

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

May 15, 2003

7:53 a.m.

MEMBERS PRESENT

Senator Con Bunde, Chair
Senator Ralph Seekins, Vice Chair
Senator Gary Stevens
Senator Bettye Davis
Senator Hollis French

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 313

"An Act authorizing a pilot program relating to state procurement and the use of electronic commerce tools; and providing for an effective date."

MOVED HB 313 OUT OF COMMITTEE

HOUSE BILL NO. 232

"An Act relating to mercury classics; and providing for an effective date."

MOVED HB 232 OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 83(JUD)

"An Act adopting a version of the Revised Uniform Arbitration Act; relating to the state's existing Uniform Arbitration Act; amending Rules 3, 18, 19, 20, and 21, Alaska Rules of Civil Procedure, Rule 601, Alaska Rules of Evidence, and Rule 402, Alaska Rules of Appellate Procedure; and providing for an effective date."

MOVED CSHB 83(JUD) OUT OF COMMITTEE

SENATE BILL NO. 194

"An Act authorizing delivery of up to two bottles of distilled spirits to a cruise ship passenger or hotel guest."

MOVED SB 194 OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 269(FIN)

"An Act establishing the Safety Code Task Force; and providing for an effective date."

MOVED CSHB 269(FIN) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 257(JUD) am

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

MOVED SCS CSHB 257(L&C) OUT OF COMMITTEE

CS FOR HOUSE BILL NO. 195(L&C) am

"An Act relating to coverage offered under an individual policy of health care insurance; relating to the state health insurance plan; and providing for an effective date."

HEARD AND HELD

PREVIOUS ACTION

HB 313 - No previous action to consider.

HB 232 - No previous action to consider.

HB 83 - See Labor and Commerce minutes dated 5/13/03.

SB 194 - See Labor and Commerce minutes dated 5/13/03.

HB 269 - No previous action to consider.

HB 257 - No previous action to consider.

HB 195 - No previous action to consider.

WITNESS REGISTER

Mr. Kevin Jardell, Assistant Commissioner
Department of Administration
PO Box 110200
Juneau, AK 99811-0200

POSITION STATEMENT: Commented on HB 313.

Representative Paul Seaton

Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of HB 232.

Ms. Jane Tollefsrud, Coordinator of Projects
Homer Boys and Girls Club
PO Box 3307
Homer AK 99603
POSITION STATEMENT: Supported HB 232.

Ms. Lisa Weissler
Staff to Representative Ethan Berkowitz
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Commented on HB 83 for the sponsor.

Mr. Grant Callow, Attorney
Alaska Commissioner
National Conference of Commissioners on Uniform State Laws
Anchorage AK
POSITION STATEMENT: Supported HB 83.

Representative Nancy Dahlstrom
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of HB 269.

Mr. Greg Moore
NANA/Colt Engineering
700 G St., ATO-500
Anchorage AK 99502
POSITION STATEMENT: Commented on HB 269.

Mr. Colin Maynard
Alaska Professional Design Council (APDC)
510 L St., Suite 200
Anchorage AK 99501
POSITION STATEMENT: Commented on HB 269.

Mr. Zach Warwick
Staff to Senator Therriault
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Commented on HB 269.

Mr. Doug Mathers, Building Official
City of Kodiak Island Borough School District

710 Mill Bay Road
Kodiak, AK 99615
POSITION STATEMENT: Commented on HB 269.

Mayor Steve Thompson
City of Fairbanks
800 Cushman St.
Fairbanks, AK 99701
POSITION STATEMENT: Commented on HB 269.

Mr. Steve Shuttlesworth
City of Fairbanks North Star Borough
800 Cushman St.
Fairbanks AK 99701
POSITION STATEMENT: Commented on HB 269.

Mr. Eugene Rutland, Executive Director
Mechanical Contractors of Alaska
1840 Second Ave.
Fairbanks AK 99701
POSITION STATEMENT: Commented on HB 269.

Mr. Charles Deardon
City of Ketchikan Gateway Borough
344 Front Street
Ketchikan, Alaska 99901
POSITION STATEMENT: Commented on HB 269.

Mr. James Baisden, Fire Marshal
City of Kenai
105 S. Willow
Kenai AK 99611
POSITION STATEMENT: Commented on HB 269.

Representative Norm Rokeberg
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Sponsor of HB 257.

Ms. Heather Nobrega
Staff to Representative Rokeberg
Alaska State Capitol
Juneau, AK 99801-1182
POSITION STATEMENT: Commented on HB 257 and HB 195 for the sponsor.

Mr. Howard Trickey

Prudential Jack White and Prudential Vista
3000 A St.
Anchorage AK

POSITION STATEMENT: Supported HB 257.

Mr. Steve Conn
Alaska Public Interest Research Group
P.O. Box 101093
Anchorage AK 99510

POSITION STATEMENT: Opposed HB 257.

Ms. Linda Garrison, Real Estate Broker
Number One Buyer Agency
PO Box 19727
Anchorage AK 99519

POSITION STATEMENT: Opposed HB 257.

Mr. David Garrison
PO Box 190727
Anchorage AK 99519

POSITION STATEMENT: Commented on HB 257.

