requirements [e.g., who the broker is working for]. The basic information about the type of property would still have to be disclosed, regardless of whether the broker was or wasn't his agent. A broker working for the buyer would help the buyer figure out how to use the property.

REPRESENTATIVE ROKEBERG directed attention to the language on page 4, lines 30-31, requiring that licensees have to "act with honesty, fairness, and good faith" in representing or dealing with these people. He said the standards change in HB 257, but realtors will still be responsible, and standards of practice and legal standards will apply.

REPRESENTATIVE GATTO said that honesty, fairness and good faith are laudable, and if everyone followed them, laws and bills would not be necessary.

REPRESENTATIVE ROKEBERG replied that the courts must enforce these [behaviors].

Number 2293

REPRESENTATIVE GUTTENBERG asked if there are any court cases involving the failure [of realtors] to disclose.

MS. WINTON replied that the one case she knows about involved residential property.

Number 2274

TRACEY RICKER, Broker, Ricker and Associates; President, Southeast Board of Realtors, stated the board's position that it does not support [HB 257] as written. She said she would defer to other witnesses waiting to testify. She expressed concern why, when the industry is trying to simplify the existing disclosure law of agency, the bill excludes commercial real estate transactions. Why would the bill diminish any public protection in this industry, she asked.

Number 2237

REPRESENTATIVE ROKEBERG stated that in his 30 years as a commercial broker this [disclosure] law, as it has evolved in the past decade, has made his practice almost impossible. When he has to file this kind of paperwork [referencing the 17-page sample disclosure forms], he said he can't even talk to a client who has to send all these forms to his legal staff back in Detroit. He stated that he is being put out of business. Therefore, [HB 257] is trying to balance the needs of the general public and those of the commercial public. He stated that the amount of commercial activity that goes on in this community and Southeast Alaska is a thimbleful of what goes on in the rest of the state. He said although he appreciates [the witnesses'] concerns, [HB 257 doesn't harm] the practice of real estate in Southeastern Alaska. This section of the law is upsetting and destroying commerce in this state, he said, and it's creating a moving target for lawyers. There's always been tension between brokers of residential and commercial real estate, he added.

MS. RICKER clarified that she is also a commercial broker.

Number 2168

JEANNIE JOHNSON, Licensed Broker, explained that she has been licensed in Alaska for 28 years. She has practiced 20 of those years in Anchorage and eight years in Juneau and does both residential and commercial transactions. She said she appreciates Representative Rokeberg's work on behalf of the industry; he has been the [legislative] workhorse for a very long time. However, she expressed concern about HB 257. Regarding questions [raised today] about realtors and commercial agents, the premier designation of a commercial real estate broker is a Certified Commercial Investment Member (CCIM), issued through the National Association of Realtors.

MS. JOHNSON said she has two concerns with HB 257. The [standards for exclusions in HB 257] are very low. For example, exempting transactions of four-plex [residential units] or \$100,000; she said that a Fortune 500 company would not be dealing with such small transactions. Therefore, she suggested making the limits [for exempted transactions] higher. She asked if the Prudential lawsuit would be affected by the retroactivity clause of this bill.

Number 2094

REPRESENTATIVE ROKEBERG said the pending case involves a \$50,000 lot.

MS. JOHNSON confirmed that the [affected] case was not the Prudential suit. She expressed her concern about the retroactivity of this bill. She informed the committee that she has just returned from a convention of the Association of Real Estate Licensed Law Officials (ARELLO), attended by U.S. and Canadian commissioners who regulate real estate licensing. She said Alaska is now famous for one particular court case, which she cannot discuss because she sits on the Real Estate Commission, who will eventually adjudicate [issues related to] that suit.

REPRESENTATIVE ROKEBERG said the Prudential lawsuit has been settled in court and a disciplinary action is pending before the Real Estate Commission. The Prudential suit would not be affected by HB 257 because there has been a final judgment or settlement. He noted that there's another case [in court that may be the subject of] a class action lawsuit. In that case the defendants have done everything they can to settle the case, but [the plaintiffs have not made] an effort to [show] there was an injury to any person. He stated that there's ulterior motives

[harmful to the real estate industry], and that's why [HB 257] is before the committee.

