

ALASKA LEGISLATURE

1617

HOUSE and SENATE FINANCE COMMITTEE FILES, 1997-1998

BBNA Testimony on CS for HB 28

February 26, 1998

BBNA remains strongly opposed to the proposed changes to the ACMP contained in committee substitute for House Bill 28 for the reasons stated above. We urge the House Resources Committee to conduct a thorough evaluation of the ramifications that committee substitute for House Bill 28 could have on coastal districts and industry prior to taking any further action.

Thank you for the opportunity to testify.

March 8, 1997

Chairman Mark Hanley
Members, House Finance Committee

SUBJECT: HB 28(RES) version F

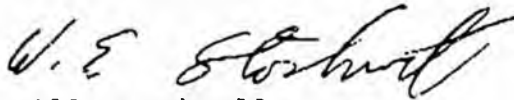
Dear Chairman Hanley and Finance Committee Members,

My name is Bill Stockwell. I live in Cooper Landing and serve on the local Fish and Game Advisory Committee. Please accept these and my attached letter dated March 3, 1998 to House Resources as my written comments on HB 28.

No short term gain could ever pay for the loss or degradation of the Kenai River Watershed. Not only is this great river the economic life blood of the Kenai Peninsula but it is a very major playground for Anchorage and the World.

The passage of this bill could cause damage to many of Alaska's great rivers impacting commercial fishing, tourism, and the way of life of Alaska's coastal people. Please oppose HB 28.

Sincerely,



Bill Stockwell
P.O. Box 721
Cooper Landing, AK 99572-0721

Phone: Cooper Landing 595-1540 or Anchorage 274-1288

March 3, 1998

House Resources Committee
1:00 p.m., March 3, 1998 Public Hearing
HB 28, Modifying Alaska Coastal Management Program

I will be unable to attend today's teleconference at the Kenai LIO on HB 28, but thank you very much for notifying me.

PLEASE OPPOSE HB 28.

I have read am HB 28, Workdraft "B" dated 2/20/98, modifying the Alaska Coastal Management Program, and I am still opposed to this bill as the needs of the people and the resources of the coastal areas are not properly addressed. I ask all who represent our coastal areas and their vast natural resources to oppose HB 28.

I live in Cooper Landing, a small unincorporated village, located in the headwaters of the Kenai River. Tourism is the economic life blood of this area and tourism only exists because of our clean waters, fresh mountain air and the natural bounties that those produce. The waters of the Cooper Landing Area produce 20 to 30 percent of Kenai River sockeye salmon and thus are a major source of the Upper Cook Inlet commercial fisheries harvest.

Because we live in an unincorporated area we are dependent on the Kenai Peninsula Borough for government. Through the Kenai Peninsula Borough Coastal Management Program local citizen can interact with Federal, State and KPB managers to best manage our coastal resource for the benefit of our area. If we lose the Coastal Management Program through the modifications recommended in HB 28, Workdraft "B", we will lose a large part of our ability to effect Federal and State decisions and those managers will lose the vast local knowledge that local citizens and governments bring to the table.

I want to thank you for this opportunity to participate and ask you to listen to the voices of Alaska's coastal people. Please leave the Alaska Coastal Management Program intact for the benefit of all Alaskans.

Thank You,



Bill Stockwell
P.O. Box 721
Cooper Landing, AK 99572

Phone and Fax: (907) 595-1540

ALEUTIANS WEST

COASTAL RESOURCE SERVICE AREA

March 10, 1998

The Honorable Carl E. Moses
State Capitol Room 521
Juneau, AK 99801-1182

Dear Representative Moses,

This letter is being written in opposition to House Bill 28 which is currently being considered in the House Finance Committee. The changes proposed in HB 28 would undercut the foundation of the coastal zone management (CZM) program and result in a serious suppression of the local voice in planning for the development of vital resource areas. The changes would greatly affect our ability to include meaningful local stipulations on permit reviews and eliminate the petition process.

Coastal program objectives include an orderly, balanced use and protection of the resources of an area. Local people develop a plan to include the needs, policies, objectives, and standards for the area. These local plans may include policies that should not have statewide applicability. District policies become State law at the completion of the review process; consequently, the authority to enforce them is provided through the process. The State is investigating the inclusion of Adak into the Aleutians West CRSA. If this should occur, the CRSA, composed of elected local representatives, in cooperation with state agencies, will work together in a development plan for that area. If the CRSA cannot develop area specific policies, then unorganized areas of the state such as ours, in the Western Aleutians, will be very limited in what they can do to develop a plan to guide local development.

The elimination of the petition review process would result in a silencing of the local voice. A petition is an opportunity to be heard by an independent body that was not involved in the original decision. Without the petition process, the only recourse would be to sue the state.

Critical elements of the locally supported, federally funded, coastal zone management program are in jeopardy. The CRSA's work at the community level and obtain funding to provide valuable information such as circulation studies and habitat analyses. This information contributes to informed development decisions and responsible use of resources. In public testimony, 19 of 20 speakers were in opposition to the proposed changes. We urge you to hear this voice.

Sincerely,



Karol Kolehmainen
Program Director

Cc (fax): Representative Hanley
Julie Hammonds Penn
AWCRSA Board of Directors

DISTRIBUTE
TO HFC MEMBERS

Bering Straits Coastal Resource Service Area
P.O. Box 190
Unalakleet, Alaska 99684
(907) 624 - 3062
Fax 624 - 3811

27 February 1998

Representative Richard Foster
Alaska House of Representatives
State Capitol
Juneau, Alaska 99801-1182

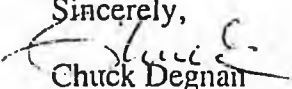
Dear Richard:

Subject: CSHB-28.

The Bering Straits CRSA opposes CSHB-28. Like the original HB-28, it has a drastic affect on all Coastal Resource Service Areas. In the Bering Straits region it reduces the coastal zone boundary by excluding Important Use Areas for Subsistence along the following rivers: Serpentine River, Arctic River, Rivers draining into Ikpek Lagoon, Agiapuk River, Kuzitrin River, Nome River, Solomon River, Niukluk River, Fish River, Kwiniuk River, Tubutulik River, Kwik River, Koyuk River, and Unalakleet River. These rivers and their tributaries provide spawning habitat for anadromous fish, which are important subsistence and commercial resource. The coastal zone boundary is reduced by excluding the "zone of indirect influence". All the communities in the Bering Straits Region would lose the ability to have their local knowledge be heard by State and Federal Agencies.

An important part of the Alaska Coastal Management Program is the petition process. This process gives all participants an opportunity to administratively appeal an adverse decision. In any case, State Agencies usually have the final say and control. The ACMP is a pro-development process.

Sincerely,


Chuck Degan
Program Director

cc
BSCRSA Board

March 10, 1998

355 Lingonberry
Soldotna AK 99669
262-9225
peggym@alaska.net

Finance Committee
House of Representatives
Alaska State Legislature
Juneau, Alaska

Re: CSHB28

Dear Finance Committee Member,

Only the name has changed. Now it ^{HB 28} 'modifies' rather than repeals the Alaska Coastal Management Program and Coastal Policy Council. Unfortunately, the potential for deleterious effects on all Alaska communities which rely on healthy salmon runs will be the same.

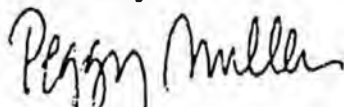
The Kenai River's salmon presently support both a healthy commercial and sport fishing economy and provide personal salmon sustenance for thousands of local residents. Why should we put this at risk by this meddling in a system that has been working well for citizens, most developers, and for local governments? Gentlemen, the Coastal Management Program 'ain't broke'. Please don't dismantle it!

Spending something well over a million dollars to remove anadromous streams (and the agencies whose mission it is to protect salmon habitat and clean water) from the planning equation just makes no sense. Only a small portion of the Kenai River interacts directly with the ocean. But healthy salmon runs require a steady supply of clean, cold water along the entire length of the river.