Ms. Michelle Cassano, Executive Director
American Diabetes Association
801 W. Fireweed Lane No. 103
Anchorage AK

POSITION STATEMENT: Opposed HB 195.

Ms. Lois Hildebrand, Volunteer
American Cancer Society
PO Box 81774
Fairbanks AK 99708-1774

POSITION STATEMENT: Opposed HB 195.

Mr. Bill Moore
[Indiscernible address]

POSITION STATEMENT: Supported HB 195.

Ms. Janel Wright
2945 Emory St.
Anchorage AK 99508

POSITION STATEMENT: Opposed HB 195.

Ms. Linda Hall, Director
Division of Insurance
Department of Community & Economic Development
PO Box 110800

Juneau, AK 99811-0800

POSITION STATEMENT: Supported HB 195.

Ms. Betsy Turner-Boggren

PO Box 343

Ester AK 99725

POSITION STATEMENT: Opposed HB 195.

Ms. Karin Braun

Nurse Midwife

3730 Rhone Circle

Anchorage AK 99507

POSITION STATEMENT: Opposed HB 195.

Ms. Carla Williams

Alaska Breast Cancer Advocacy Partners

13001 Norak Pl.

Anchorage AK 99516

POSITION STATEMENT: Opposed HB 195.

Ms. Camille Soleil, Executive Director

Alaska Nurses Association

2207 E. Tudor Rd., Ste 34

Anchorage AK 99507

POSITION STATEMENT: Opposed HB 195, section 1.

ACTION NARRATIVE

TAPE 03-33, SIDE A

HB 313-STATE PROCUREMENT PILOT PROGRAM

CHAIR CON BUNDE called the Senate Labor and Commerce Standing Committee meeting to order at 7:53 a.m. Present were Senators Stevens, Seekins, French and Bunde. The Chair announced HB 313 to be up for consideration.

SENATOR HOLLIS FRENCH said someone asked him about the exemption for the procurement code in this bill and he wanted Mr. Jardell to explain how that will play out in the award of this contract.

MR. KEVIN JARDELL, Assistant Commissioner, Department of Administration, explained that the provisions exempting the process from the procurement code caused the department to take a great deal of caution. He noted:

We are absolutely supportive of the new technology and finding efficiencies, both in real dollars and time getting materials to our employees in a more efficient manner. Any time we begin blanket exemptions in [the] procurement code, the administration gets wide-eyed; a red flag comes up and says slow down. We've got to make sure that we're not going to get in trouble on this. That's one of the reasons we insisted that the language in the bill be permissive - that we "may" do it. If we see at any point along the line that we don't feel as the administration that we can put in the protections to the local businessmen - people selling the goods, the vendors - then we can stop the program. It is our intention to write regs and processes to insure that as much of the procurement code can be used in this process as fits. Some of it won't, but especially the systems whereby people can appeal. They can bring their problems forward and have a process to bring up any objections that they have if they feel they're not getting a fair shake....

SENATOR RALPH SEEKINS moved to pass HB 313 from committee with individual recommendations and attached fiscal note. There were no objections and it was so ordered.

CHAIR BUNDE [recessed] the meeting at 7:56 a.m.
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TAPE 03-34, SIDE A

HB 232-HOMER MERCURY CLASSIC/GAMING PRIZE LIMIT

CHAIR CON BUNDE called the meeting back to order at 1:40 p.m. Present were SENATORS SEEKINS, STEVENS and BUNDE. He announced HB 232 to be up for consideration.

REPRESENTATIVE PAUL SEATON, sponsor of HB 232, said the Homer Mercury Classic is similar to the Nenana Ice Classic in which ticket purchasers buy a chance to guess the time when the mercury will go down to 15 degrees. A drawing for the prize is held when the mercury goes up to 55 degrees in the spring. The Boys and Girls Club, Homer Chapter, has a computerized weather station on top of its building that monitors [the temperature] every hour in conjunction with the NASA Globe Project, a project that monitors global warming.

The only other mercury classic in the state was held in Fairbanks in 1987-88. This classic will not conflict or preclude anyone else from doing the same thing.

CHAIR BUNDE commented that it is interesting that some of the same people who oppose other forms of gambling would think this is a good idea and asked how much money is involved.

REPRESENTATIVE SEATON replied that the tickets cost \$2 a piece and the total depends on how many tickets the children sell. Fifty percent goes to the Boys and Girls Club.

MS. JANE TOLLEFSRUD, Coordinator of Projects, Homer Boys and Girls Club, offered to answer questions and added that the Homer Club in particular has 350 members and the Kenai Peninsula Boys and Girls Club has a total of 3,000 members.

SENATOR SEEKINS said there could be a large number of winners.

MS. TOLLEFSRUD replied that they thought using the hour would be okay and multiple winners could split the pot. If they need to use minutes, the device could be recalibrated to read every minute.

SENATOR SEEKINS asked if the Homer Boys and Girls Club have a charitable gaming permit now.

MS. TOLLEFSRUD replied that the Kenai Peninsula Boys and Girls Club has the gaming permit it is going to use.

