

Offered: 4/29/85  
Referred: Finance

Original sponsor: Clocksin

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2

CS FOR HOUSE BILL NO. 232 (Judiciary)

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

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For an Act entitled: "An Act relating to real estate claims based on

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innocent misrepresentation; and claims against the

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real estate surety fund."

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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\* Section 1. AS 08.88 is amended by adding a new section to read:

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Sec. 08.88.395. INNOCENT MISREPRESENTATION. A person licensed

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under this chapter is not liable to another person for innocent mis-

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representations of fact.

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\* Sec. 2. AS 08.88.460(a) is amended to read:

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(a) A person seeking reimbursement for a loss suffered in a

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transaction as a result of fraud, negligent or intentional misrepre-

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sentation, deceit, or the conversion of trust funds on the part of a

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real estate broker, associate real estate broker, or real estate

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salesman licensed under this chapter shall make a claim to the commis-

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sion for reimbursement on a form furnished by the commission. The

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form shall be executed under penalty of perjury, and information

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required to be supplied shall include the following:

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(1) the name and address of the real estate broker, associ-

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ate real estate broker, or real estate salesman;

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(2) the amount of the alleged loss;

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(3) the date or period of time during which the alleged

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loss occurred;

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(4) the date upon which the alleged loss was discovered;

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(5) the name and address of the claimant; or

1 (6) the general statement of facts relative to the claim-  
2 ant.

3 \* Sec. 3. AS 08.88.460(d) is amended to read:

4 (d) A claimant under this section shall pay a filing fee of \$25  
5 [\$250] to the commission at the time the claim is filed. The filing  
6 fee shall be refunded only if

7 (1) the commission makes an award to the claimant from the  
8 real estate surety fund; or

9 (2) [THE CLAIM IS DISMISSED UNDER (c) OF THIS SECTION; OR

10 (3)] the claim is withdrawn by the claimant before the  
11 commission holds a hearing on the claim.

12 \* Sec. 4. AS 08.88.465(d) is amended to read:

13 (d) The claimant bears the burden of proof of establishing that  
14 the claimant suffered losses in a transaction as a result of fraud,  
15 negligent or intentional misrepresentation, deceit, or the conversion  
16 of trust funds on the part of a real estate broker, associate real  
17 estate broker, or real estate salesman and the extent of those losses.  
18 All facts shall be established by a preponderance of the evidence.

19 \* Sec. 5. AS 08.88.474 is amended to read:

20 Sec. 08.88.474. PAYMENT OF [SMALL CLAIMS] JUDGMENT. If a  
21 [CLAIM ORIGINALLY FILED WITH THE COMMISSION IS DISMISSED AND IS HEARD  
22 AS A SMALL CLAIMS ACTION UNDER AS 08.88.460(c) AND THE] claimant  
23 prevails in a court [THE SMALL CLAIMS] action against a [THE] real  
24 estate broker, associate real estate broker, or salesman, and the  
25 action was based on conduct substantially similar to that set out in  
26 AS 08.88.460(a), the commission shall make an award from the fund of  
27 any outstanding portion of the [SMALL CLAIMS] judgment. The commis-  
28 sion shall make the award after [ON] receipt of a copy of the final  
29 judgment and an affidavit from the claimant stating that more than 30

1 days have elapsed since the judgment became final and that the broker,  
2 associate broker, or salesman has not satisfied the judgment during  
3 that time. After payment of a [SMALL CLAIMS] judgment the commission  
4 is subrogated to the claimant's rights in the judgment under AS 08.-  
5 88.490.

6 \* Sec. 6. Section 1 of this Act applies to causes of action arising on  
7 or after the effective date of this Act.

8 \* Sec. 7. Sections 2 - 5 of this Act do not apply to a claim that a  
9 real estate broker, associate real estate broker, or real estate salesman  
10 has elected to remove to small claims court under AS 08.88.460(c) before  
11 the effective date of this Act.

12 \* Sec. 8. The commission shall refund \$225 of the filing fee paid under  
13 AS 08.88.460(d) to a claimant whose case is pending on the effective date  
14 of this Act.

15 \* Sec. 9. AS 08.88.460(c) and 08.88.465(f) are repealed.