Assuming that federal funding will flow in to fill the gap is not a safe assumption if we have in effect dismantled our coordinated, cooperative river protection policies.

Thank you for your time, and for your interest in keeping healthy systems for all Alaska salmon.

Sincerely,



Peggy Mullen



City and Borough of Sitka

100 LINCOLN STREET • SITKA, ALASKA 99835

March 28, 1998

**The Honorable Representative Mark Hanley, Co-Chair
The Honorable Representative Gene Therriault, Co-Chair
and Members of House Finance Committee
Alaska State House of Representatives
State Capitol
Juneau, AK 99801-1182**

Dear Co-Chairs Hanley and Therriault and Members of
House Finance Committee:

I respectfully request that the following testimony be included in the House Finance Committee final hearing on House Bill 28, Draft "T". Please also accept the attached Resolution No. 97-670 by the Assembly of the City and Borough of Sitka Supporting the Alaska Coastal Management Program and Opposing HB 28 To Repeal The Program, as well as the comments of Administrator Gary Paxton of the City and Borough of Sitka.

TESTIMONY BY MARLENE CAMPBELL, COASTAL MANAGEMENT COORDINATOR CITY AND BOROUGH OF SITKA TO THE HOUSE FINANCE COMMITTEE

Mr. Co-Chairs and members of the House Finance Committee:

My name is Marlene Campbell. I have been Coastal Management Coordinator for the City and Borough of Sitka for the past eleven years. The Sitka Coastal District encompasses the coastal areas of the 4,710 square mile City and Borough of Sitka. Over 90 percent of the City and Borough of Sitka is Tongass National Forest lands owned by the Federal government, and most of the tidelands are State-owned.

The Alaska Coastal Management Program (ACMP) permits the citizens of the City and Borough of Sitka to have an active voice in the management of our land and water coastal resources. This "seat at the table" with the Forest Service, Department of Natural Resources, and other State and Federal agencies has been extremely beneficial to all parties and enables the Municipality and our community to have a measure of local control which is very important to us.

HB 28 as revised is far less onerous than previous drafts, but the Sitka Coastal Management Program must question why this bill is needed. The requirement for the council to adopt regulations to provide for periodic review of approved district programs to ensure consistency seems unnecessary, since all

House Finance Committee
March 28, 1998
Page 2

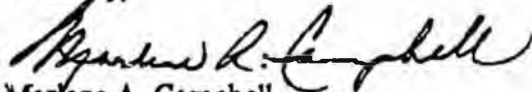
approved programs must meet requirements of the guidelines and standards or could be challenged. This provision does not appear to be necessary and will require more staff time dealing with bureaucratic details rather than actively working with our constituencies. It also would be a costly hardship to require an amendment of an approved coastal program to remove any state statutes or regulations which have been incorporated by reference into the district program. Why is this necessary? This would not result in a change in the way the ACMP is managed; the state statutes and regulations still stand on their own.

We are also concerned about the elimination of the petition process. Sitka's Coastal Program has been a model statewide since 1981, providing a balanced approach to permitting needed economic development while ensuring our natural resources in the Coastal Zone are maintained. We have never had a petition to the CPC; we have been able to work out all problems with permits to enable projects to proceed while protecting the environment. However, if there were a conflict in the future, it would be beneficial for both project applicants and agencies to have another means of resolving conflicts through the petition process.

Sitka still believes the Alaska Coastal Management Program is not broken and does not need fixing. Please support Alaska's coastal communities by letting the Division of Governmental Coordination fine-tune Alaska's highly successful Coastal Management Program. Please do not support HB 28, which will only harm and complicate this extremely valuable federally funded program so important to the future of our State.

Thank you for the opportunity to comment.

Sincerely,



Marlene A. Campbell
Coastal Management Coordinator/
Special Projects Director

cc: Senator Robin Taylor
Representative Ben Grussendorf
Director Diane Mayer, DGC

CITY AND BOROUGH OF SITKA

RESOLUTION NO. 97-670

**A RESOLUTION OF THE ASSEMBLY OF THE CITY AND BOROUGH
OF SITKA, ALASKA SUPPORTING THE ALASKA COASTAL MANAGEMENT
PROGRAM AND OPPOSING HB 28 TO REPEAL THE PROGRAM**

WHEREAS, the Sitka District Coastal Management Program has been an extremely effective opportunity for both citizens and the Municipality of the City and Borough of Sitka to have a strong local voice in decision-making affecting our coastal zone since its adoption in 1981; and

WHEREAS, developing the Sitka Coastal Program was a major citizen-based effort that encompassed long-range planning for the entire community and a site-specific determination of the major recreation and subsistence use areas in the entire Sitka Coastal District; and

WHEREAS, having gained state and federal approval of the Plan means state and federal agencies must recognize and be consistent with the local coastal Management policies, which has been of immense benefit to Sitka; and

WHEREAS, the Sitka Coastal Program has provided often the only opportunity for direct citizen involvement in setting policies which will permit appropriate development while at the same time protecting the resources our citizens most value; and

WHEREAS, the primarily federal dollars which fund the Alaska Coastal Management Program have provided hundreds of thousands of dollars over time to Sitka to fund staff and projects to permit Sitka to actively participate in the Coastal Management Program, to provide daily assistance to the public and agencies, and to comment on and facilitate permit reviews; and

WHEREAS, Sitka does not have automatic zoning and regulatory presence throughout its entire 4,710 square miles, and the Coastal Program provides the only involvement available to the Municipality for much development outside the zoned Sitka road system; and

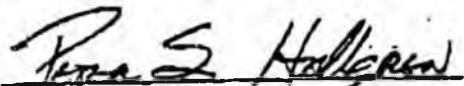
WHEREAS, the Alaska Division of Governmental Coordination has been of great

assistance to the City and Borough of Sitka recently to resolve agency conflicts with the permitting of two of its own large development projects, the Sitka Lightering Facility and the Sitka Water Export Project, and generally has provided a valuable project planning and coordination tool through the ACMP process,

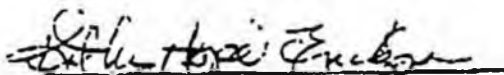
NOW, THEREFORE, BE IT RESOLVED by the Assembly of the City and Borough of Sitka, Alaska opposes HB 28 to repeal the Alaska Coastal Management Program.

BE IT FURTHER RESOLVED that the Assembly of the City and Borough of Sitka, Alaska supports the Alaska Coastal Management Program and wishes to continue to be an active participant in the program.

PASSED AND APPROVED by the Assembly of the City and Borough of Sitka, Alaska on this 11th day of March, 1997.


Peter S. Hallgren, Mayor

ATTEST:


Kathy Hope Erickson
Municipal Clerk



City and Borough of Sitka

100 LINCOLN STREET • SITKA, ALASKA 99835

CITY AND BOROUGH OF SITKA'S SUPPORT FOR THE ALASKA COASTAL MANAGEMENT PROGRAM

February 24, 1997

The Sitka District Coastal Management Program has been an extremely effective opportunity for both the citizens and the Municipality of the City and Borough of Sitka to have a strong local voice in decision-making affecting the coastal zone of our City and Borough since its adoption in 1981. A major revision of the Sitka Coastal Program and the Sitka Public Use Management Plan have further enhanced the effectiveness and specificity of the Sitka Program. Developing the Sitka Program and its revisions was a major citizen-based effort that encompassed long-range planning for the entire community and a site-specific determination of the major recreation and subsistence use areas in the Sitka Coastal District. Gaining state and federal approval of the plan means state and federal agencies must recognize and be consistent with local Coastal Management policies. This local involvement in state and federal decision-making has been of immense benefit to Sitka.