SENATOR SEEKINS asked if gaming permits are normally limited to a certain dollar amount on an annual basis.

CHAIR BUNDE responded that pulltab winnings are limited, but he wasn't familiar with any limitation on the classics like the ice pool.

SENATOR SEEKINS said he was trying to figure out if this will expand the amount this charity would bring in in terms of gambling revenue in a calendar year.

MS. TOLLEFSRUD said she didn't know the answer to that. She does know that the only thing they use their permit for in Kenai is the raffle and an auction that they have once per year.

CHAIR BUNDE said he thought the limit on the prizes is \$1 million and it's not likely that they are approaching that amount.

SENATOR SEEKINS said the only reason he questioned that is because the number of groups that want to get into charitable gaming, in addition to charities (like municipalities and questionable non profits), is increasing.

REPRESENTATIVE SEATON said that his understanding is that the Boys and Girls Club is not involved in pulltabs. The Classic will be a twice-a-year lottery, a guessing game that will involve the kids in monitoring.

CHAIR BUNDE asked Ms. Tollefsrud and Representative Seaton to investigate if the Boys and Girls Club was using its permit for pulltabs and whether, with the classic, they would be held under a one-umbrella limit or whether this would expand their limit. He closed public testimony and asked the will of the committee.

SENATOR STEVENS moved to pass HB 232 with zero fiscal note and individual recommendations. There were no objections and it was so ordered.

HB 83-REVISED UNIFORM ARBITRATION ACT

CHAIR CON BUNDE announced HB 83 to be up for consideration.

MS. LISA WEISSLER, staff to Representative Berkowitz, sponsor, gave members an overview of what the bill does. First, it is the Revised Uniform Arbitration Act. She explained that arbitration is a voluntary process that people agree to in a contract. It's an alternative to resolving disputes in the courts that is hopefully speedier and more economical. The original Act was developed in 1955. These acts are normally developed by national committees and then states can choose whether or not to adopt them. Alaska did adopt the Uniform Arbitration Act in 1968, which addressed some of the basics of arbitration. Over the years, arbitration has become very popular and deals with more complex issues; more money is involved. So an effort was made by the National Conference of Commissioners on Uniform State Laws to update the National Uniform Arbitration Act. The Commissioners came up with the Revised Uniform Act in 2000 and so far five states have adopted it. It has been introduced this year by 12 more states, including Alaska. The revised act is much more comprehensive and updates the basic coverage of the

Uniform Act. It addresses many issues that were not originally covered. She continued:

It's a very complicated looking piece of legislation, but, in the legal world, it actually makes things simpler for those folks who decide to do arbitration. Many of the provisions can be waived so it's not something set in stone and, from what I've heard, people who do this type of thing think it's a good thing.

SENATOR SEEKINS asked, for the record, if anything in the bill requires any form of arbitration or whether it is entirely voluntary on both parties.

MS. WEISSLER replied that it is voluntary and has to be in a contract signed by both parties.

SENATOR SEEKINS asked if there is anything in this bill that would vary from the Uniform Act or whether it is tailored to any other issue particular to the state of Alaska.

MS. WEISSLER answered that a couple of provisions were included in response to a concern of the Department of Law that labor agreements not be subject to these rules unless specifically agreed to.

MR. GRANT CALLOW, Attorney and Alaska Commissioner to the National Conference of Commissioners on Uniform State Laws, concurred with Ms. Weissler's answer.

SENATOR SEEKINS moved to pass CSHB 83(JUD) from committee with its zero fiscal note and individual recommendations. There were no objections and it was so ordered.

SB 194-LIQUOR DELIVERED TO HOTELS/CRUISE SHIPS

CHAIR CON BUNDE announced SB 194 to be up for consideration.

SENATOR GARY STEVENS, sponsor, explained that this issue initially arose because a florist in Seward wanted to deliver gift baskets with alcohol to cruise ships. There was a change that allowed wine and champagne to be delivered in a gift basket, but this bill would allow distilled spirits to be delivered either to cruise ships or to hotels in a floral arrangement.

CHAIR BUNDE asked if anyone had expressed opposition.

SENATOR STEVENS said he hadn't heard of any opposition. He moved to pass SB 194 from committee with zero fiscal note and individual recommendations. There were no objections and it was so ordered.

CSHB 269(FIN)-SAFETY CODE TASK FORCE

CHAIR BUNDE announced CSHB 269(FIN) to be up for consideration.

REPRESENTATIVE NANCY DAHLSTROM, sponsor, said that this bill is identical to SB 180, sponsored by Senator Therriault, which was already heard in this committee. There is only one difference - the size of the advisory task force was expanded in CSHB 269(FIN) to include more folks. She explained:

There are five primary safety codes that deal with construction in Alaska and they are under the jurisdiction of two different departments. Therein lies the majority of the problems. The fire, building and mechanical codes are under the jurisdiction of the fire marshall in the Department of Public Safety and the plumbing and electrical codes are governed by the Department of Labor. Each department is responsible for adopting a family of codes to bring uniformity and consistency for obvious reasons to the construction industry. The current delegation of authority to the respective departments has caused quite a bit of conflict and discrepancies and I know that through the hearings you've had that you are familiar with them.

