

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

May 1, 2004

5:12 p.m.

TAPE(S) 04-57

**MEMBERS PRESENT**

Senator Ralph Seekins, Chair  
Senator Scott Ogan, Vice Chair  
Senator Gene Therriault  
Senator Hollis French

**MEMBERS ABSENT**

Senator Johnny Ellis

**COMMITTEE CALENDAR**

SENATE JOINT RESOLUTION NO. 33

Urging our United States Senators to work to allow a timely vote on the floor on all judicial nominations.

SCHEDULED BUT NOT HEARD

CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 29(JUD) am

"An Act relating to real estate licensees and real estate transactions; and providing for an effective date."

MOVED SCS CSSHB 29(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 15(FIN) am

"An Act relating to fair trade practices and consumer protection, to telephone solicitations, to charitable solicitations; and providing for an effective date."

MOVED SCS CSHB 15(JUD) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 514(FIN) am

"An Act relating to child support modification and enforcement, to the establishment of paternity by the child support enforcement agency, and to the crimes of criminal nonsupport and aiding the nonpayment of child support; amending Rule 90.3, Alaska Rules of Civil Procedure; and providing for an effective date."

MOVED SCS CSHB 514(JUD) OUT OF COMMITTEE

**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  
02/20/04 (H) Moved CSSSHB 29(JUD) Out of Committee  
02/20/04 (H) MINUTE(JUD)  
02/26/04 (H) JUD RPT CS(JUD) 4DP 2NR  
02/26/04 (H) DP: SAMUELS, ANDERSON, OGG, MCGUIRE;  
02/26/04 (H) NR: GARA, GRUENBERG  
03/04/04 (H) TRANSMITTED TO (S)  
03/04/04 (H) VERSION: CSSSHB 29(JUD) AM  
03/05/04 (S) READ THE FIRST TIME - REFERRALS  
03/05/04 (S) L&C, JUD  
04/15/04 (S) L&C AT 1:30 PM BELTZ 211  
04/15/04 (S) Heard & Held  
04/15/04 (S) MINUTE(L&C)  
04/22/04 (S) L&C AT 1:30 PM BELTZ 211  
04/22/04 (S) UNIV. STUDENT PRACTICUM LIABILITY/WAGES  
04/23/04 (S) JUD AT 8:00 AM BUTROVICH 205  
04/23/04 (S) <Pending Referral>  
04/27/04 (S) L&C AT 1:30 PM BELTZ 211  
04/27/04 (S) Moved SCS CSSSHB 29(L&C) Out of  
Committee  
04/27/04 (S) MINUTE(L&C)  
04/28/04 (S) JUD AT 8:00 AM BUTROVICH 205  
04/28/04 (S) <Pending Referral>  
05/01/04 (S) JUD AT 5:00 PM BUTROVICH 205