Throughout the 16 years of Sitka's approved program, it has operated smoothly, providing often the only opportunity for direct citizen involvement in setting policies which will permit appropriate development while at the same time protecting the resources our citizens most value. There has been an opportunity to encourage project development with the least adverse impacts to resources or the community through the consistency review process. Many problems or conflicts have been solved through the review process. There has not been a single elevation by a Sitka project during the entire history of the Coastal Program.

The primarily federal dollars which fund the Alaska Coastal Management Program have provided hundreds of thousands of dollars over time to Sitka to fund the Coastal Management Coordinator part-time position. This local staff presence has facilitated the major amendments of the Sitka Program, provided daily assistance to the public and agencies, and permitted active municipal participation in permit reviews. The Coastal Management staff regularly works with individuals to help develop and comment on permit requests and with State and Federal agencies to assist them at the local level. Without this position, the City and Borough of Sitka would have no staff to provide all these services.

Hundreds of examples of the effectiveness of Sitka's Coastal Program exist. One example was a mariculture project proposed for an extremely popular recreation and subsistence use area close to Sitka. There was universal opposition to the project at this location but it would have been permitted anyway if not for the inconsistency finding of the Coastal Program. The Coastal Coordinator then worked with the applicant to find a less controversial location, and the project was subsequently permitted at the new site with NO opposition. This was ultimately a "win-win" situation. Usually, such problems can be eliminated before they occur if the applicant works with the Coastal Coordinator early on to resolve conflicts.

Sitka does not have automatic zoning throughout its entire 4,710 square miles. The Coastal Program provides the only involvement available to the Municipality for much development outside the zoned Sitka road system. Rather than developing new layers of regulations and additional municipal staff, the City and Borough of Sitka has relied on the Coastal Program to provide for reasonable, controlled development. The ACMP review enables projects to proceed with a single permit process rather than duplication and inconsistencies between agencies. If the Coastal Program were repealed, Sitka's only recourse to get direct involvement in project reviews would be through litigation.

The Alaska Division of Governmental Coordination (DGC) has been of great assistance to the City and Borough of Sitka recently to resolve agency conflicts with the permitting of two of its own large development projects: the Sitka Lightering Facility and the Sitka Water Export Project. Each of these proposals was "bogged down" by various agency concerns that proved specious, but the projects were finally moved forward to successful conclusion with the assistance of DGC. The ACMP process is a valuable project planning and coordination tool. While Sitka has occasionally had difficulties with DGC, these have generally been resolved equitably, and the agency's willingness to upgrade its services through the ACMP assessment process has been admirable.

In short, Sitka and its citizens have benefitted greatly from its involvement in the Coastal Management Program since 1981. The passage of House Bill 28 to repeal the Coastal Management Program would have major adverse impacts on our Municipality and our community and the lands and waters of the City and Borough of Sitka. The Coastal Management Program is our citizens' only real chance for involvement in the decisions affecting the coastal zone in which we all live. The City and Borough of Sitka opposes HB28 and hopes to continue to participate in the Coastal Management Program in the future.

Submitted by
Gary L. Paxton, Administrator
City and Borough of Sitka

HB

30

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: February 21, 1997

FURTHER REFERRALS:

Date of Committee Action: 3/5/97

The FINANCE Committee considered:

HB 30

HOUSE BILL NO. 30

CIVIL LIABILITY FOR SKATEBOARDING

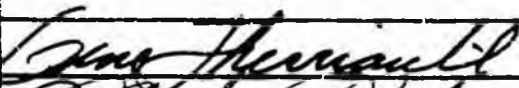
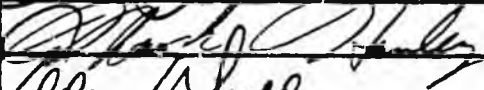

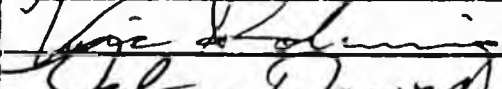
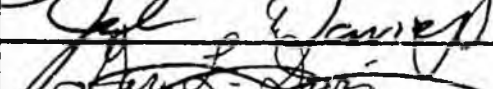

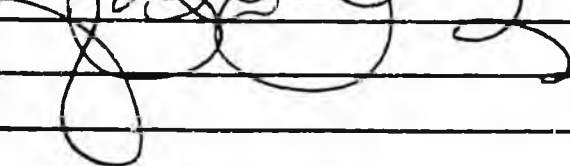
"An Act relating to civil liability for skateboarding; and providing for an effective date."

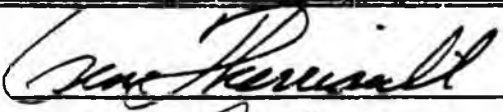
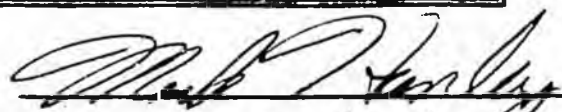
recommends it be replaced with the following committee substitute CS HB 30 (FIN) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date)
 fiscal note(s) _____ fiscal note(s) _____
 zero fiscal note(s) _____ zero fiscal note(s) Legislative 3/31/97
AK COUNT 3/31/97

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
	Therria Witt	X			
	Hanley	X			
	Mulder	X			
	Kohnig	X			
	J. Davies	X			
	G. Davis	X			
	FOSTER	X			

CO CHAIR'S SIGNATURE  
 Therria Witt Hanley

FISCAL NOTE

No. 1
 Bill Version: CSHB 30 (L&C)
 (H) Publish Date: 1/31/97

**STATE OF ALASKA
 1997 LEGISLATIVE SESSION**

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: Civil liability for skateboarding BRU: Trial Courts
 Component: _____
 Sponsor: Rep. Mulder
 Requestor: House Labor & Commerce COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CL/IMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: None

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel *[Signature]*
 Agency: Alaska Court System

Approved by: Arthur H. Snowden, II, Administrative Director *[Signature]*
 Agency: Alaska Court System

Phone: 264-8228
 Date: 01/28/97

Date: 01/28/97

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

COMMITTEE COPY

FISCAL NOTE

No. 2

Bill Version: CSHB 30(L&C)

(H) Publish Date: 1/31/97

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO.

Title: CIVIL LIABILITY FOR
STATE BOARDING
Sponsor: REP. MULDER
Requestor: L & C

Dept. Affected: NOLIF
BRU: _____
Components: _____
Serial #: _____

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants, Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (THOUSANDS OF DOLLARS)

General Fund	0.0	0.0	0.0	0.0	0.0	0.0
Federal Fund	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

see attached analysis

Prepared by:
Approved By:
Agency:

Tim Sullivan Staff Rep. Mulder
27 JAN 97
LEGISLATURE

Date: 27 JAN 97
Phone: 465-2647
Phone: 465-2647

0-LS0192\K
Ford
3/5/97

ddopted NO(0B)

CS FOR HOUSE BILL NO. 30()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE MULDER

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil liability for certain skating and cycling activities; and
2 providing for an effective date."

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

4 * Section 1. AS 05 is amended by adding a new chapter to read:

5 Chapter 50. Municipal Skating and Cycling Liability and Responsibility.

6 Sec. 05.50.010. Limitation on actions arising from recreational activities.

7 Notwithstanding any other provision of law, a person may not bring an action against
8 a municipality for an injury occurring at a municipal skating and cycling facility if the
9 injury results from an inherent danger and risk of using the facility.

10 Sec. 05.50.020. Effect of violations. (a) A municipality or person who
11 violates a requirement of this chapter is negligent and civilly liable to the extent the
12 violation causes injury to a person or damage to property.

13 (b) Notwithstanding the provisions of AS 09.17.080,

14 (1) the limitation of liability described under AS 05.50.010 is a

1 complete defense in an action against a municipality for an injury if an inherent danger
2 or risk of the skating or cycling activity is determined to be a contributory factor in
3 the resulting injury, unless the municipality has violated a requirement of this chapter;

4 (2) a violation of the person's duties imposed under AS 05.50.030 is
5 a complete defense in an action against a municipality if the violation is determined
6 to be a contributory factor in the resulting injury, unless the municipality has violated
7 a requirement of this chapter.