The mission of the Safety Task Force is to suggest options to consolidate the two groups together and they would be tasked with coming back with recommendations that would be due on the first day of our second legislative session.

As part of the task force, the legislation proposes an advisory panel. These appointments will be made by the Governor to represent the different areas. The president of the Senate and speaker of the House will jointly appoint 11 additional members that will serve on the advisory committee. The purpose of the advisory group is to advise the task force on the effect of any changes in code adoption to the respective industries that they belong with. This is also to insure the

broadest representation of stakeholders so that everyone has a good opportunity and a good chance to voice their concerns....

CHAIR BUNDE asked if it is safe to assume the task force would recommend a single code and whether that is possible.

REPRESENTATIVE DAHLSTROM replied yes and, although it would be a daunting task, she thought it was possible. All agree that safety is the main issue.

MR. GREG MOORE, NANA/Colt Engineering, said his company has 180 stakeholders and they support the idea of the task force, but they remain concerned that no building officials, local or state, will sit in a voting position on the task force. He conceded that building officials will sit on an advisory committee, but said that their input is too valuable to not have a voting position. The argument he has heard is that using a representative from every segment of industry would make the task force too unwieldy and he suggested removing a voting member that might not be as critical to the outcome. He said there is one electric code and no one is disputing an [electrician's] place on the task force.

REPRESENTATIVE DAHLSTROM responded that her feeling about having a member from the electric community is that even though there is only one code, it's got to mesh with all the other codes. She felt their representation was important. She felt it is important to have a building official on the advisory committee rather than the task force, because building officials have regulatory oversight over private sector members of the task force. Therefore, they have an opportunity to wield undue influence over other members of the task force.

MR. COLIN MAYNARD, APDC, agreed with the previous speaker in that the task force needs to be more balanced. He said:

The fact of the matter is that code enforcement is done by architects and engineers and code officials, not by contractors or subcontractors. Those are the people who work with it every day designing buildings and overseeing contractors to make sure they are meeting the requirements of the code. To have people that are being overseen deciding what code they're going to do, I think, is incorrect. If the electrical one is not the one to pull out of there to add either another engineer or the building official, then I

would combine the plumbing and mechanical seat - because we've heard testimony that almost all of these people have both plumbing and mechanical administrator's licenses, so one person could handle that job. I don't think that what this task force will come out with will be worth anything if the design community and code officials aren't combined in it and right now with this make-up we're not buying into it.

REPRESENTATIVE DAHLSRTOM said she had made note of his comments again, but she feels that the most efficient way for the task force to be set up is with the members that are currently listed.

CHAIR BUNDE asked if she could help the committee understand the issue Mr. Maynard makes about the design people being the ones that are actually doing the enforcement. He questioned, "Indeed, should they, then, be deciding the codes or is that the fox guarding the hen house?"

REPRESENTATIVE DAHLSTROM asked if she could have Zach Warwick from Senator Therriault's office help with the answer.

SENATOR SEEKINS interjected and said that he had:

...agreed in conversations with the Senate President that if this task force does become a reality, he would be one of the co-chairs and he would not take it kindly for anyone to imply that that task force, then, would be unruly or that the product of the task force would be worthless or I wouldn't spend my time there.

CHAIR BUNDE recapped that Mr. Maynard's view is that design folks are the ones that have to police codes; he thought they are the ones that should help decide what code it will be rather than the people who are being policed (plumbers, contractors, etc.). He wanted to know what Mr. Warwick and Senator Therriault thought about that and, if the people who are enforcing the codes get to choose which code, they would have an inherent conflict.

MR. ZACH WARWICK, staff to Senator Therriault, responded that he thought there would be some inherent conflict. "It's a like a police officer writing the law."

He said that mechanical plumbing administrators are ultimately the ones that go out and inspect their companies' work to make

sure everything is up to snuff when it comes time for the building inspectors to come out and actually inspect the building. He stated,

So, they do have a very direct need to look at the code as well. Other than that, I'm not sure exactly where that question was heading. I don't think the design and engineering community is the one who polices it; they are the ones who draw the code. It would be the local building official - is the one who is going out and policing it.

MR. DOUG MATHERS, Building Official for the City of Kodiak, said he had sent a fax to the committee. He said the task force is a good idea and noted:

My problem is I don't really understand how come there's not a building official and a representative from the fire marshal's office as a voting member on the task force. We're the ones responsible for enforcing these codes. They actually developed the codes through the International Code Council and [indisc.].

MR. WARWICK responded by saying that having a building official as a voting member would be similar to Senator Seekins as a car dealer telling the State of Alaska which vehicles to buy. He maintained, "I think that's the kind of influence these people would bring to this task force as a voting member rather than an advisory position."

MAYOR STEVEN THOMPSON, City of Fairbanks, said the city feels the task force would be unbalanced without a building official and fire marshall. He indicated:

The architects and engineers design the buildings; the building officials enforce the codes and the contractors build the buildings. I really think you need to have a better balance than what you are proposing on this task force. We go through quite a process and I'm sure all the other communities do. We have a code review commission that we appoint. We spent two years having hearings and public meetings on our code review before we decided what to do with them and now to have that possibly changed in the future kind of scares us a bit. We want to make sure this is balanced, that we have the right people on there that

are going to have objective views on what's going to be taking place.