MS. JOHNSON reiterated her concern about the bill's retroactivity provision, which sets a precedent. There are other [court cases] pending in the residential field, and she's expressed concern about a "get out of jail free card." She said, "We work very long and hard in this industry to be professionals."

Number 1986

REPRESENTATIVE ROKEBERG disagreed that [the retroactivity clause] is a "get out of jail free card." The legislature can act retroactively, he explained. He said he has personally brought before this committee a number of [statutory fixes to court] cases. This is not [the case of] a bad actor [getting off the hook], he said.

MS. JOHNSON suggested that the retroactivity clause be clarified because other members of the committee have read it the same way.

Number 1950

JIM WAKEFIELD said he would forgo his testimony in favor of other witnesses.

Number 1939

JEAN KAY, President, Valley Board of Realtors; Real Estate Agent, ReMax of Wasilla; board member, Alaska Association of Realtors, explained that she was speaking only for part of her membership because she was unable to poll all of the members before this hearing. She testified that HB 257 does not reflect the standards of practice of the real estate industry today. The Alaska Association of Realtors has been working since 2002 on the issue of agency disclosure. She reiterated earlier testimony that the association's effort has taken two directions: proposed regulation changes to the Real Estate Commission and proposed statutory changes that reflect the standards of practice of the industry in this country. This committee [of the Alaska Association of Realtors] has spent countless hours meeting twice a month, and a number of state laws were reviewed and are still under consideration by the committee. She stated that HB 257 primarily promotes the interests of commercial realtors.

MS. KAY noted that [classifying] a four-plex as a commercial [transaction] doesn't make sense. Owner-occupied financing is available through FHA [Federal Housing Administration] for four-plexes, and many times those buyers and sellers are not sophisticated. She said that the primary goal of both regulation changes and the proposed statute change has been consumer protection. Consumers need to be aware for whom the agents work and how they are compensated. She said that this is realtors' livelihood; how they treat people makes all the difference. She asked that HB 257 not pass out of committee until the Agency Task Force has a chance to present its findings of fact. Some states that have passed real estate agency laws are having to revise them because of errors, she mentioned.

Number 1767

PADDY COAN, Associate Broker, Valley Office, Prudential Vista Real Estate; past president, Valley Board of Realtors; Secretary, Alaska Association of Realtors, President-Elect, Wasilla Chamber of Commerce, said that she was originally licensed in 1982. She supervises 40 agents working in land sales, residential sales, property management, and commercial sales and leasing. She testified that in the first three months of 2003, her office closed \$25 million in real estate transactions.

MS. COAN said that currently, real estate licensees can be sued and held liable for damages, including punitive damages, for a failure to disclose dual agency in writing in a timely manner. She said that [this liability situation] does not help the public. She said she prefers that dissatisfied buyers and sellers come to brokerages to resolve problems rather than file court cases over technicalities. She proposed eliminating lawsuits over technical violations of the disclosure law and having the real estate commission handle failures to comply with licensing laws. In her area, which is the fastest growing in the state, [dual agency] disclosures for construction [transactions] are very difficult [to determine]. She said that the [Agency] Task Force has learned how difficult it is to determine when dual agency must be disclosed. For example, a broker could meet someone at an open house, and the person could decide right then to write an offer on the property; the broker could technically be in violation of timely disclosure.

MS. COAN noted that under HB 257, buyers and sellers can still file complaints with brokers; they can make a claim against the

surety fund; and they can still, if defrauded, bring a lawsuit to the court. Commercial practitioners understand that there's a period of due diligence [to disclose agency]. In commercial transactions, there's usually a greater degree of sophistication of the parties. There's no loss of consumer protection in HB 257, she testified. Ms. Coan clarified that this bill does not exempt commercial practitioners; it exempts commercial transactions. In her office, she supervises people who do all types of real estate activities, and they would not be prohibited from disclosing their agency. The transaction [whether residential or commercial] would be the event that would change that [requirement to disclose]. She thanked Representative Rokeberg for introducing HB 257, and stated that she supports the bill.