BILL: HB 15

SHORT TITLE: SOLICITATIONS/CONSUMER PROTECTION

SPONSOR(S): REPRESENTATIVE(S) FATE

01/21/03 (H) PREFILE RELEASED (1/10/03)  
01/21/03 (H) READ THE FIRST TIME - REFERRALS  
01/21/03 (H) L&C, STA, FIN  
01/29/03 (H) L&C AT 3:15 PM CAPITOL 17  
01/29/03 (H) <Bill Postponed>  
02/07/03 (H) L&C AT 3:15 PM CAPITOL 17  
02/07/03 (H) Moved CSHB 15(L&C) Out of Committee  
02/07/03 (H) MINUTE(L&C)  
02/10/03 (H) L&C RPT CS(L&C) NT 3DP 4AM  
02/10/03 (H) DP: CRAWFORD, ROKEBERG, ANDERSON;  
02/10/03 (H) AM: LYNN, GATTO, GUTTENBERG, DAHLSTROM  
02/18/03 (H) STA AT 8:00 AM CAPITOL 102  
02/18/03 (H) Heard & Held  
02/18/03 (H) MINUTE(STA)  
02/25/03 (H) STA AT 8:00 AM CAPITOL 102  
02/25/03 (H) Scheduled But Not Heard  
03/11/03 (H) STA AT 8:00 AM CAPITOL 102  
03/11/03 (H) Heard & Held  
03/11/03 (H) MINUTE(STA)  
03/13/03 (H) STA AT 8:00 AM CAPITOL 102  
03/13/03 (H) Moved CSHB 15(STA) Out of Committee  
03/13/03 (H) MINUTE(STA)  
03/26/03 (H) STA RPT CS(STA) NT 3DP 4NR  
03/26/03 (H) DP: SEATON, GRUENBERG, WEYHRAUCH;  
03/26/03 (H) NR: HOLM, LYNN, DAHLSTROM, BERKOWITZ  
02/19/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
02/19/04 (H) Heard & Held  
02/19/04 (H) MINUTE(FIN)  
02/23/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
02/23/04 (H) Moved CSHB 15(FIN) Out of Committee  
02/23/04 (H) MINUTE(FIN)  
02/24/04 (H) FIN RPT CS(FIN) NT 7DP 3NR  
02/24/04 (H) DP: HAWKER, CROFT, CHENAULT, FATE,  
02/24/04 (H) MEYER, HARRIS, WILLIAMS; NR: STOLTZE,  
02/24/04 (H) JOULE, MOSES  
03/03/04 (H) TRANSMITTED TO (S)  
03/03/04 (H) VERSION: CSHB 15(FIN) AM  
03/04/04 (S) READ THE FIRST TIME - REFERRALS  
03/04/04 (S) L&C, JUD  
03/25/04 (S) L&C AT 1:30 PM BELTZ 211  
03/25/04 (S) Heard & Held  
03/25/04 (S) MINUTE(L&C)  
04/06/04 (S) L&C AT 2:00 PM BELTZ 211  
04/06/04 (S) Heard & Held  
04/06/04 (S) MINUTE(L&C)  
04/13/04 (S) L&C AT 1:30 PM BELTZ 211

04/13/04 (S) -- Meeting Canceled --  
 04/20/04 (S) L&C AT 2:00 PM BELTZ 211  
 04/20/04 (S) Moved SCS CSHB 15(L&C)am Out of  
 Committee  
 04/20/04 (S) MINUTE(L&C)  
 04/22/04 (S) L&C RPT SCS 1DP 4NR SAME TITLE  
 04/22/04 (S) NR: BUNDE, DAVIS, FRENCH, STEVENS G;  
 04/22/04 (S) DP: SEEKINS  
 04/28/04 (S) JUD AT 8:00 AM BUTROVICH 205  
 04/28/04 (S) Heard & Held  
 04/28/04 (S) MINUTE(JUD)  
 05/01/04 (S) JUD AT 5:00 PM BUTROVICH 205