SENATOR SEEKINS asked about the makeup of the city's code review committee.

MAYOR THOMPSON said he would have Steve Shuttlesworth answer that.

MR. STEVE SHUTTLESWORTH said the members consisted of Ron Price, a professional architect; Richard Tilly (chairman), Home Builders Association; Jerry Mustard, a mechanical engineer with Holiday Parks; Bill Howe, a co-consultant with C.B. Bettisworth and Co.; Jim Mobius, an electrical engineer; Bill Dryder, a registered structural engineer with PDC; and Patty Pearsall, a registered architect.

SENATOR SEEKINS responded that there was one individual involved in actual construction; the rest were engineers, architects and consultants.

MR. SHUTTLESWORTH said that was correct.

MR. EUGENE RUTLAND, Executive Director, Mechanical Contractors of Alaska, said his organization is made up of about 50 contracting firms that perform construction projects of many types and sizes across the state of Alaska. They believe that code adoption by regulation, which is currently used in this state, is flawed and needs to be looked at. He stated support for CSHB 269(FIN) with no amendments. He said the task force would come up with solutions to issues of code adoption that would have broad support in the construction community and that members would allow the stakeholders to have an equal and effective voice in the process.

MR. CHARLES DEARDON, City of Ketchikan, said he was testifying for Mayor Bob Weinstein, and that he agrees with the mayors from Juneau and Fairbanks that this bill is flawed regarding the voting members of the task force. It should include a municipal code official and fire official.

MR. JAMES BAISDEN, Kenai Fire Marshal, expressed the same concerns as others that a building and fire official would not be voting members of the task force. He maintained:

After the buildings are built, the fire officials still have to deal with these facilities for the next

50 to 75 years and for us not to have an equal voice as a voting member of this committee just doesn't make sense.

REPRESENTATIVE DAHLSTROM repeated that she appreciates everyone's involvement and that everyone agrees this deals with critical issues. She still believed the current make-up of the task force and advisory panel would be effective.

CHAIR BUNDE closed public discussion.

SENATOR SEEKINS said he could see how this could be a very contentious issue if the panel is created. Because this is so contentious, the legislature has been asked to become the final arbiter and voters on how the code issues are handled. The contractors need a transition period between codes. Because there is tension between two sets of codes and municipalities across the state are able to adopt different sets of codes, it makes this issue contentious. This task force will have recommendations for the legislature and there will still be time for everyone to weigh in, but he hoped they would come back with good recommendations that adequately protect the safety of Alaskans.

TAPE 03-34, SIDE B

SENATOR SEEKINS offered to co-chair the subcommittee and hoped that all those discussions would take place in it. He asked:

Would I as a member of the committee put more credence in the vote of someone on the task force versus someone I knew? I've known Steve Shuttlesworth for years; I've known Mayor Thompson for years; I've known several contractors for years; the man who helped put me in business was a mechanical contractor. My dad was an electrical contractor. I had a journeyman's book in the carpenter's union when I was 19 years old....

He said he hoped to bring back a common sense solution to the tension between these two groups. He moved to pass CSHB 294(FIN), version I, from committee with individual recommendations, and said, "...with the commitment, if it passes, as co-chairman that I'll work with everybody to try to come up with a solid recommendation to bring back so we can get it solved next year."

CHAIR BUNDE noted there were no objections and it was so ordered.

CSHB 257(JUD)am-REAL ESTATE LICENSEES:DUTIES & CLAIMS

CHAIR BUNDE announced CSHB 257(JUD)am to be up for consideration and said he had prepared a committee substitute (CS) for it.

2:30 - 2:32 - at ease

REPRESENTATIVE NORM ROKEBERG, sponsor of HB 257, said this legislation is a combination of work that has been under way for about eight years. He explained:

There is nothing in this bill that changes the duties of a real estate licensee to make a disclosure when they represent either a buyer, a seller or a dual agent, both of which are recognized under current Alaska statute.

He noted in 1991, the legislature required disclosure by the licensee about his or her relationship and duties in the transaction to the client. Currently, you can't have preauthorized permission from a house seller, who may have transferred out of state, to show his house, which is what is occurring right now because of a recent court interpretation. The bill encompasses the right to have a preauthorized dual agency relationship, allowing a property to be presented and marketed.

CHAIR BUNDE asked if the CS would still provide consumer protection for the dual agency.

REPRESENTATIVE ROKEBERG replied absolutely. It only allows preauthorization and limits any remedy if there's a failure or a technical breakdown, like not getting the paperwork signed at the right time.

CHAIR BUNDE asked if a person could sue to recover an economic loss.

REPRESENTATIVE ROKEBERG replied that is correct.

SENATOR GARY STEVENS moved to adopt SCS CSHB 257, version X, as the working document. There were no objections and it was so ordered.

CHAIR BUNDE asked if that was the document Representative Rokeberg was speaking to.