Number 1585

DON ZIMMERMAN, RealEstateAlternative.com, testified that he has sold real estate since 1985. He spoke in support of HB 257. He said he'd like for the Agency Task Force to continue its work on the issue. He reiterated that [under HB 257], the disclosure is determined by the type of transaction. He agreed that buyers are more sophisticated than they were 10 years ago. He pointed out that buyers can use the Internet to research agents and properties. Even on the residential side, he noted, consumers can go to classes before they engage in any transactions. He said he didn't believe HB 257 in any way harms the public. Legislation should consider real estate licensees as members of the public who need protection. He recommended [raising] the limits [on exempted transactions] on page 4, line 20, but he would prefer [the exemption] being confined to commercial transactions and eliminating any reference to dollar limits because those change with the times.

Number 1500

MARK LEE, CCIM (Certified Commercial Investment Member), Broker, Lee Realty, testified that his practice is in commercial real estate only. He said he does primarily leasing and some sales of commercial land. He commented that the \$12,000 lease, on page 4, line 23, is the equivalent of a \$1,000 lease per month. Leasing should be on a completely different plane because the broker is dealing with commercial people and with small businesses that have their bankers' advice. He'd like to see leasing excluded [from disclosure requirements] because the agent always represents the property owner. The person out looking for space to lease certainly has enough business savvy

to recognize that fact. He supports this bill and would like to see it move forward.

REPRESENTATIVE ROKEBERG asked Mr. Lee about his statement to exclude leasing activities. He asked if he would exclude leases below \$12,000 a year or raise the leasing limit.

Number 1399

MR. LEE replied that he deals with leases for very small spaces, and they range from \$650 to \$3,000 a month. He suggested that leasing activities be exempt from disclosure requirements. He said the general public understands the leasing agent's responsibilities.

Number 1353

HOWARD TRICKEY, Prudential Vista; Prudential Jack White, said his comments would be limited to subsection (g) on page 5, lines 1-5, and subsection (b), on page 5, lines 12-15. He said that subsection (g) does not change or eliminate the obligation of a residential broker to make a dual agency disclosure. All that this section does is protect the broker from a frivolous lawsuit where there's been no harm or damage done to any buyer or consumer. Subsection (g) is intended to treat a technical failure to disclose a dual agency relationship in writing in a timely fashion. He said that it proposes to treat that failure as a licensure violation for which disciplinary action could be taken against the agency. If there's actual loss or harm suffered [because of] a technical violation, a buyer may bring a claim under the [real estate surety] fund. The subsection does not change a buyer's right under common law to bring a tort or negligence action.

MR. TRICKEY noted that this change is consistent with the only ruling on this subject by the Alaska Supreme Court in 1979 in a case entitled Deeds Beets(ph) v. Meiers Real Estate Agent (ph). He said that the supreme court ruled that an innocent, unintentional failure to make a disclosure should not give rise to a claim to disgorge a commission or turn over a commission after an actual damage or loss to the buyer. He said that subsection (g) protects real estate agents and brokers from frivolous lawsuits in cases when they have made a disclosure of the agency relationship in good faith but may not have technically made it in writing in a timely fashion.

Number 1201

MR. TRICKEY said he is currently defending Prudential Vista in a class action lawsuit over a technical violation of the statute. He said the lawsuit seeks that the agents and brokers, who represented the sellers and buyers in the transactions and made disclosure but didn't make the disclosure timely, should forfeit all commissions earned over the past six years. He warned that such a ruling would have a devastating impact on the industry. That case also seeks punitive damages for a technical violation of the statute, which the Alaska Supreme Court wouldn't recognize as a breach of a fiduciary duty under the common law. [He] said he supports a proposed [amendment] to subsection (g) that is before the committee.