BILL: HB 514

SHORT TITLE: CHILD SUPPORT ENFORCEMENT/ CRIMES

SPONSOR(S): REPRESENTATIVE(S) KOTT

02/16/04 (H) READ THE FIRST TIME - REFERRALS  
 02/16/04 (H) JUD  
 02/23/04 (H) JUD AT 1:00 PM CAPITOL 120  
 02/23/04 (H) Heard & Held  
 02/23/04 (H) MINUTE(JUD)  
 02/27/04 (H) JUD AT 1:00 PM CAPITOL 120  
 02/27/04 (H) Moved CSHB 514(JUD) Out of Committee  
 02/27/04 (H) MINUTE(JUD)  
 03/03/04 (H) JUD RPT CS(JUD) 5DP  
 03/03/04 (H) DP: GARA, SAMUELS, GRUENBERG, OGG,  
 03/03/04 (H) MCGUIRE  
 03/03/04 (H) FIN REFERRAL ADDED AFTER JUD  
 03/08/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
 03/08/04 (H) Heard & Held  
 03/08/04 (H) MINUTE(FIN)  
 03/23/04 (H) FIN AT 1:30 PM HOUSE FINANCE 519  
 03/23/04 (H) Moved CSHB 514(FIN) Out of Committee  
 03/23/04 (H) MINUTE(FIN)  
 03/24/04 (H) FIN RPT CS(FIN) 4DP 3NR 2AM  
 03/24/04 (H) DP: HAWKER, FOSTER, FATE, WILLIAMS;  
 03/24/04 (H) NR: JOULE, CHENAULT, HARRIS;  
 03/24/04 (H) AM: STOLTZE, CROFT  
 03/31/04 (H) TRANSMITTED TO (S)  
 03/31/04 (H) VERSION: CSHB 514(FIN) AM  
 04/01/04 (S) READ THE FIRST TIME - REFERRALS  
 04/01/04 (S) JUD, FIN  
 04/16/04 (S) JUD AT 8:00 AM BUTROVICH 205  
 04/16/04 (S) Scheduled But Not Heard  
 04/19/04 (S) JUD AT 8:00 AM BUTROVICH 205  
 04/19/04 (S) Heard & Held

04/19/04 (S) MINUTE(JUD)  
04/20/04 (S) JUD AT 8:00 AM BUTROVICH 205  
04/20/04 (S) Heard & Held  
04/20/04 (S) MINUTE(JUD)  
04/21/04 (S) JUD AT 8:00 AM BUTROVICH 205  
04/21/04 (S) Bill Postponed To 4/23/04  
04/23/04 (S) JUD AT 8:00 AM BUTROVICH 205  
04/23/04 (S) Heard & Held  
04/23/04 (S) MINUTE(JUD)  
04/29/04 (S) JUD AT 8:00 AM BUTROVICH 205  
04/29/04 (S) Scheduled But Not Heard  
05/01/04 (S) JUD AT 5:00 PM BUTROVICH 205

**WITNESS REGISTER**

Ms. Sue Stancliff  
Aide to Representative Kott  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Explained amendments to HB 514

Ms. Landa Bailey  
Special Assistant  
Department of Revenue  
PO Box 110400  
Juneau, AK 99811-0400

**POSITION STATEMENT:** Answered questions about HB 514

Mr. John Mallonee  
Acting Director  
Child Support Enforcement Division (CSED)  
Department of Revenue  
PO Box 110400  
Juneau, AK 99811-0400

**POSITION STATEMENT:** Answered questions about HB 514

Representative Hugh Fate  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Sponsor of HB 15

Ms. Susan Burke  
Gross & Burke  
Juneau, AK

**POSITION STATEMENT:** Explained Amendment 1a to HB 15 and supported the legislation as amended

Mr. David Marcus  
Assistant Attorney General  
Department of Law  
PO Box 110300  
Juneau, AK 99811-0300  
**POSITION STATEMENT:** Supported Amendment 1a to HB 15

Representative Norm Rokeberg  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Sponsor of HB 29

Ms. Peggy Ann McConnochie  
Alaska Realtors Association  
Juneau, AK  
**POSITION STATEMENT:** Supports SCS CSHB 29(JUD)

**ACTION NARRATIVE**

**TAPE 04-57, SIDE A**

**CHAIR RALPH SEEKINS** called the Senate Judiciary Standing Committee meeting to order at 5:12 p.m. Senators French, Ogan, Therriault and Chair Seekins were present. He announced the committee would also meet at 3:00 p.m. the following day and that it would first take up HB 514.

^#HB 514

**HB 514-CHILD SUPPORT ENFORCEMENT/ CRIMES**

CHAIR SEEKINS reminded members that public testimony on HB 514 had been closed and that he is trying to find out how comfortable committee members are with the bill and what the committee can do to make sure that the Child Support Enforcement Division (CSED) "can nab the bad guys but not unnecessarily make bad guys out of people who have, what we call in this, a lawful excuse not to have paid child support." He noted that Senator Ogan has had some legitimate concerns that the committee is trying to address.