8 (c) If the municipality is determined to have violated a requirement of this
9 chapter, the provisions of AS 09.17.080 apply in an action against a municipality for
10 an injury resulting from the violation.

11 **Sec. 05.50.030. Duties of municipal skating and cycling facility users.** A
12 person using a municipal skating or cycling facility may not

13 (1) enter or leave except at a designated area unless reasonably
14 necessary to prevent injury to the person or others;

15 (2) intentionally throw or expel an object onto the facility;

16 (3) take food, drink, or glass containers on the facility;

17 (4) act while using the facility in a manner that may interfere with
18 proper or safe condition of the facility;

19 (5) engage in conduct that may contribute or cause injury to a person
20 other than those associated with inherent dangers and risks of the activity; for purposes
21 of this paragraph, an injury that results from a violation of the rules of the activity is
22 not one that is associated with inherent dangers and risks of the activity;

23 (6) enter the facility when the facility is marked as closed;

24 (7) disobey instructions posted in accordance with this chapter or any
25 other instructions required by local laws consistent with this chapter.

26 **Sec. 05.50.040. Duties of municipalities.** (a) In a municipal skating or
27 cycling facility, a municipality shall maintain a sign system with concise, simple, and
28 pertinent information for the protection and instruction of a person who uses the
29 facility. Signs shall be prominently placed at each facility.

30 (b) At least one sign posted at each facility must contain language substantially
31 similar to the following warning notice:

WARNING

Under Alaska law, the risk of an injury to person or property resulting from any of the inherent dangers of using a municipal skating or cycling facility rests with the user. Inherent dangers and risks of using the facility include collisions with man-made objects, collisions with other persons, variations in slope, falling, and the failure of a person to recreate within their own abilities.

(c) A municipality shall clearly delineate the boundaries of a municipal skating or cycling facility with fencing or another type of enclosing or surrounding structure.

(d) A municipality may not construct or maintain a municipal skating or cycling facility in a negligent manner.

Sec. 05.50.050. Skating and cycling duties and responsibilities. (a) A person who is skating or cycling at a municipal skating or cycling facility

(1) is responsible for knowing the range of the person's own ability to negotiate a skating or cycling facility and to recreate within the limits of the person's ability; in the case of a minor, the minor's parent or legal guardian is responsible for determining whether the minor satisfies the requirements of this paragraph;

(2) is responsible for an injury to a person or property resulting from an inherent danger and risk of the activity, except that a person is not precluded under this chapter from suing another person for an injury to person or property resulting from the other person's acts or omissions; notwithstanding any other provision of law, the risk of collision with another person is not an inherent danger or risk of using a skating or cycling facility in an action by one user of the facility against another;

(3) has the duty to

(A) maintain control of the person's speed and course at all times when using the facility and to maintain a proper lookout so as to be able to avoid other persons, objects, and debris; however, a person on a downhill slope has a primary duty to avoid collision with a person or object below the person;

(B) perform a visual inspection of the facility before each use;

(C) ensure that all areas of the facility the person intends to use

1 are free and clear of natural or manmade debris that would interfere with the
2 person's use of the facility;

3 (D) heed all posted information and other warnings and to
4 refrain from acting in a manner that may cause or contribute to the injury of
5 the person; evidence that signs as required by AS 05.50.040 or as required by
6 consistent local laws were present, visible, and readable at the beginning of a
7 given day creates the presumption that a person using the facility on that day
8 has seen and understood the sign; and

9 (4) may not use a skating or cycling facility

10 (A) while the person's ability is impaired by the influence of
11 alcohol or a controlled substance as defined in AS 11.71.900 or other drugs;

12 (B) if the person does not have sufficient physical dexterity or
13 ability and knowledge to negotiate or use the facility safely; in the case of a
14 minor who uses a municipal skating or cycling facility, the minor's parent or
15 legal guardian is responsible for determining whether the minor satisfies the
16 requirements of this paragraph;

17 (C) if the person is not wearing knee pads, elbow pads, shoes,
18 and a helmet at all times.

19 (b) A person may not skateboard or cycle at a municipal skating or cycling
20 facility if the facility has been posted as "closed."

21 **Sec. 05.50.060. Competition: immunity for municipality operating a**
22 **skating or cycling facility.** (a) A municipality shall, before beginning recreational
23 competition at a municipal skating or cycling facility, allow an athlete who will
24 participate in the competition a reasonable visual inspection of the course or area
25 where the competition is to be held.

26 (b) A person in competition at a municipal skating or cycling facility assumes
27 the risk of all course or area conditions, course construction or layout, and obstacles
28 that a visual inspection would have revealed. A municipality is not liable for injury
29 to a person who competed at a municipal skating or cycling facility operated by the
30 municipality and who is injured as a result of a risk described in this subsection.

31 **Sec. 05.50.100. Definitions.** In this chapter,

1 (1) "inherent dangers and risks of the activity" means a danger or
2 condition that is an integral part of the activity, including collisions with man-made
3 objects; impact with ramps, signs, posts, fences, or enclosures, or other man-made
4 structures and their components; variations in slope and steepness; collisions with other
5 persons; and the failure of a person to perform the activity within their own abilities;
6 the term "inherent dangers and risks of the activity" does not include the negligence
7 of a municipality that is responsible for a municipal facility;

8 (2) "injury" means property damage, personal injury, or death;

9 (3) "skating or cycling" means skateboarding, cycling, coasting, roller-
10 skating, or in-line skating or a combination of those activities.

11 * Sec. 2. APPLICABILITY. This Act applies to a civil action that accrues on or after the
12 effective date of this Act.

13 * Sec. 3. This Act takes effect July 1, 1997.



REPRESENTATIVE ELDON MULDER
DISTRICT 23 MULDOON-Ft. RICHARDSON



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

SPONSOR STATEMENT **CSHB 30 (JUD)**

by
Representative Eldon Mulder

CSHB 30 was introduced at the request of the Municipality of Anchorage.

The Municipality of Anchorage, City and Borough of Juneau and several other municipalities would like to create skateboard parks so skateboarders will have a place to ride, rather than using other areas designed for pedestrians. The municipalities are willing to develop areas suitable for skateboard riding if they can be insulated from liability for claims arising from hazards inherent in skateboarding.

The intent of CSHB 30 is to encourage the municipalities to proceed with development of areas for outdoor recreation without increasing their liability unnecessarily. The bill applies only to municipal skateboard parks.

This bill is patterned after the legislation passed providing this limited protection to ski areas. The protection from liability relates to inherent dangers and risks of skateboarding. The municipality is required to post signs warning that there are inherent risks to skateboarding and the liability rests with the skateboarder.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
AX (907) 465-2029
Mail Stop 3101

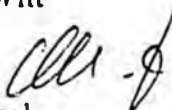
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

January 23, 1997

SUBJECT: Sectional Summary of HB 30

TO: Representative Eldon Mulder
Attn: Dennis DeWitt

FROM: Michael F. Ford 
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, 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

Sec. 05.50.010. - Prohibits a person from bringing a lawsuit against a municipality, for an injury resulting from an inherent danger and risk of skateboarding at a municipal skateboarding facility.

Sec. 05.50.020. - Describes the effect of a violation of AS 05.50. A municipality or other person who violates AS 05.50 is negligent and civilly liable to the extent the violation causes injury or property damage. Provides that if an injury occurs and an inherent danger and risk of skateboarding was a contributory factor or the injured person violated a provision of AS 05.50, that a municipality is not liable unless the municipality also violated a provision of AS 05.50.

Sec. 05.50.030. - Sets out the duties of a person who uses a municipal skateboarding facility.

Sec. 05.50.040. - Requires that municipalities maintain a sign system for protection and instruction of skateboarders.