Number 1138

MR. TRICKEY said subsection (b) [applies retroactively] to pending cases for which no final judgment has been entered. When some people object to a "get out of jail free card," they are referring to the well-known Bonnie Mehner case, which has been settled, he noted. He said that the applicability [provision] in Section 7 would not change the outcome of that case, with its judgment for compensatory damages, nor the pending disciplinary proceedings. The court found that she made a material misrepresentation, and the two proposed amendments, which he supports, would not change that outcome. [Under HB 257 and the two proposed amendments,] no buyer is left unprotected where they suffer an actual loss as the result of a misrepresentation or fraud or deceit. The proposed amendments to Section 6, subsections (g) and (f) [would prohibit] a suit based on a technical violation of failure to make disclosure in a timely fashion. These proposed changes do not relieve residential brokers of their obligation to make disclosures. These two subsections, Section 6(g) and Section 7(b), are applicable only to residential brokers. He said he doesn't have any comments to make on the commercial brokerage provisions of the bill. He also commented that if this bill passes, the losers would be the lawyers bringing frivolous lawsuits. After these two sections [are amended], no buyers or consumers would lose, he said.

Number 0985

RICK FULLER, Owner/Broker, Prudential Vista Real Estate, responded to a question from Representative Rokeberg about why [HB 257] is important to him. He explained that he has been a broker for 28 years, and was chairman of the Real Estate

Commission for five years. He said that his company has an outstanding reputation, is proactive in solving problems, and doesn't have a rash of litigation. He said he doesn't think that the litigator [who has a filed a lawsuit against his company] is going to get class action status; however, he wants to stop that possibility. He said that this court case is not about solving problems; it's about using a technical violation to strip his company and the industry of the right to practice. He said that the losers would be the public because the real estate industry does a very good job of buying and selling real estate. He said his company is being sued on a \$50,000 transaction by owners of companies that do a billion dollars worth of business annually. He said he has a reputation of taking complaint referrals and solving them. He noted that no other attorneys or clients have jumped on the [class action] bandwagon. He said he objects to an attorney getting rich on a technicality.

Number 0827

CHRIS STEPHENS, CCIM, President, Bond, Stephens & Johnson, explained that he's in a conference room with five other brokers; another three had to leave earlier. He authored the [April 14, 2003] letter in the members' packets. He explained that his company is the largest commercial brokerage company in the state. The company has 12 agents and last year the company did 200 exclusively commercial transactions, worth \$300-\$400 million. He has been in the business 22 years and most of the company's agents have five or more years of experience.

Number 0703

MR. STEPHENS referred to several unintentional drafting errors in HB 257. He stated that HB 257 is trying to rectify two issues in current law: dual agency and disclosure. He said that in a dual agency situation, the law prohibits brokers from discussing price or terms with a client. Dual agency occurs when the broker has an established relationship with the other party or if the other agent works for the same company. If the buyer is brought in by an agent from another company, then it's not dual agency. The aforementioned leads to some ridiculous situations. His company experiences a large proportion of dual agency commercial transactions for several of reasons. Mr. Stephens explained that [Alaska] has a very small business and investment community. So he ends up dealing with the same people and the organizations on all sides of a transaction quite frequently. He said the result is a dual agency relationship.

All commercial property [transactions] tend to be complex; the agents know one another and talk about their properties. He noted that his firm has been hired by his clients because of its tremendous expertise, but the law prohibits his firm from [exercising that expertise]. He described the loser as the person who wants to put these transactions together; his agents can't say anything because of the dual agency statutes.

MR. STEPHENS described a recent situation, in which he had a property he was selling for the heirs of an estate. He had three offers, two from agents outside his company, and one from agents in his company. He said he sat down with the heirs to review these offers and to decide which of these offers to counter and pursue. He could discuss the first two but he couldn't discuss the offer from an agent within his company. He concluded that [this legal restraint] doesn't help the public, the consumer, or the economy. To try to do business under these circumstances is just about impossible, he said. He said the current law is making criminals of honest people, who are trying to do the best they can for their clients.

Number 0519

MR. STEPHENS next discussed the disclosure forms, included in his letter to the committee, which was developed by an attorney for his company so it could comply with the law. He said the paperwork is voluminous. He said he deals with a lot of national companies, and their [representatives] just put [the disclosure forms] aside because they might not have the authority to sign them and they don't want to take the time to send them to their national real estate department someplace [to be reviewed]. Local businesses don't know what to do with the forms either, he said. His company is trying to transact [business] and these [forms] aren't helping. He deals with experienced business people who, if they want somebody to represent them, will say so.