SENATOR OGAN expressed concern that under this bill, 15,000 people could become felons. He said he was considering amending the prison bill to create a debtors' prison because the state may need one if it is going to prosecute people under HB 514.

MS. SUE STANCLIFF, staff to Representative Pete Kott, sponsor of HB 514, pointed out that a new work draft had been provided to members, labeled version C.

CHAIR SEEKINS moved to adopt version C as the working document before the committee.

SENATOR FRENCH objected for the purpose of an explanation of the changes made in version C.

MS. STANCLIFF explained that version C incorporates the three amendments previously adopted by the Senate Judiciary Committee. It also contains a couple of conceptual amendments that are corrective in nature. The first, on page 2, line 5, conforms to one amendment the committee adopted to increase the debt amount from \$10,000 to \$20,000. The second conceptual amendment is on page 7, line 9: a comma was inserted following the word "year".

SENATOR OGAN moved the two conceptual amendments.

CHAIR SEEKINS designated the two conceptual amendments as Amendment 4. There being no objection, Amendment 4 was adopted.

SENATOR FRENCH asked where the language came from in Section 12 on page 5 that pertains to the non-cash contribution.

MS. STANCLIFF said that was another change she planned to get to and explained that language was incorporated from HB 176, which is currently in the House Finance Committee. That language allows non-custodial parents to support their children in ways other than monetary payments, such as providing a winter supply of firewood or a freezer full of meat. Those non-cash items would be recognized as support. It is her understanding that Representative Coghill or his staff spoke to members of the Senate Judiciary Committee about that change.

SENATOR OGAN said he likes the concept but worries about the ambiguous nature of valuing those items. He asked if the Department of Revenue (DOR) could quantify what those items are worth by regulation. He said if a father remodeled a room in an ex-wife's home, the wife could get bids from other contractors to quantify the worth of that project but the concept has many pitfalls.

CHAIR SEEKINS noted the language says the two parties must agree.

MS. STANCLIFF responded that Representative Coghill's staff indicated that the value would be set through a written agreement between the custodial and non-custodial parents and that CSED would have a duty to make sure the value is reasonable. However, the non-cash contributions would not apply to accounts when the custodial parent is receiving public assistance because when that occurs, CSED steps in to enforce the collection of monetary support.

MS. LANDA BAILEY, special assistant, DOR, informed members that CSED and the Department of Law (DOL) have worked out the glitches in the process. She deferred to staff from those agencies to explain that process.

MR. JOHN MALLONEE, acting director of CSED, told members when he originally looked at this bill and spoke to Representative Coghill's staff, it had CSED determining the value. That was cause for concern. That value differs depending on location and conditions and CSED has no way to monitor it. CSED felt it would be much more beneficial to all concerned if there was an agreement between the two parties as to the value of the item. He noted if the non-cash item is to satisfy the debt between the two parties and not with CSED, then those parties should be able to determine the value.

CHAIR SEEKINS asked if a situation arose in which the non-custodial parent changed a towel bar and was given a \$20,000 credit, who the custodial parent would appeal to.

MR. MALLONEE said there would be no ability to appeal at that point since the two parties would have agreed.

SENATOR FRENCH agreed the concept is a good one but said he has severe concerns about how it will work in reality. He thought that getting into the business of valuing non-cash contributions would be a nightmare for CSED. He pointed out that the language on page 6, lines 5-6 says the non-cash contribution could be directed to a creditor of the child's custodian. He said if the child's custodian owed a \$500 bar tab, the non-custodial parent could deliver moose meat directly to the bar.

MR. MALLONEE explained that the non-cash item must cover the basic needs of the children, such as food, heat or housing. A non-cash payment might be made to a creditor if the non-custodial parent was unable to make a mortgage payment or pay a heating bill, for example.

SENATOR FRENCH appreciated the explanation but expressed continued concern about the difficulty of valuating non-cash contributions.