Sec. 05.50.050. - Sets out the duties and responsibilities of a skateboarder who uses a municipal skateboarding facility.

Representative Eldon Mulder
January 23, 1997
Page 2

Sec. 05.50.060. - Requires that a municipality must allow a person participating in a skateboard competition to visually inspect the course or area. Provides that a person participating in a skateboard competition assumes certain risks and cannot hold the municipality liable for the assumed risks.

Sec. 05.50.100. - Definitions.

Section 2. Applicability section.

Section 3. Effective date.

MFF:jdr
97-042.jdr

**Municipality
of
Anchorage**



P.O. Box 196650
Anchorage, Alaska 99519-6650
Telephone: (907) 343-4431
Fax: (907) 343-4499
<http://www.ci.anchorage.ak.us>

Rick Mystrom, Mayor

OFFICE OF THE MAYOR

January 23, 1997

Representative Eldon Mulder
Alaska State Legislature
Juneau, Alaska 99801-1182

Re: House Bill No. 30. "An Act relating to civil liability for skateboarding"

Dear Eldon:


There is significant community interest in a municipal skateboard park and our 1997 Capital Improvement Budget includes plans for construction of one.

Like alpine skiing, skateboarding is an active sport that includes numerous inherent risks of injury. Before construction of a municipal skateboard park, the Municipality of Anchorage desires adoption of a statute that would insulate it from claims arising from the hazards inherent in skateboarding.

House Bill 30 helps fulfill that need and will eliminate a roadblock to the completion of this long awaited facility.

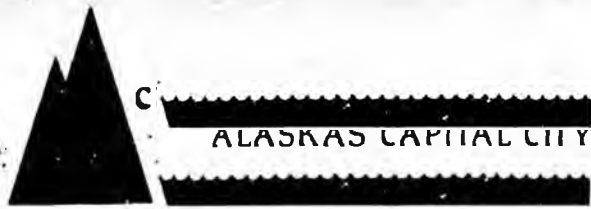
Thank you for your assistance with this legislation.

Sincerely,



Rick Mystrom
Mayor

"City of Lights and Flowers"



OFFICE OF THE MAYOR

January 27, 1997

The Honorable Eldon Mulder
Representative
Alaska State Legislature
Alaska State Capital, Rm 501
Juneau, Alaska 99801-1182

RE: House Bill 30

EL Don
Dear Representative Mulder:

On behalf of the City & Borough of Juneau Assembly, I am writing to express our support for House Bill 30, pending legislation limiting municipal liability for skate park operation. The introduction of this bill is timely for Juneau's youth; a group of students from Juneau Douglas High School has undertaken a class project to construct a skate facility on borough land. Of concern to the Borough Assembly is liability for skate park operation.

In their proposal for the skate park, the youth included a summary of survey data substantiating the need for the facility. From the data they gathered at three schools, we learned that over 80% of our youth roller skate, in-line skate, skate board or BMX bike. We suspect that recreation patterns in Juneau are similar to those in other Alaskan communities. Like other municipalities, we have no facility to accommodate these activities. An Alaska law limiting a municipality's exposure to liability for park operation will go a long way towards enabling us to accommodate our youth without breaking the budget.

Please contact me if I can provide additional information regarding our efforts to provide a venue for skating in Juneau. Thank you for your effort on behalf of Alaskan skaters.

Sincerely,

Dennis Egan
Dennis Egan
Mayor



January 29, 1997

Representative Eldon Mulder
State Capital
Juneau, AK 99801

Dear Representative Mulder:

Thank you for introducing HB 30, relating to civil liability for skateboarding. This issue is becoming increasingly important for municipalities around the state and we support its passage.

As stated in the 1997 AML Policy Statement, which was adopted unanimously by AML members at their November conference:

C. Liability Issues


1. Liability for Injury in Recreational Activities: The League supports legislation that would limit the liability of a government, organization, volunteer, or private property owner providing recreational activities, facilities, and trail easements.

There is increasing pressure on local governments to provide additional recreational areas for young people, but they are reluctant to do so because of the unacceptable risk to their taxpayers. With passage of HB 30, those municipalities would be able to provide a safe place for skateboarders without putting the rest of the population at financial risk.

This issue is also a part of our 1997 Legislative Platform (attached). We believe providing recreational opportunities for youth will give communities more tools to help reduce youth crime.

Thanks again for your continued support.

Sincerely,


Kevin C. Ritchie
Executive Director

Attachment

c:\k\leg97\hb30ltr.doc



**Alaska Municipal League &
Alaska Conference of Mayors
1997 Legislative Platform**

1. Approval of the "Safe Communities" bill and maintain current funding for municipal revenue sharing to avoid further state generated local property tax increases. The "four legs" of the Safe Communities bill are:
 - Directs the funds to be used primarily for public safety and health services
 - Establishes a minimum sharing of \$40,000 for small municipalities
 - Removes the "hold harmless" to allow equal treatment to all municipalities
 - Distributes municipal funds on July 31 each year
2. Provide for the long term construction, operation, and maintenance of state and municipal airports, roads, and harbors, including revenue sharing programs for maintenance. Bring state harbors up to an adequate maintenance level through a statewide bond issue, or other funds, to prepare them for possible negotiated transfer to municipalities.
3. Approval of a Long Range Financial Plan that prohibits unfunded mandates and unfunded service responsibilities, adequately funds schools and maintenance of public infrastructure, reasonably reduces state expenses, protects the Permanent Fund, and phases in new tax revenue sources.
4. Actively encourage the construction of a natural gas pipeline with an emphasis on jobs for Alaskans.
5. Restore funding for Municipal Capital Matching Grant Program to \$20 million because local communities can most efficiently determine and meet local capital needs.
6. Create a permanent State/Local Government Partnership Council to negotiate methods to most efficiently provide public services at the lowest possible cost to taxpayers.
7. Provide long term funding of public safety and health services through the equitable sharing of increased statewide alcohol and tobacco taxes, and removing the current prohibition against municipalities voting for local special taxes on the sale or use of alcohol.
8. Reduce the state unfunded mandate for the Senior Citizen Property Tax exemption.
9. Adequately fund a program to construct efficient sanitation systems throughout Alaska.
10. Give communities more tools to reduce youth crime by limiting confidentiality of youth crime information; to protect the community, allow municipalities the option of assuming greater jurisdiction over juvenile justice, and limit liability for providing recreational opportunities for youth, such as skateboard parks.



CITY OF KODIAK
POST OFFICE BOX 1397, KODIAK, ALASKA 99615

February 12, 1997

Representative Eldon Mulder
Alaska State Legislature
Alaska State Capital, Rm 501
Juneau, Alaska 99801-1182

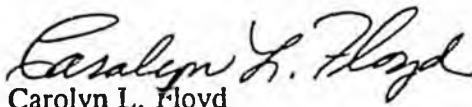
Dear Representative Mulder:

The City of Kodiak, not unlike many Alaska communities, has an active group of young people needing a place to skateboard. One of the major hurdles to building a facility has been the liability. House Bill 30 would remove some of the concern and permit consideration of such a facility on its merits. These young people have felt that it was a lack of interest or caring when in reality it was a fear of being sued for an inherently dangerous activity.

Your concern and efforts are recognized and appreciated.

Sincerely,

CITY OF KODIAK


Carolyn L. Floyd
Mayor

CITY OF SEWARD

P.O. BOX 167
SEWARD, ALASKA 99664



- Main Office (907) 224-3331
- Police (907) 224-3338
- Harbor (907) 224-3138
- Fire (907) 224-3445
- Fax (907) 224-3248

February 12, 1997

Representative Eldon Mulder
Alaska State Legislature
Alaska State Capital, Rm 501
M/S 3100
Juneau, Alaska 99801-1182

RE: House Bill 30

Dear Representative Mulder:

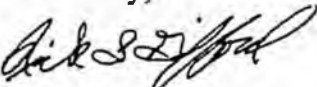
The City of Seward is in support of HB 30, relating to civil liability for skateboarding. Municipalities and taxpayers are deeply impacted by rising costs associated with claims. Since 1986, insurance and claim costs have been a major factor in municipal tax increases and have, in some cases, influenced communities to limit or eliminate recreation and other public services.