MR. STEPHENS stated that, contrary to the prior testimony, this [sophisticated understanding of agency and disclosure] is a standard of practice of commercial real estate in Anchorage and in Alaska for the past 22 years. He said he also works with national brokers selling properties to people outside the state. He noted that another five people are waiting patiently at his site to testify.

CHAIR ANDERSON announced that the bill will not be passed out of committee today because of the number of people who still want to testify.

Number 0302

REPRESENTATIVE ROKEBERG invited him to send written comments.

MR. STEPHENS stated there were other people extremely concerned about the bill who wanted to testify. He said several agents from other companies had already left because they could not stay for the whole hearing. The following people introduced themselves: Stuart Bond, Tim Spernak, Joe LoMonaco, Greg Johnson, Mike McElligott, Bob Arms, and Marc Dunne.

CHAIR ANDERSON noted that these agents were members of Mr. Stephens' firm.

Number 0212

TOM MARTIN, Broker, A+ Realty, stated that he has been in the real estate industry since 1991, is the past president of the Kodiak Board of Realtors, and does both residential and commercial work. He said he disagrees with the bill. He mentioned recent regulatory changes that are improving the standards of practice within the industry. He compared the [unethical] practices of Arthur Anderson [a national accounting firm] with common practices in the real estate industry. He noted that "all of a sudden when the stuff hits the fan, it was looked at from a totally different perspective." Mr. Martin described the need to carefully disclose agency to individuals who have limited knowledge of the English language. He recommended increasing the [threshold for commercial exemptions] in Section 6, changing the \$100,000 limit on page 4, line 20, to \$500 million and changing the \$12,000 a year limit on page 4, line 23, to \$1 million. He favored letting the courts settle litigation [rather than including the retroactive clause in HB 257].

Number 0076

DAVE FEEKEN, Chair, Legislative Committee, Alaska Association of Realtors; ReMax of the Peninsula, summarized the history of the disclosure issue. In 1984, there was a lawsuit in Hawaii, where the standard real estate practice was subagency, that is, a real estate agent represented the seller only. The lawsuit inspired a federal review of agency practices in the real estate

industry. That commission found that 80 percent of [consumers] who were working with an agent thought the agent was representing them. This prompted the National Association of Realtors (NAR) [tape ends mid-statement.]

**TAPE 03-35, SIDE A**

Number 0010

MR. FEEKEN recounted that NAR agreed to push agency disclosure laws in all states in order to prevent the nationalization of the real estate industry. He cited a 1989 case in Minnesota, the Edina Real Estate case, that dealt with an undisclosed dual agency situation very similar to the class action suit pending in Alaska. He explained that there are two types of dual agency: disclosed, consensual dual agency that is legal, and undisclosed dual agency, which is illegal in all 50 states. The result of undisclosed dual agency can be the forfeiture of commission if found guilty, recession of the contract, fraud, punitive damages, and the loss of license. Mr. Feeken opined that this bill trivializes what the two lawsuits and the federal government consider a very important consumer protection issue. He stated that Representative Rokeberg is attempting to abrogate common law. Thirteen states have attempted this [approach] in their licensing laws, and none of them have been successful [in court]. He said that there's got to be a [standard] rulebook, and when people get in trouble in all of these other states, they go back to common law to decide how to deal with the issue.

Number 0219

DAVID GARRISON, Associate Broker, AAR #1 Buyers' Agency; member, Anchorage Board of Realtors; Buyer Agent, National Association of Exclusive Buyer Agents, explained that he works only on the buyer's side of the transaction and that his firm handles both commercial and residential properties. He warned that if the [the legislature] stops requiring agency disclosure, the consumer will be hurt. He explained that he is doing a real estate transaction with an agent in Chicago, and that person discloses whom he is representing. He said that the issue is not about the different disclosure practices between realtors in big towns and small towns. Mr. Garrison said he favors retaining the disclosure requirement [in state law]. He opposes the "get out of jail free" provision in [Section 7 of] the bill. He said an agent should have a fiduciary duty to represent the buyer or the seller. If that is changed, he said the [legislature] should sunset the Real Estate Commission and let the [real estate] marketplace go [unregulated].