SENATOR OGAN maintained that small claims courts are full of cases and as a contractor, he would refuse to take payments in advance because he felt waiting for the final payment motivated him and assured that his client was satisfied. He noted jobs that he bartered for were often not a priority for him. He expressed concern that a custodial parent could agree in advance to a non-cash contribution, such as a remodel project, and then be dissatisfied with the work and CSED would have to get involved.

CHAIR SEEKINS asked members if there was objection to adopting version C.

SENATOR FRENCH noted that he preferred the prior version of the bill [version X.A].

CHAIR SEEKINS asked Ms. Stancliff if the language change in Section 12 is the only substantive change in version C.

MS. STANCLIFF verified that it is.

SENATOR FRENCH maintained his objection to adopting version C.

CHAIR SEEKINS asked Ms. Stancliff if the sponsor will have a big "hiccup" if the committee continues to work on the prior version.

MS. STANCLIFF said he would not; Section 12 provided an opportunity to help people who do not have the ability to pay cash and he was only trying to make a good bill better.

The motion to adopt version C failed with Senators French and Seekins opposed, and Senator Ogan in favor.

[There was some confusion as to whether the committee was working from version B or version X.A.]

SENATOR FRENCH moved to adopt version X.A as the working document before the committee.

CHAIR SEEKINS noted without objection, the motion carried.

CHAIR SEEKINS referred to language on page 3, line 7, and asked if the 24 months would be consecutive or cumulative.

MR. MALLONEE said it would be 24 consecutive months.

CHAIR SEEKINS moved to adopt Amendment [5], to insert the word "consecutive" after the number "24" on page 3, line 7, and at any other appropriate place in the bill [page 2, line 6]. With no objection, the motion carried.

SENATOR OGAN moved to insert the word "intentionally" on page 1, line 14, after the word "person" [Amendment 6].

CHAIR SEEKINS suggested placing the word "intentionally" on page 2, line 2, after the word "person" instead.

SENATOR FRENCH objected and said for the sake of consistency, the word "knowingly" should be used.

SENATOR OGAN agreed with Senator French.

CHAIR SEEKINS suggested inserting the word "knowingly" after the word "person" on page 2, line 2.

SENATOR OGAN agreed to that language and placement change.

CHAIR SEEKINS announced that without objection, Amendment [6] was adopted.

Members discussed inserting "knowingly" on page 2, line 29 also, but decided it was unnecessary.

SENATOR OGAN moved to give the legal drafter authority to make corrections if he or she finds inconsistencies due to the previous amendment (Amendment [7]).

MS. BAILEY pointed out that the word "knowingly" is on page 1, line 9.

CHAIR SEEKINS clarified that without objection, conceptual Amendment [7] was adopted.

CHAIR SEEKINS repeated that his concern about HB 514 is that CSED go after the egregious offenders - people who deliberately, knowingly, and intentionally live large on their children, not the people who cannot make payments. He would prefer that the bill contain language that says prior to being able to charge a

person with a felony, CSED have a consultation with that person, but he was not willing to insert such language in the bill at this point.

MS. BAILEY pointed out that Section 12 of version X.A is the forgiveness provision. That provision provides a way for people who are in arrears in their state-owed debt to resolve the situation with CSED through a settlement process. She indicated that even though 15,000 cases are potential felony cases, the majority of those people simply are unable to pay and those people cannot be charged with a felony under this provision unless they have the ability to pay.

SENATOR OGAN said the wording in the bill is good and noble, but many people do not report their income and work under the table. Those people could claim they only earned minimal income and apply for forgiveness and would be hard to catch. He asked if the bill contains a provision that would help CSED to prove fraud in those cases, because those are the people he would like to charge with felonies.

CHAIR SEEKINS said if CSED could prove that a person intentionally failed to provide support that would be fraud.

MS. BAILEY informed members that if Diane Wendlandt, Assistant Attorney General, and the investigators at CSED find criminal activity, they work hard to prosecute.