We are concerned for our youth, yet due to the increase in public liability, municipalities are reducing and/or eliminating recreational facilities and activities, such as skateboard parks, that would provide our youth with constructive activities instead of idle time which causes many of our youth to get in trouble in their communities.

Skateboarding, like alpine skiing, is an active sport that includes numerous inherent risks of injury. The sport is very popular among the youth in Seward and if we don't provide them a place to use, they will continue to use the streets, sidewalks, harbor and other public facilities that not only endanger the youth, but also the public who are using those facilities.

Thank you for your assistance with this legislation!

Sincerely,


for Ronald A. Garzini,
City Manager

RAG:rg

cc: Governor Tony Knowles
Senator John Torgerson
Representative Gary Davis
Seward Mayor and Council Members
Alaska Municipal League
Alaska Municipal League Joint Insurance Association

HB

33

HFIN

FILE

adopted N/O

AMENDMENT # 1

OFFERED IN THE HOUSE

TO: Proposed CSHB 33 (FIN)/Version R

Page 30, line 28

AFTER: "(18)"

DELETE: "real estate transactions"

INSERT: "community association management"

Page 30, line 30

AFTER: "percent of the property"

INSERT: ";

DELETE: rest of line 30 and all of line 31

Page 31, line 29

AFTER: "means"

DELETE: "an interest in a mobile home or"

Page 32, line 29

DELETE

Re-number remaining paragraphs accordingly

Page 33, lines 8, and 9

AFTER: "in a"

DELETE: "mobile home or a"

Page 33, line 11

AFTER: "to market"

DELETE: "a mobile home or"

2/17/98

E

No Obj - adopted

AMENDMENT #2.

OFFERED IN THE HOUSE

TO: Proposed CSHB 33 (FIN)/Version R

Page 32, lines 25-27

DELETE paragraph (8)

Renumber remaining paragraphs accordingly.

Insert a new bill section to read:

"Application to independent contractors. The provisions of this chapter that apply to employment relationships and employees also apply to contracting relationships and independent contractors."

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: January 30, 1998

FURTHER REFERRALS:

Date of Committee Action: 2/17/98

The FINANCE Committee considered:

HB 33

HOUSE BILL NO. 33

REAL ESTATE LICENSING

"An Act relating to real estate licensing and the real estate surety fund; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 33 (FIN) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) _____ fiscal note(s) DCED 1/30/98

zero fiscal note(s) _____ zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Gene Theriault</i>	Theriault			X	
<i>Mark Hanley</i>	Hanley			X	
<i>Edo Muel</i>	Mulder			X	
<i>Terry Martin</i>	Martin			X	
<i>Vic Kohring</i>	Kohring			X	
<i>John Grussard</i>	Grussard				X
<i>John Davis</i>	J. Davis			X	

CHAIR'S SIGNATURE *Gene Theriault* *Mark Hanley*
 Theriault Hanley

FISCAL NOTE

No. 1

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Bill Version: CSHB 33 (L&C)
 (H) Publish Date: 1/30/98

Revision Date: _____
 Title: An Act relating to real estate licensing and the
real estate surety fund:....
 Sponsor: Representative Rokeberg by Request
 Requestor: House Labor and Commerce

Department: Commerce and Economic Development
 BRU: Occupational Licensing
 Component: Operations

COMPONENT SERIAL NO. 1844

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	7.1	7.1				
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	7.1	7.1	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES	***	***				
--------------------	-----	-----	--	--	--	--

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1091 Designated PR	7.1	7.1				
TOTAL	7.1	7.1	0.0	0.0	0.0	0.0

Estimate of any current year (FY 98) cost: \$ 0.0

POSITIONS						
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

HB 33 makes several amendments to the real estate licensing statutes, AS 08.88. The costs shown on this fiscal note represent costs associated with the re-write and public noticing of regulations for \$1.2; printing and mailing of new statute and regulation booklets to approximately 2,124 licensees for \$5.9. No costs are included for restructuring of the examination since the exam is scheduled for review at no additional costs in FY 98 by the exam contractor. Costs are shown for the first two-years only to cover the implementation stage of this legislation. Once HB 33 is implemented, these costs will no longer apply. ***Revenue in both designated program receipts and the surety fund can be expected to increase with the authority to set fees for each type of endorsement and to recover costs for educational programs. However, the amount of revenue cannot be estimated at this time until fees are reviewed in accordance with sec. 08.88.221.

Prepared by: Jennifer Strickler, Administrative Manager
 Division: Occupational Licensing
 Approved by Commissioner: Deborah B. Sedwick
 Agency: Commerce and Economic Development

Phone: 465-2144
 Date: 1/29/98
 Date: _____

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2/17/98

✗

0-LS0197Q.2
Lauterbach
2/17/98

adopted N/O
#3

A M E N D M E N T

OFFERED IN THE HOUSE
TO: CSHB 33(L&C)^{FIN}

1 Page ~~19~~²⁰, line ~~20~~², through page 20, line ~~8~~²².

2 Delete all material and insert:

3 "Sec. 08.88.391. Conflict of interest. A [LICENSED] real estate licensee
4 [BROKER, ASSOCIATE REAL ESTATE BROKER, OR REAL ESTATE
5 SALESMAN] who has a conflict of interest relating to [PERSONAL FINANCIAL
6 INTEREST IN] a real estate transaction shall disclose that conflict of interest at the
7 time of initial substantive contact with the principals or agents of the principals
8 and confirm the conflict of interest in writing to the principals or agents of the
9 principals [EVERY PERSON] involved in the transaction as soon as possible after
10 the initial substantive contact.

11 * Sec. 31. AS 08.88.391 is amended by adding new subsections to read:

12 (b) The failure of a licensee to disclose a conflict of interest as required under
13 this section does not give rise to a cause of action by a private person. However, the
14 commission may, under AS 08.88.071, impose a disciplinary sanction for violation of
15 this section, and a claim may be filed by a private person under AS 08.88.460 if the
16 violation constituted fraud, misrepresentation, or deceit and the person suffered a loss
17 as a result of the violation.

18 (c) In this section, "conflict of interest" is when a licensee

19 (1) has a present ownership or leasehold interest in the property that
20 is the subject of a transaction;

21 (2) is whole or part owner of a business interest in the property being
22 marketed or considered for purchase or lease;

23 (3) represents a relative, as defined in AS 08.88.900(19), or a person
24 with whom the licensee has a financial relationship if the relative or person has a
25 present financial interest in the property being marketed or considered for purchase

or lease;

- (4) receives compensation from someone other than a party to the contract or another party having a financial interest in the transaction; or
- (5) receives compensation for community association management while simultaneously engaged as a property manager for a unit within the community association.

Renumber the following bill sections accordingly.

Renumber internal references to bill sections in accordance with this amendment.

or lease;

- (4) receives compensation from someone other than a party to the contract or another party having a financial interest in the transaction; or
- (5) receives compensation for community association management while simultaneously engaged as a property manager for a unit within the community association.

Renumber the following bill sections accordingly.

Renumber internal references to bill sections in accordance with this amendment.