Number 0392

REPRESENTATIVE LYNN confirmed that the Chicago transaction Mr. Garrison mentioned was of a commercial nature.

Number 0439

LINDA GARRISON, AAR #1 Buyers' Agency, questioned why the big hurry to pass HB 257. She noted the work of the [Alaska Association of Realtors'] legislative committee, the Agency Task Force committee, and its subcommittee, and urged the committee to wait until these groups had finished their work, even if it means waiting until next session. Ms. Garrison said she opposes any retroactive provisions in state law because they remove the checks and balances between the legislature and judicial systems. She testified that [HB 257] protects the real estate agent, not the public or the consumer. She said that buyer agency and seller agency are very simple relationships with a fiduciary duty. Ms. Garrison stated that dual agency only benefits one person; but buyers and sellers have the right to decide whether they want a dual agent or their own representation. She said she does not support abrogation of common law.

Number 0635

CHAIR ANDERSON closed public testimony on HB 257.

Number 0649

REPRESENTATIVE DAHLSTROM moved to report HB 257 out of committee with individual recommendations and the accompanying fiscal note. There being no objection, HB 257 was passed from the House Labor and Commerce Standing Committee.

HB 255-WAGES:TRAINING/FLEX-TIME/DEFINITIONS

Number 700

CHAIR ANDERSON announced that the final order of business would be HOUSE BILL NO. 255, "An Act amending the Alaska Wage and Hour Act as it relates to flexible work hour plans, the provision of training wages, and the definitions of certain terms; and repealing the exemption in the Act from the payment of minimum wages for learners."

Number 0845

REPRESENTATIVE ROKEBERG, as sponsor of HB 255, testified that the bill covers three sections of the Alaska Wage and Hour Act [AS 23.10.050-150] and the related regulations. He said HB 255 adjusts the definitions of who is management, looks at flexible work hour provisions, and revises the provisions for training wages [for workers less than 20 years of age].

Number 0900

FRANK ROSE, President, Alaska Hotel and Lodging Association; Owner, Alaska Lodging Management, spoke in support of HB 255. He testified that Sections 1 and 2 of the bill realistically define executive, administrative, and professional positions as they relate to exempt employees and overtime status. He said the bill also makes the definitions consistent with federal law. He said that is a very important [factor] in his business operations. Section 3 of the bill provides for long-overdue changes to the voluntary flexible work hour plan, allowing flexible work hours [simply] upon agreement [after] filing [paperwork with the Department of Labor] for the flexible work hour [plan]; approval usually involves a rubber stamp [by the department]. The [law] assures that the employer and the employee agree on the terms of a 40-hour work week, [usually] with four 10-hour days. And lastly, he noted, the hospitality industry supports changes to the training wage legislation that give employers more opportunities to train young people in new work environments. He said that businesses need to be able to employ young people for full work weeks so that they can be given the training. [Current regulations limit youth on lower wages to 30 hours per week.] This provision provides an incentive to hire [young] people who don't have experience and who wouldn't otherwise be hired, he said.

Number 1024

REPRESENTATIVE ROKEBERG asked Mr. Rose to explain what he meant by getting the voluntary flexible work hour plan rubber-stamped.

MR. ROSE explained that two of his companies have needed flexible work hour plans. They filled out the forms and sent them to the Department of Labor; and two weeks later they came back approved. He confirmed that they were for 4-day, 10-hour work weeks.

REPRESENTATIVE ROKEBERG commented that the Department of Labor will approve 4-day, 10-hour work weeks but nothing else. He noted that working parents are demanding more flexibility in their schedules so they can look after their children. He asked if that worked for his industry.

MR. ROSE replied yes, and that it's a real incentive for an employee if they can [get these flexible hours]. He said it benefits the employer as well.

Number 1085

CHAIR ANDERSON asked his thought about AS 23.10.055(11), which exempts from Alaska's minimum wage youth who are under the age of 18 and work less than 30 hours a week; they can be paid at the lower rate of \$5.15 per hour. He asked Mr. Rose how he would respond to folks who protest being hired at the lower wage.