REPRESENTATIVE ROKEBERG said that is correct. He also said he had to go to another meeting so his staff, Heather Nobrega, would continue to answer questions.

SENATOR RALPH SEEKINS asked about the current penalty for not explaining the preauthorization situation to a client. He asked if there is a timeline for disclosure under the current law.

MS. HEATHER NOBREGA, staff to Representative Rokeberg, answered the current law is interpreted to mean the disclosure has to be made before the agent walks in the front door of that house.

SENATOR SEEKINS asked if it is acceptable for the clients to sign a paper later saying they understood it.

MS. NOBREGA replied that the way the law is interpreted, the agent would be in violation of the law.

CHAIR BUNDE said it was explained to him that under current law, not only do you need permission, you need written permission every time you show that property. This bill would allow blanket permission.

SENATOR SEEKINS asked if that requirement is in statute or was set by precedent.

MS. NOBREGA answered that is how the court recently interpreted the statute so it's a combination of both.

SENATOR STEVENS wanted to know more about the court case and what other issues were involved.

MR. HOWARD TRICKEY, Prudential Jack White and Prudential Vista, said the problem with the current law is that the statute is vague and ambiguous and allowed the court to make its interpretation in a single case that was just litigated under the statute. The main part of the case had to do with misrepresentation and breach of fiduciary duties under common law. As a sideshow in the case, the ambiguous clause about disclosures that Representative Rokeberg talked about - when a seller or buyer receives specific "assistance from an agent," was interpreted to have to happen at the initial showing of a property.

A number of claims in that court case would not be affected by the proposed legislation - for breach of fiduciary duty and tort claims - contentions that the agent had breached her contractual obligation and violated general common law agency principles. That was the focus of the decision by the Superior Court judge in that case. The contention was that the agent had misrepresented the value of the property as she had information that indicated the property was worth less than the asking price. The buyer's contention was that he suffered actual damages because he paid too much for the property. Under the proposed amendment, if a buyer is damaged and suffers actual damages by virtue of a violation of the statute, they can bring claim under the statute as well as bring a claim under the common law of agency law, tort law or contract law.

Section 4 of the CS allows for a remedy limited to actual damages for violation of the statute. The House version said there would be no cause of action for a violation of this statute. The reason they want to limit the remedy to actual damages is that industry is facing devastating financial consequences from class action plaintiffs' lawyers who want to bring and are asserting the claim in a pending case over a transaction where no one suffered any actual damages. All they are seeking is a return of the commissions and punitive damages. They feel that is an unfair financial exposure and risk to an industry (a lot of small business people) that cannot cover itself.

SENATOR STEVENS asked what actual damages really meant.

MR. TRICKEY replied that actual damages would be the cost to a buyer who paid too much or a seller who sold for too little, if the damage was caused by the lack of disclosure that is required by the statute. Another type would be if the property had a defect or needed a repair.

The bill says the plaintiff's remedy for violation of the statute would be limited to actual damages, which would be a recovery of the commissions and punitive damages. Because the claim is based on a violation of a statute, the legislature has the constitutional power and authority to limit what remedies ought to be available for a statutory violation.

CHAIR BUNDE said he had received 158 e-mails about this issue from around the state and a vast majority of them were in support.

MR. STEVE CONN, Alaska Public Interest Research Group (AKPIRG), said he could show members why the legislation would be egregiously damaging to the consumer:

You're probably aware of how sacrosanct an agency relationship is and the fiduciary duty that flows there from. Fiduciary duties, of course, were established originally in common law. There is no question that a dual agency or an individual who purports to be an agent with fiduciary duties to both buyer and seller is damnably complicated....

The problems, not in the order of their severity, are it appears that the dual agency concept is expanded to lessors and lessees as well as buyers and sellers. So now there is not only unsophisticated buyers and sellers, but unsophisticated lessors and lessees who have to suffer through the question of can they trust their agent. Language in the CS doesn't clarify; if anything, it muddles the written authorization until the licensee's relationship with the party is completely established. Now, if that is not subject to a thousand different interpretations by the court, by the buyer, by the seller, leading to more complications, I don't know what is.

The limitation of simple remedies is particularly bad, not only in future cases, but what is more outrageous than that is that you are being called to intervene in ongoing litigation about which you have heard only one side and not a very clear picture of that one side. Apparently, under the committee substitute you're being asked to take this legislation and apply it to whatever action out there... in court... to re-determine the whole relationship retroactively....

MR. CONN said that art. 1, sec. 15 of the Alaska Constitution prohibits various kinds of state actions and mentions impairment of contractual relationships. He stated, "This sort of smells like an unconstitutional action."

He said further:

If the dual agency arrangement is too complicated to handle in terms of parsing out the respective obligation either in writing or in oral representation and is too burdensome, then they shouldn't do it. They

should allow some other agency to handle the other side of the transaction or they should consider a breakdown into agents who represent exclusively buyers and exclusively sellers.

CHAIR BUNDE noted that the committee just went through a back wages issue, which was retroactive and that was deemed to be constitutional by the legislative legal folks.