#4

add section
require commission to add to disclosure statement ^{34.70}
"buyer is responsible to obtain info regarding sex offenders.
& direct buyer to source of information"

FISCAL NOTE

No: 1

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Bill Version: CSHB 33 (L&C)
 (H) Publish Date: 1/30/98

Revision Date: _____ Department: Commerce and Economic Development
 Title: An Act relating to real estate licensing and the BRU: Occupational Licensing
real estate surety fund;... Component: Operations
 Sponsor: Representative Rokeberg by Request
 Requestor: House Labor and Commerce COMPONENT SERIAL NO. 1844

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	7.1	7.1				
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	7.1	7.1	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES	***	***				

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1091 Designated PR	7.1	7.1				
TOTAL	7.1	7.1	0.0	0.0	0.0	0.0

Estimate of any current year (FY 98) cost: \$ 0.0

POSITIONS						
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

HB 33 makes several amendments to the real estate licensing statutes, AS 08.88. The costs shown on this fiscal note represent costs associated with the re-write and public noticing of regulations for \$1.2; printing and mailing of new statute and regulation booklets to approximately 2,124 licensees for \$5.9. No costs are included for restructuring of the examination since the exam is scheduled for review at no additional costs in FY 98 by the exam contractor. Costs are shown for the first two-years only to cover the implementation stage of this legislation. Once HB 33 is implemented, these costs will no longer apply. ***Revenue in both designated program receipts and the surety fund can be expected to increase with the authority to set fees for each type of endorsement and to recover costs for educational programs. However, the amount of revenue cannot be estimated at this time until fees are reviewed in accordance with sec. 08.88.221.

Prepared by: Jennifer Strickler, Administrative Manager Phone: 465-2144
 Division: Occupational Licensing Date: 1/29/98
 Approved by Commissioner: Deborah B. Sedwick Date: _____
 Agency: Commerce and Economic Development

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
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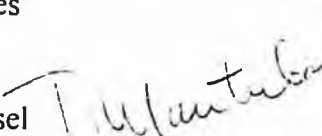
130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 16, 1998

SUBJECT: Real Estate (CSHB 33(FIN), version "R")

TO: Representative Gene Theriault
Attn: Mike Tibbles

FROM: Terri Lauterbach
Legislative Counsel 

Enclosed is a draft FIN CS for HB 33.

I recommend that at least one more change be made in the draft. In paragraph (8) of AS 08.88.990, which is added in sec. 52 of the draft, there is a definition that is flawed. That paragraph reads as follows:

(8) "employ," "employing," "employs," "employed," "employee," "employees," and "employment" include being an independent contractor with an employer;

Using the term "employer" to define words relating to an employee involves a circularity that results in uncertain legal meaning. The legal meaning is further complicated by the use of a noun ("independent contractor") as the counterpart for verbs ("employ and "employs") and adjectives ("employing" and "employment").

The following amendment would help clarify the situation:

Delete paragraph (8) on page 32.

Insert a new bill section to read:

Application to independent contractors. The provisions of this chapter that apply to employment relationships and employees also apply to contracting relationships and independent contractors.

Please let me know if I can be of additional assistance.

TML:jdr
98-093.jdr

Enclosure

0-LS0197R
Lauterbach
2/14/98

Amendment #1
#2
#3

adopted Mo 2/17/98

CS FOR HOUSE BILL NO. 33(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): **REPRESENTATIVE ROKEBERG BY REQUEST**

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to real estate licensees and to the real estate surety fund; and
2 providing for an effective date."

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

4 * Section 1. AS 08.67.010 is amended to read:

5 **Sec. 08.67.010. Registration of mobile home dealers.** A mobile home dealer
6 may not do business in the state unless the dealer is registered with the department.
7 However, a person licensed under AS 08.88 may, without registering under this
8 chapter, perform the same activities with respect to mobile homes, except for
9 property management, as are authorized for that person to perform under
10 AS 08.88 with respect to real estate.

11 * Sec. 2. AS 08.88.051(c) is amended to read:

12 (c) The commission shall elect its officers at the first meeting of each fiscal
13 year.

14 * Sec. 3. AS 08.88.061 is amended to read:

1 **Sec. 08.88.061. Assistants. Notwithstanding contrary provisions of**
 2 **AS 08.01.050, the [THE] commission may assign or designate [USE] assistants to**

3 (1) issue licenses to applicants who meet the qualifications for
 4 licensure established under this chapter;

5 (2) prepare questions on examinations;

6 (3) administer and [(2)] grade examinations;

7 (4) certify courses required under this chapter;

8 (5) approve instructors to teach courses required under this
 9 chapter; and

10 (6) negotiate terms for payment of fines and other money due
 11 under this chapter.

12 * Sec. 4. AS 08.88.071 is amended to read:

13 **Sec. 08.88.071. Duties of the commission. (a) The commission shall**

14 (1) determine whether [PASS ON QUALIFICATIONS OF] applicants
 15 meet requirements for licenses under this chapter and issue licenses to those who
 16 qualify;

17 (2) prepare and grade examinations;

18 (3) after hearing, have the authority to suspend or revoke the license
 19 of a licensee or impose other disciplinary sanctions authorized under AS 08.01.075
 20 on a licensee who

21 (A) with respect to a real estate transaction

22 (i) made a substantial misrepresentation;

23 (ii) made a false promise likely to influence, persuade,
 24 or induce;

25 (iii) in the case of a real estate broker, pursued a
 26 flagrant course of misrepresentation or made a false promise through
 27 another [AN AGENT, ASSOCIATE REAL ESTATE BROKER, OR]
 28 real estate licensee [SALESMAN];

29 (iv) has engaged in conduct that is fraudulent or
 30 dishonest;

31 (v) violates AS 08.88.391;

1 (B) procures a license by deceiving the commission, or aids
2 another to do so;

3 (C) has engaged in conduct of [IN] which the commission had
4 no knowledge at the time the licensee was licensed demonstrating the licensee's
5 unfitness to engage in the business for which the licensee is licensed;

6 (D) knowingly authorizes, directs, connives at or aids in
7 publishing, distributing, or circulating a material false statement or
8 misrepresentation concerning the licensee's business or concerning real estate
9 offered for sale, rent, or lease, or managed in the course of the licensee's
10 business in this or any other state or concerning the management of an
11 association in the course of a licensee's business in this or another state;

12 (E) if a real estate broker, wilfully violates AS 08.88.171(d) or
13 08.88.291;

14 (F) if an associate real estate broker, claims to be a real estate
15 broker, or, if a real estate salesperson [SALESMAN], claims to be a real estate
16 broker or associate real estate broker;

17 (G) if a real estate broker, employs an unlicensed person to
18 perform activities for which a real estate license is required [ASSOCIATE
19 REAL ESTATE BROKER OR REAL ESTATE SALESMAN];

20 (H) if an employed real estate licensee of a [ASSOCIATE]
21 real estate broker [OR REAL ESTATE SALESMAN], fails immediately to turn
22 money or other property collected in a real estate transaction over to the
23 employing real estate broker;

24 (4) prosecute, through the Department of Law, violations of the
25 provisions of this chapter or lawful regulations adopted under this chapter;

26 (5) release for publication [PUBLISH, ON THREE CONSECUTIVE
27 WEEKENDS] in a newspaper of general circulation in the locale of the offending
28 person's principal office registered with the commission notice of [LICENSED
29 UNDER THIS CHAPTER,] disciplinary action taken by the commission against a
30 person licensed under this chapter;

31 (6) issue a temporary permit to the personal representative of the estate

1 of a deceased real estate broker or to another [SOME OTHER] person designated by
2 the commission with the approval of the personal representative of the estate in order
3 to secure proper administration in concluding the affairs of the decedent broker's real
4 estate business;

5 (7) issue a temporary permit to the personal representative of a
6 legally incompetent real estate broker or to another person designated by the
7 commission with the approval of the personal representative of the broker in
8 order to secure proper administration in temporarily managing the real estate
9 business of the broker;

10 (8) establish and periodically revise the form of the seller's property
11 disclosure statement required by AS 34.70.010;

12 (9) have the authority to levv civil fines as established in this
13 chapter;

14 (10) revoke the license of a broker or associate broker who is
15 convicted of forgerv, theft, extortion, conspiracy to defraud creditors, or a felony
16 involving moral turpitude committed while licensed under this chapter;
17 notwithstanding AS 08.88.171, a person whose license is revoked under this
18 paragraph is not qualified for a license under AS 08.88.171(a) or (b) until seven
19 years have elapsed since the person completed the sentence imposed for the
20 conviction.