Number 1140

MR. ROSE said that businesses are providing a service to young people; training that individual to do the job is pretty intensive. He said that many employers would prefer to hire an experienced person to do the job. The question is whether these hires are just to save money. He assured the committee that the [employer's] effort to train a 17-year-old to be a productive worker is a public service.

Number 1169

JON FAULKNER, Owner/operator, Land's End Resort; Van Guilden Hotel, explained that he has run these hotels for 14 years. He said he employs 125 people in the summertime and roughly 75 in the winter. Land's End Resort is the largest private sector employer in Homer; Homer is perennially one of the areas of highest unemployment in the state. He said he knows what it means to put people to work and the effort it takes to stay open in the wintertime.

MR. FAULKNER said he supports HB 255, Sections 1 and 2 in particular. He stressed that it is critical to clarify and define what is supervisory, professional, and executive. He said he has been sued [over the definition of supervisory] and lost and came close to filing bankruptcy [to pay the court-ordered damages] in the case, Land's End v. Chase. He stated that when these cases are settled, they cost the industry

millions of dollars every year and are a lawyer's delight. The current Alaska law [AS 23.10.055. Exemptions] varies so far from the federal law that employers [are handicapped by] very ambiguous definitions of supervisory. His case involved his restaurant manager who operated a year-round restaurant with 65 employees, who hired and fired staff, and negotiated \$200,000 purchase contracts with vendors. Yet in the wintertime, when the business fell down to 15 dinners a night, she managed the floor and kitchen from the hostess station. This manager proved that she spent more than 20 percent of her time standing in a hostess station, so the court determined that she did line level work and was not exempt from overtime pay. The result was treble damages and her lawyer's fees; he wrote a check for \$100,000 that took him to the edge of bankruptcy. As a result, he placed every employee on hourly pay and refuses to hire anyone on salary. Mr. Faulkner said that this policy hurts employees because they don't qualify for certain benefits, and it restricts them in other ways. He said HB 255 affects independent, Alaskan-owned, and -operated businesses that are the backbone of rural economic development.

REPRESENTATIVE ROKEBERG asked if he deals with the voluntary flex time issue.

Number 1491

MR. FAULKNER replied that he uses flex time in his maintenance department, which has seasonal work. He said it helps people who have to work two jobs. He said the Department of Labor approval is very cumbersome. There is often a two-week delay in getting the paperwork back. He said he only uses the 4-10 work week, usually with maintenance, sometimes with security employees.

CHAIR ANDERSON asked about the training wages as described in Section 4, page 5.

MR. FAULKNER said he supported the concept, but pointed out troublesome language [lines 6-9] which read,

An employer may not take an action to displace an employee, including partial displacements such as reduction in hours, wages, or employment benefits, for purposes of hiring individuals at the wage authorized in this subsection.

MR. FAULKNER explained his point with the example of hiring a maintenance or server trainee. Two months later, he reduces hours, because [in the hospitality industry, the employer] is always changing the staff levels. A disgruntled employee will point out that his hours were reduced so that another employee could be hired at the training wages. He warned that this language will create exposure for the employer. Ninety days is not very long to have someone at a training wage. He suggested making certain positions eligible for training wages.

Number 1609

REPRESENTATIVE GUTTENBERG asked two questions about the benefits Mr. Faulkner offers to his hourly and salaried employees.

Number 1642

MR. FAULKNER said he used to expect more of a salaried employee. When he stopped paying salaries, he no longer paid the benefits associated with salary positions. He confirmed that paying benefits is discretionary; the law does not require the employer to pay benefits. He said he had offered his salaried employees health benefits of a reimbursable type.

KAREN ROGINA, Alaska Hospitality Alliance, explained that her organization includes the Alaska Hotel and Lodging Association, the Alaska Restaurant and Beverage Association, and the Alaska Hospitality Alliance Education Foundation. She testified in favor of HB 255. She said her membership includes over 80 percent of the lodging rooms in the state and over 100 food and beverage operations in the state, employing over 20,000 Alaskans. She said that employees in the industry gain valuable work experience that readily transfers to other industries. According to the National Restaurant Association, over one third of the labor force today in the United States got its start in the hospitality industry. "We are the training ground of America's work force," she said.