CHAIR SEEKINS asked if some prosecuting attorneys in the district attorneys offices specialize in misdemeanors while others specialize in felonies.

SENATOR FRENCH said generally the felony DWI cases fall to the misdemeanor attorneys but one part-time assistant attorney general handles all the CSED cases. He pointed out that the fact that no one is willing to expand her work hours will constrain this law.

MS. BAILEY pointed out that under the current statutory structure, CSED can only charge people with misdemeanors and one person in the district attorney's office works on those cases.

CHAIR SEEKINS asked the will of the committee.

SENATOR FRENCH moved SCS CSHB 514(JUD) to the next committee of referral with its attached fiscal notes.

The motion carried with Senators French, Ogan and Chair Seekins in favor.

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^#HB 15

**HB 15-SOLICITATIONS/CONSUMER PROTECTION**

REPRESENTATIVE HUGH FATE, sponsor of HB 15, said the issue of written agreements was raised at the last hearing and that Mr. Pound would elaborate on that.

CHAIR SEEKINS asked if the committee is to look at a negotiated agreement this afternoon.

REPRESENTATIVE FATE said that is correct and that he has reviewed and supports it.

CHAIR SEEKINS indicated the committee has been working on version W.

SENATOR OGAN moved to adopt Amendment 1a, which reads as follows.

**A M E N D M E N T 1a**

1. Page 8, lines 13-19, delete all material and insert:

(10) by a person who is primarily soliciting the sale of a [MAGAZINE, PERIODICAL,] sound recording or [,] book

(A) if the person

(1) has no minimum purchase requirements,

(2) provides written notice of the buyer's right to cancel at any time, and

(3) allows the buyer to return the sound recording or book and obtain a full refund, or

(B) through a [,OR] membership in a book or record club

(1) [(A)] where the club provides the buyer with a form that the buyer may use to instruct the club not to ship the offered merchandise; and

(2) [B] that is regulated by the Federal Trade Commission as a negative option plan under 16 C.F.R. [CFR] 425;

2. Page 8, following line 31, add the following:

(C) the provisions of subparagraph (11)(B) do not apply to a sale of a magazine subscription

(i) where the telephone call is made to a customer to solicit a subscription renewal; or

(ii) when the telephone call is initiated by the buyer, payment is made by credit card, and a telephone number to cancel the subscription is on the credit card statement description line for that charge;

SENATOR FRENCH objected for the purpose of discussion.

CHAIR SEEKINS asked what Amendment 1a will do.

MS. SUSAN BURKE, representing the Direct Marketing Association and the Magazine Publishers of America, explained that during a previous discussion on HB 15 in committee, members talked about book and record club memberships versus a solicitation received in the mail for a single book or a single item. Amendment 1a addresses that problem. The first section deals with a single sale and says that a company retains its exemption if no minimum purchase is required. It also requires a written notice of the buyer's right to cancel at anytime and allows the buyer to return the item for a full refund. She stated, "And the rest of it is just the way it was in the original bill."

SENATOR FRENCH asked how the written notice of the right to cancel on the sale of a single item would work.

MS. BURKE said the buyer would receive the notice in the mail and could cancel the agreement by returning the item and getting a refund.

SENATOR OGAN thought it offensive that such a law would even have to be enacted to protect consumers from themselves.

SENATOR FRENCH asked for an explanation of how the second part of the amendment would work.

MS. BURKE said a new section 11 was added on page 8 of version W with introductory language and an A and B section; those would not change. Amendment 1a adds a new subsection that says a company does not have to provide written notice under two very limited circumstances. The first instance is where the publisher is contacting an existing customer and soliciting a magazine renewal. The second instance would be when the seller sends a

postcard and the buyer initiates the contact and payment is made by credit card.

**TAPE 04-57, SIDE B**

6:00 p.m.