MS. LINDA GARRISON, real estate broker, Number One Agency, said they had spent a lot of hours on this issue to show that the consumer is the one that should be thought of here. She was not surprised that members received so many e-mails in support of this legislation because a lot of agents have been violating state law and got caught. Now they want to change the law to reflect what they have been doing for a long time.

She said the House removed the retroactive clause on this bill because it recognized that was wrong. In conclusion she urged members to not weaken the common law of agencies and to not make the law retroactive.

MR. DAVID GARRISON said he is an associate broker and owns several businesses, one of which leases properties. He explained that one of the findings of fact in the lawsuit is that there were offers presented to the agent who did not present them to the seller. The agent stated that the seller would only take a full-price offer. She did not give disclosures. She told the buyer he had to buy the property from her. The acts were egregious and that is why punitive damages were awarded. The case settled a year and a half ago. He noted that no other situations like that had occurred since then.

MR. GARRISON said he had a problem with section 4, which limits liability.

The law now is strong enough.... The problem is that these companies which have 300 agents don't train their personnel well. It is a matter of education. And that's one of the things that needs to be brought forward - better education.

He opposed the dual agency relationship because it only benefits the agent.

SENATOR SEEKINS asked if he was a party to this case.

MR. GARRISON replied no. He is familiar with it because he sat on the agency task force and read the findings of the court.

SENATOR SEEKINS asked him if he is a dual agent.

MR. GARRISON replied that AAA Customer Services owns most of the properties it deals with.

SENATOR SEEKINS asked if he advocated for single agency.

MR. GARRISON replied that he is an advocate for single agency, but also tries to be realistic about the fact that large companies have this problem. He maintained, "The disclosure needs to be there though, and they need to do it."

SENATOR SEEKINS asked which part of section 4 he didn't like.

MR. GARRISON replied limiting the amount of damages for nondisclosure.

SENATOR SEEKINS asked if he thought someone should be allowed to get punitive damages, not just actual damages.

MR. GARRISON replied yes.

SENATOR SEEKINS asked if he thought a clerical error that could be an error of timing should be cause for punitive damages.

MR. GARRISON replied yes. He said also that it's just not possible to be a buyer's agent and a seller's agent at the same time. He stated, "It's like one attorney representing both sides of a divorce."

MS. GARRISON said she felt strongly about that section also. She did not think the public right for any remedy should be blocked in this way. She maintained, "We have a very good check and balance system."

MR. GARRISON clarified that he is not saying there should be punitive damages for a clerical error. In the court case, the agent told the court that was how she did business and that's how she would continue to do business. That's what was found as a grievous act, which is what punitive damages are all about.

3:15 p.m.

TAPE 03-35, SIDE A

MR. TRICKEY said he thought this bill protects consumers because it allows them to recover for actual damages; it doesn't in any way change the common law of agency at all. Most of the people who say it will don't understand the legislation. Also, most of the comments about a pending case are about the Bonnie Maynard case and this is not about that case. He indicated, "If that case went to trial today under this statute, there would be the same result, because there were misrepresentations made in that case...."

CHAIR BUNDE said that Ms. Maynard still has her real estate license and asked why the State Real Estate Commission had not met to discipline her yet.

MR. TRICKEY replied that he didn't know where the case stands in terms of the disciplinary process, but an administrative proceeding [is underway] to address whether discipline should be taken against her as a licensee.

SENATOR SEEKINS moved to pass SCS CSHB 257(L&C), version X, from committee with individual recommendations. There were no objections and it was so ordered.

3:18 - 3:19 p.m. - at ease

CSHB 195(L&C)am-STATE HEALTH INSURANCE PLAN

SENATOR SEEKINS announced CSHB 195(L&C)am to be up for consideration.

MS. HEATHER NOBREGA, staff to Representative Rokeberg, explained that CSHB 195(L&C)am deals with two distinct areas. Section 1 attempts to give individual health care insurance seekers the option of providing a bare bones insurance policy that doesn't include the state mandates listed in statute. This is intended to be in addition to the normal individual plan that would include all the mandates that are required. The proposed CS includes clarifying language on this issue on page 2, lines 2 - 4, that the bare bones coverage is "in addition to" the mandatory coverages listed in statute.

The Division of Insurance requested the second portion of the bill. The federal government has adopted the Trade Adjustment Assistance Act, which provides a 65% health care tax credit on an insurance premium for people, like timber and oil workers,

who have lost their jobs due to the effects of international trade acts.

Sections 2 through 9 make conforming amendments to the Alaska Comprehensive Health Insurance Association (ACHIA) statutes so that those individuals who do qualify under the Federal Trade Adjustment Assistance Act can actually get 65% of their ACHIA premiums paid by the federal government.

SENATOR DAVIS arrived at 3:22 p.m.

SENATOR SEEKINS moved to adopt SCS CSHB 195(L&C), version U, as the working document. There were no objections and it was so ordered.

SENATOR SEEKINS asked Ms. Nobrega to explain the numbers on the handout, which she did briefly.

SENATOR SEEKINS asked what the impetus was to provide this kind of policy.