MS. ROGINA said she supports HB 255 because it encourages employment and the development of workers in the industry while protecting the slim profit margins of the members' operations. She testified that the current statute discourages employment growth and development while eroding bottom-line profits. Given the recent changes in the wage and hour law [mandating an annual cost of living adjustment in the minimum wage], the current economic downturn has also been very hard on the industry. She noted that the alliance recently commissioned a study to

quantify the impacts of the economic downturn and the minimum wage law. She added that anecdotal information shows that employees are being laid off, employee benefits are being cut, vacation packages are being cut, and fewer workers under the age of 21 are being hired because of these factors. She stated that HB 255 encourages the development of employees, and she urged the committee to pass HB 255 out of committee.

Number 1845

REPRESENTATIVE ROKEBERG asked her opinion of the current training wage provision that allows young people to work 30 hours a week.

MS. ROGINA replied that the current statute allows young people [up to age 18] to be paid \$5.15 an hour, up to 30 hours a week. She cautioned that if they work beyond 30 hours a week, there isn't a mechanism in place to track those hours and send up an alert. This [bill] changes that to 40 hours a week, and every employer has that mechanism in place to identify when an employee hits the 40-hour limit [for purposes of computing overtime]. So, administratively, this is a lot easier to put into place, she said. The increase [in the age limit from 18 to 20] years opens up a pool of young people who need that experience in the workforce and the opportunity to ascend [the job ladder].

CHAIR ANDERSON asked about a 17-year old working at Wendy's 20 hours a week. He asked her to explain how that works.

Number 1915

MS. ROGINA said that currently they can be paid the training wage only if they work less than 30 hours ongoing. In the summertime, they might work more hours. It's so difficult to track [the 30 hours] that people just don't do it.

CHAIR ANDERSON confirmed that if young person works one hour more than the 30 hour [limit], all 31 hours must be paid at the higher [minimum] wage. He asked what happens when the young worker turns 20 if this bill passes.

MS. ROGINA explained that if a 19-year-old works at the training wage for a month, when she turns 20, she would have to be paid at the higher wage. She confirmed that HB 255 allows for 40 hours a week for the first 90 days.

Number 1972

REPRESENTATIVE GUTTENBERG asked what percentage of employees fit into these definitions of summer or seasonal hires and would be eligible for the training wage.

MS. ROGINA said that information is not currently available, but the Alaska Hotel and Lodging Association recently commissioned the McDowell Group to do a study that quantifies that kind of detail.

REPRESENTATIVE GUTTENBERG asked how many of the young people hired in this industry are non-Alaskan, summer travelers.

MS. ROGINA replied that she didn't know but would find that information and send it to him.

Number 2024

REPRESENTATIVE ROKEBERG noted that he didn't want to be accused of running a child sweatshop. He asked Ms. Rogina if she thinks this wage can be used properly to train young people for a job. Is there anything in the bill that prevents paying a teenager at the higher wages, he asked.

MS. ROGINA said HB 255 allows the market to [determine] what young people are paid. Within 90 days, the employer has a good sense of the value of that employee. She said there's high turnover in the beginning.

Number 2079

REPRESENTATIVE ROKEBERG said that if an employer hires a young person at the lower wage who proves of value, the employer might raise the wage immediately to the \$7.15 or above to hang on to a good employee. He also asked whether the flex-time provisions will help her member employers hire working parents who need schedule flexibility.

MS. ROGINA said absolutely, especially on the hotel side, which is a [round the clock] industry as is the case in restaurants as well. The industry hires a lot of people that have unique scheduling requirements. Offering employees flexible schedules allows them to fit into the workforce more readily.

REPRESENTATIVE ROKEBERG confirmed that some of her larger hotels and restaurants have union employees, and that some of the union

contracts allow for split shifts. He asked if they are exempt from the Wage and Hour Act because they have collective bargaining.

MS. ROGINA said that union contracts often negotiate this kind of flex time. But nonunion employers are also able to, so this levels the playing field.

CHAIR ANDERSON noted that the rest of the people in the committee room were willing to wait until the next meeting to testify. He noted that HB 255 will be held over.

#### **ADJOURNMENT**

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:40 p.m.