

SB

76

<TARGET><BILL>SB 76</BILL><SUBJECT>SB
76</SUBJECT><COMM>SJUD29</COMM></TARGET>

Alaska State Legislature

Session:
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Senator Lesil McGuire

SB 76

SPONSOR STATEMENT

Under AS 08.88.396, a real estate licensee acting before January 1, 2005 was authorized to act as both a buyer's and a seller's representative, but only after the licensee informed both the buyer and the seller of his or her dual agency and obtained written consent from both. The statute, as originally enacted, did not specify remedies if a real estate licensee (or agent) violated its provisions.

In 2003, the Alaska Legislature acted to correct the remedies-omission. The Legislature was concerned that without specifying its intent with respect to appropriate remedies in the case of a violation, a court might feel compelled to impose the potentially business-ending remedy of forfeiture of real-estate sales commissions. The Legislature was particularly concerned that this could occur in cases even where the plaintiffs had suffered no actual damages.

In order to address this concern, the Legislature enacted House Bill 257, legislation that fixed this ambiguity by retroactively limiting the remedy for violations of AS 08.88.396 to actual damages. HB 257 passed the Legislature, was signed into law and despite challenges before two different Superior Court judges, has been found constitutional. The Alaska Supreme Court has twice declined to review the case.

Despite the enactment of House Bill 257, and despite the finding of constitutionality by the Superior Court, questions have arisen regarding the Legislature's intent in amending AS 08.88.396. Senate Bill 76 is intended to make clear the Legislature's intent when it amended AS 08.88.396 in 2003 by specifying and clarifying that the "actual damages" limitation of the 2003 amendment applies to all claims that are based upon or arise out of allegations of violations of AS 08.88.396.

The clarification is necessarily retroactive because the Legislature enacted House Bill 29 in 2004 which, among other things, specified that AS 08.88.396 ceased to apply to real estate transactions as of January 1, 2005; and the Legislature desires to ensure that any claims pre-dating the 2005 effective date of House Bill 29 are appropriately subject to the intent of

its 2003 enactment of House Bill 257.

The retroactivity of the bill is constitutional, as provided in both U.S. Supreme Court and Alaska Supreme Court decisions.¹ This bill preserves the right of purchasers of real estate to seek redress for actual damages under AS 08.88.396 while ensuring that the Legislature's intent that only actual damages be awarded is recognized by courts hearing cases arising within the relevant time periods.

¹ See *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 216 (1995) (“When a new law makes clear that it is retroactive, an appellate court must apply that law in reviewing judgments still on appeal that were rendered before the law was enacted, and must alter the outcome accordingly.”); *Estate of Kim ex rel. Alexander v. Coxe*, 295 P.3d 380, 388-92 (Alaska 2013).

Fiscal Note

State of Alaska
2015 Legislative Session

Bill Version: SB 76
Fiscal Note Number: _____
() Publish Date: _____

Identifier: SB076-DCCED-CBPL-03-27-15
Title: REAL ESTATE BROKERS; LIABILITY
Sponsor: JUDICIARY
Requester: (S) JUDICIARY

Department: Department of Commerce, Community and
Economic Development
Appropriation: Corporations, Business and Professional
Licensing
Allocation: Corporations, Business and Professional
Licensing
OMB Component Number: 2360

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2016 Appropriation Requested	Included in Governor's FY2016 Request	Out-Year Cost Estimates				
	FY 2016	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
OPERATING EXPENDITURES							
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
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Estimated SUPPLEMENTAL (FY2015) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2016) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By:	Janey Hovenden, Director	Phone:	(907)465-2536
Division:	Corporations, Business and Professional Licensing	Date:	03/27/2015 02:49 PM
Approved By:	Catherine Reardon, Director	Date:	03/27/15
Agency:	Division of Administrative Services, DCCED		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2015 LEGISLATIVE SESSION

BILL NO. SB076

Analysis

SB 76 clarifies AS 08.88.396(e) relating to limitations on the legal remedy for a real estate licensee's violation of the statute regulating disclosures and relationships. This bill is retroactive to January 1, 1991 and will only apply to cases pertaining to violations through January 1, 2005 where no judgment has been rendered.

The Division of Corporations, Business, and Professional Licensing does not anticipate fiscal impact from this legislation.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
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MEMORANDUM

March 30, 2015

SUBJECT: SB 76: Sectional Summary
(Work Order No. 29-LS0542\H)

TO: Senator Lesil McGuire
Attn: Genevieve Wojtusik

FROM: Kathleen Strasbaugh
Legislative Counsel

You have requested a sectional summary of the above-described bill. Please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 amends the wording of AS 08.88.396(e) which, for real estate transactions that occurred before January 1, 2005, limits civil litigation and other remedies for the failure of a real estate licensee to comply with certain requirements concerning relationships with and disclosures to buyers and sellers.

Section 2 provides that the bill applies to a real estate transaction that occurred on or before the bill's effective date, and to a court action related to such a transaction pending on the effective date of bill.

Section 3 makes sec. 1 of the bill retroactive to January 1, 1991.

Section 4 makes the bill effective immediately.

KJS:med
15-107.med



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March 26, 2015

Senator Mia Costello
State Capitol Building Room 510
Juneau, AK 99801

REF: SB 76

Dear Senator Costello:

On behalf of the Alaska Association of REALTORS®, I am writing to urge the scheduling of the hearing on SB 76 in the Senate Labor and Commerce Committee as soon as possible. Our Legislative Issues Committee has discussed the bill and is preparing both written and oral testimony to be presented in support of the legislation.

Sincerely,

A handwritten signature in blue ink that reads 'Errol Champion'.

Errol Champion
Chairman, Legislative Issues Committee
Alaska Association of REALTORS®

Cc: Senator Lesil McGuire