MS. NOBREGA replied that this was Representative Rokeberg's idea. He wanted to help provide cheaper health care insurance for people who don't want all the coverage but would like some form of health care insurance.

MS. MICHELLE CASSANO, Executive Director, American Diabetes Association, wanted to clarify the mandate in AS 06.42.390 is for coverage of diabetes treatment including medication, equipment and education. She indicated:

HB 195 will eliminate the requirement that state regulated individual health insurance plans cover diabetes supplies, equipment and self-management education. It will eliminate a similar requirement to many other health benefits. The business community claims mandates-free policies provide affordable health insurance through [indisc.] consumer choice, but, in fact, they only provide employers and consumers with the choice of a health insurance plan that does not cover basic, necessary services.

HB 195 will allow diabetes coverage to be offered rather than required in individual health insurance plans. [Indisc.] option coverage, but it doesn't work...

She said that they wouldn't support HB 195 unless section 1 was eliminated. Approximately 39,000 Alaskans are affected by diabetes.

SENATOR STEVENS asked if the changes in the bill would remove the mandate that insurance policies cover preventative treatment of diabetes and whether that would let the insurance companies off the hook for all of the debilitating aspects of diabetes as it progresses.

MS. CASSANO replied that it is scientific fact that preventative care and good control of diabetes can limit complications in the aggregate by 68% in both Type 1 and Type 2 diabetes.

MS. LOIS HILDEBRAND, Volunteer, American Cancer Society, said:

This bill sets up a dangerous precedent for Alaskans for not getting life-saving cancer screening tests. Furthermore, it contains inconsistencies that undermine the stated intent of the legislation. Over the last decade, state legislatures have increasingly become aware of the importance of requiring insurance coverage for cancer screening. Early detection of cancer is the key to survival....

She said that all attempts made to reduce required insurance coverage in Washington State failed.

MR. BILL MOORE, Manager, Legislative Policy, [indisc.], said his group likes legislation that responds to consumer concerns about rising costs of health insurance premiums and offers a choice in the health insurance marketplace. He stated, "We think HB 195 advances all of these principles."

MS. JANEL WRIGHT, Anchorage resident, said she has had diabetes for over 27 years and urged the committee to not pass HB 195 or at least to eliminate section 1. She pointed out, "Access to and reimbursement providing supplies and equipment and self management education is cost effective." She said managing diabetes is expensive, but the cost to treat the complications of unmanaged diabetes is even more expensive.

MS. LINDA HALL, Director of the Division of Insurance, said she thought there was a misunderstanding about this particular bill and the adopted CS.

There is no intention on the part of the sponsor of the bill, which has the support of the division, to remove mandates for coverage. This was an attempt to make an option available should anyone choose to do so, requires a very clear disclosure of the lesser coverage provided by this particular option so that it might make a small dent in the number of uninsured people. We have a problem with health insurance costs; we have a problem with health care costs....

MS. HALL said the CS specifically maintains those mandates for individuals who choose to buy individual health care policies. This does not affect group policies or employer provided policies at all. She explained:

The Division of Insurance did ask for the balance of this bill to be added. There will be federal money available in August for individuals whose jobs are replaced through various international trade assistant acts. This money is coming from the federal government and will be administered by the Department of Labor. Again, this is a small step in helping alleviate our uninsured population. The estimate right now is that there probably would have been 200 people this year affected by this. The estimates we were given by the Alaska Department of Labor indicated up to as many as 2,000 could have been affected in some prior years. We're very much encouraging you to pass this bill so that our citizens will be eligible for this care in August when the money is available.

CHAIR BUNDE thanked her and said they would hear the bill again and Ms. Hall would be available, but he wanted to take public testimony with the remaining time.

MS. BETSY TURNER-BOGGREN, Ester resident, asked the committee to not support HB 195 as it is written. Three years ago, she and her son, Max, traveled to Juneau and testified in front of this committee in support of HB 298 and SB 276, which required insurers in our state to reimburse for costs related to diabetes management. It became law and had overwhelming support. She told members, "HB 195 would not create a new type of health insurance policy. Instead, it would recreate the old type of policies that did not work well for the people of Alaska."

CHAIR BUNDE responded that testimony from the Division of Insurance said that this bill does not remove any requirement for coverage.

MS. BOGGREN replied that she didn't think that the language stated that very clearly, especially in section 1, which says:

A health care insurer may offer a health care insurance plan issued to the individual market that does not include health coverage required under...

CHAIR BUNDE said he would get further clarification of that section.

MS. KARIN BRAUN, Nurse Midwife, opposed HB 195, especially section 1. She was concerned that if the legislature creates this precedent for individuals, group insurance will follow.

MS. CARLA WILLIAMS, Alaska Breast Cancer Advocacy Partners, opposed HB 195 and said that she had submitted written testimony.

MS. CAMILLE SOLEIL, Alaska Nurses Association (ANA), said the ANA opposes section 1 of HB 195. The ANA's concern is that this type of insurance would discriminate against midwives.

CHAIR BUNDE apologized for rushing the testimony, but members were late for another meeting. He said he would hold the bill for further work and testimony.

CHAIR BUNDE adjourned the meeting at 3:47 p.m.