MS. BURKE said the credit card statement will contain a telephone number to call to cancel the subscription. All of those things would have to apply to negate the written notice requirement. She acknowledged that the amendment does not address all of the Department of Law's concerns but through the negotiating process both parties determined they can live with these changes.

MR. DAVID MARCUS, legislative liaison and assistant attorney general, DOL, affirmed that Amendment 1a is satisfactory.

REPRESENTATIVE FATE said he also finds the amendment to be satisfactory.

SENATOR FRENCH withdrew his objection, therefore Amendment 1a was adopted.

SENATOR OGAN moved SCS CSHB 15(JUD) from committee with individual recommendations and its attached fiscal notes.

The motion carried with Senators Ogan, French, and Seekins in favor.

CHAIR SEEKINS thanked participants and announced an at-ease.  
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6:11 p.m.

^#HB 29

**HB 29-REAL PROPERTY TRANSACTIONS/LICENSEES**

CHAIR SEEKINS informed members that the working document before the committee was version C and that Senator French had a proposed amendment.

SENATOR FRENCH moved to adopt Amendment 1, which reads as follows.

23-LS0189\C.1  
Bannister

A M E N D M E N T 1

OFFERED IN THE SENATE

BY SENATOR FRENCH

TO: SCS CSSSHB 29(L&C)

Page 5, following line 18:

Insert a new subsection to read:

"(c) Notwithstanding (b)(2) of this section, before a buyer makes or accepts an offer in a real estate transaction, a real estate licensee who is handling the real estate transaction for the buyer shall disclose to the buyer that a murder or suicide occurred on the real property that is the subject of the real estate transaction if

(1) the murder or suicide occurred within one year before the date that the licensee first showed the real estate to the buyer; and

(2) the licensee is aware that the murder or suicide occurred on the real estate."

SENATOR FRENCH then informed members that he wished to amend Amendment 1 by deleting the language on lines 4 and 5 that reads, "who is handling the real estate transaction for the buyer".

CHAIR SEEKINS noted without objection, Amendment 1 was amended.

SENATOR OGAN objected to the adoption of Amendment 1 as amended for the purpose of discussion. He then asked how much the disclosure of a murder or suicide could significantly devalue a property.

MS. PEGGY ANN McCONNOCHIE, Alaska Association of Realtors, said that is in the eye of the beholder, which is why disclosure is necessary. She explained:

We're not saying it has to be disclosed in a negative way but, for example, there are certain cultures whose culture prohibits them from buying a home in which there has been a murder or suicide. Other people will not care. They just want the house. They don't care if that happens. But the fact is it still needs to be disclosed and we thank Senator French for helping us with the wording because we believe that this wording makes it far more clear since those are the two

problem areas that we feel are material facts and need to be disclosed if they're known by the licensee within the past 12 months.

REPRESENTATIVE ROKEBERG, sponsor of HB 29, added that the reason this issue arose is because of case law and other actions throughout the country. These circumstances have given rise to lawsuits because of the psychological impact. Because this bill will specifically codify more of the duties of realtors, he believes it is necessary to clarify this matter. He thanked Senator French.

CHAIR SEEKINS announced with no further objection, Amendment 1 as amended was adopted.

SENATOR FRENCH noted he had a few questions and first asked for a clear example of a conflict of interest that a real estate licensee would have if this bill is enacted.

REPRESENTATIVE ROKEBERG pointed out that Section 3, which pertains to conflicts of interest, is already part of the statute. He said the other subsections under AS 08.88.391 provide more detail and that it is the relationships that give rise to a conflict of interest.

SENATOR FRENCH referred to "specific assistance" on page 3, line 10, and throughout the bill, and asked if a realtor can provide specific assistance to a person without representing that person.

MS. McCONNOCHIE said the Alaska Realtors Association wanted to define at what point the services of a real estate licensee are being used, "And that's when specific assistance happens." She pointed to the definition of "specific assistance" at the end of the bill and repeated that realtors need to know when their services begin and when they do not.

SENATOR FRENCH asked why hosting an open house is not included in that definition.

MS. McCONNOCHIE replied, "Because typically when you're coming into a house and I am sitting there, intrinsically I'm representing the owner of the house. Consequently I'm not going to offer you specific assistance, which could be in fact, against my client's - the seller's - best interest."

SENATOR FRENCH said he was thinking of it in opposite terms but realizes that realtor is already representing the seller.

REPRESENTATIVE ROKEBERG indicated that the bill requires a written disclosure statement about the type of relationship between the licensee and a prospective buyer or seller. To provide specific assistance would require the host of an open house to have any prospective buyer jump up and sign a form before allowing the person to look around, which is not likely to happen.

SENATOR FRENCH then referred to lines 23-25 on page 3 and asked for an explanation.

MS. McCONNOCHIE said an example would be if she represented Senator French when selling his real estate. If, after the sale, Senator French did not intend to buy another piece of property but planned to rent, she could not represent him if she was representing the owner of a home that he wanted to rent.

CHAIR SEEKINS asked if that would also apply to a home sale rather than a rental.

MS. McCONNOCHIE explained that she could represent him to sell his home and buy another home, but she could not do that if she was also working for the owner of the property for sale or lease.

SENATOR FRENCH asked about the duties of a neutral licensee [Sec. 08.88.645].

REPRESENTATIVE ROKEBERG said the former relationship that may have been created by dual agency is redefined in that section. He stated, "They are to cover similar situations. They are not - they may be analogous but they're not the same."

SENATOR FRENCH said his question revolves around the language on page 9 in subsection (5), which talks about what a realtor can and cannot do when working as a neutral licensee with a buyer and seller on either side. He said he finds subsection (5)(b)(2) to be problematic because it almost allows the realtor to do what the realtor is prohibited from doing in (5)(A) and (B). He suggested changing the word "would" to "should" in (5)(b)(2).

MS. McCONNOCHIE clarified that the relationship between the buyer, seller, and realtor would not be adversarial and the realtor would not be trying to advocate for either party. The

realtor would, in effect, be working as a go-between for the two parties. If Senator French was buying a house through her, and she had prior written permission from both parties to be a neutral agent and he told her he would pay a certain price and that she could take that price to the seller, but the seller gave her permission to offer a lower price, she could inform Senator French of the lower price.

CHAIR SEEKINS said he understands (5)(B) to say that with written consent, the neutral agent could "work both sides of the street."

MS. McCONNOCHIE agreed and repeated that this relationship would not be adversarial and the realtor would be working to create a win-win situation for both parties, which this legislation will allow. She pointed out what is most often more important to both parties are the terms of the transaction rather than the price.

REPRESENTATIVE ROKEBERG told members this bill is the result of a significant amount of effort that goes back eight years. He believes HB 29 is a major consumer protection bill and is an excellent example of the proper balance between protecting the consumer and allowing commerce to move forward. He added that in 1992 the fire agency provisions of law were adopted, but they are broken and the statute has been modified to make the system work better for all parties. He complimented the people in the industry for working on consumer protection. For example, realtors will have to provide a pamphlet to every client of the rights and obligations of the licensee.

CHAIR SEEKINS asked if anything in the bill will make it difficult for a person to craft their own documents consistent with state law to sell or buy a home.

REPRESENTATIVE ROKEBERG said nothing whatsoever. This legislation only applies to licensees regulated under Title 8, occupational licensing.

CHAIR SEEKINS asked if HB 29 puts constraints on the licensee and not on the way a buyer wants to buy.

REPRESENTATIVE ROKEBERG replied, "This regulates the conduct of a licensee."

SENATOR FRENCH declared a conflict of interest with this legislation as his wife is a real estate agent.

SENATOR OGAN moved SCS CSHB 29(JUD) from committee with individual recommendations and its zero fiscal note.

The motion carried with Senators French, Ogan and Seekins in favor.

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CHAIR SEEKINS adjourned the meeting.