21 (b) When an award is made from the real estate surety fund under this chapter
22 [IN REIMBURSEMENT OF LOSSES SUFFERED BY A CLAIMANT AS A
23 RESULT OF FRAUD, MISREPRESENTATION, DECEIT, OR CONVERSION OF
24 TRUST FUNDS ON THE PART OF A LICENSED BROKER, ASSOCIATE
25 BROKER, OR SALESMAN], the commission may suspend [CONSIDER THE
26 HEARING ON THE CLAIM TO BE A HEARING ON THE SUSPENSION OF] the
27 license of the real estate licensee whose actions formed the basis of the award
28 [BROKER, ASSOCIATE BROKER, OR SALESMAN, AND MAY SUSPEND THE
29 LICENSE OF THE BROKER, ASSOCIATE BROKER, OR SALESMAN]. A
30 suspension ordered under this subsection shall be lifted if the licensee [BROKER,
31 ASSOCIATE BROKER, OR SALESMAN] reaches an agreement with the commission

1 on terms and conditions for the repayment to the real estate surety fund of the money
2 awarded to the claimant and the costs of hearing the claim under AS 08.88.465. The
3 suspension shall be reimposed if the licensee [BROKER, ASSOCIATE BROKER, OR
4 SALESMAN] violates the terms of a repayment agreement entered into under this
5 subsection.

6 (c) For the purposes of (a)(3) of this section, the conduct of an employee is
7 [NOT] attributable to a real estate broker if [UNLESS] the real estate broker has actual
8 knowledge that the employee is going to engage in the conduct and agrees to the
9 conduct, either actively or by remaining silent, or ratifies the conduct after it is
10 engaged in.

11 * Sec. 5. AS 08.88.091(d) is amended to read:

12 (d) A person who is licensed under this chapter must complete 20 hours of
13 continuing education approved by the commission before the person's license may be
14 renewed. The commission may not establish limits that prevent a person from
15 satisfying this continuing education requirement within a two-day period.

16 * Sec. 6. AS 08.88.091(e) is amended to read:

17 (e) Except for a course described in (1)(1) or (3) of this section, in order
18 for an educational course to be recognized for credit under this section, [THE
19 COMMISSION MAY NOT APPROVE AN EDUCATION OR CONTINUING
20 EDUCATION COURSE REQUIRED UNDER THIS SECTION UNLESS THE
21 COMMISSION CERTIFIES] the course outline and [APPROVES] the instructor of the
22 course must have been approved by the commission or the commission's designee
23 before the course was [IS] conducted. A course outline or instructor is considered
24 approved if the commission or the commission's designee does not disapprove the
25 outline or instructor within 45 days after the date on which complete application
26 was made for approval. Each approved contact hour of a submitted course
27 outline constitutes one credit hour of continuing education. The fee for continuing
28 education course certification under AS 08.88.221 shall be based on the hours
29 approved for credit not hours submitted.

30 * Sec. 7. AS 08.88.091 is amended by adding new subsections to read:

31 (f) The commission shall establish by regulation the educational and continuing

1 educational requirements for licenses issued by the commission. The regulations for
2 continuing education requirements must allow the following types of courses to qualify
3 for the appropriate number of credit hours, as determined by the commission:

4 (1) courses that are developed by national organizations, as identified
5 for the purpose of this paragraph in the commission's regulations, that are delivered by
6 nationally certified instructors and that are required in order to earn professional
7 designations from a national organization in specialized areas of licensed real estate
8 practice; notwithstanding other provisions of this chapter, the commission may not
9 charge a fee for these courses;

10 (2) technology courses directly related to real estate practice that are
11 designed to enhance the skills and performance of a real estate licensee; and

12 (3) courses offered by an accredited college or university as part of a
13 real estate curriculum that are available for at least one quarter-hour or one-half
14 semester-hour of academic credit; the commission may not charge a fee for these
15 courses.

16 (g) The commission shall establish core curricula for continuing education in
17 the following areas: real estate sales, property management, community association
18 management, and commercial sales. A licensee shall complete at least one of the four
19 core curricula during each biennial licensing period as part of the licensee's continuing
20 education.

21 * Sec. 8. AS 08.88.161 is amended to read:

22 **Sec. 08.88.161. License required.** Unless licensed as a real estate broker,
23 associate real estate broker, or real estate salesperson in this state [SALESMAN], a
24 [NATURAL] person [, FOREIGN OR DOMESTIC CORPORATION, OR
25 PARTNERSHIP, OR LIMITED PARTNERSHIP, OR OTHER ENTITY] may not,
26 **except as otherwise provided in this chapter,**

27 (1) sell, exchange, rent, lease, auction, or purchase real estate;

28 (2) list real estate for sale, exchange, rent, lease, auction, or purchase;

29 (3) collect rent for the use of real estate or collect fees for property

30 management:

31 (4) practice, or negotiate for a contract to practice, property

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management;

(5) collect fees for community association management;

(6) practice, or negotiate for a contract to practice, community association management;

(7) as a business, buy, sell, or deal in

(A) options in real estate; or

(B) options in improvements to real estate;

(8) [(5)] assist in or direct the procuring of prospective buyers **and sellers of real estate, communicate with prospective buyers and sellers of real estate,** or **assist in** the negotiation of a transaction **that** [WHICH] results or is calculated to result in the sale, exchange, rent, lease, auction, or purchase of real estate;

(9) accept or pay a fee for the performance of any of the activities listed in this section except as otherwise specifically provided in this chapter;

(10) [(6)] hold out to the public as being engaged in the business of doing any of the things listed in this section; **or**

(11) [(7)] attempt or offer to do any of the things listed in this section [.

(8) REPEALED].

* Sec. 9. AS 08.88 is amended by adding a new section to read:

Sec. 08.88.167. Civil penalty for unlicensed or unauthorized practice. (a)

In addition to penalties prescribed by any other provision of law, if a person engages or offers to engage in an activity for which a license is required under AS 08.88.161 without being licensed or authorized to engage in the activity in accordance with the provisions of this chapter, the commission may enter an order levying a civil penalty.

(b) A civil penalty levied under this section may not exceed \$5,000, or the amount of gain realized plus \$5,000, whichever is greater, for each offense. In levying a civil penalty, the commission shall set the amount of the penalty imposed under this section after taking into account the seriousness of the violation, the economic benefit resulting from the violation, the history of violations, and other facts the commission considers relevant.

1 (c) Before entering an order under (a) of this section, the commission shall
2 send the person written notice of the proposed order that grants the person a 30-day
3 period during which the person may request a hearing on the record.

4 (d) In connection with proceedings under (a) - (c) of this section, the
5 commission may issue subpoenas to compel the attendance and testimony of witnesses
6 and the disclosure of evidence and may request the department to bring an action to
7 enforce a subpoena.

8 (e) A person aggrieved by the levy of a civil penalty under this section may
9 file an appeal with the superior court for judicial review of the penalty under
10 AS 44.62.560.

11 (f) If a person fails to pay a civil penalty within 30 days after entry of an order
12 under (a) of this section, or within 10 days after the court enters a final judgment in
13 favor of the commission of an order stayed pending an appeal under (e) of this section,
14 the commission may initiate other action to recover the amount of the penalty.

15 (g) An action to enforce an order under this section may be combined with an
16 action for an injunction under AS 08.88.037.

17 * **Sec. 10.** AS 08.88.171 is amended to read:

18 **Sec. 08.88.171. Entitlement to license.** (a) A natural person qualifies [IS
19 ELIGIBLE] for a real estate broker license if the person passes the [REAL ESTATE]
20 brokers examination, [IF THE PERSON] applies for a license within six months after
21 passing the [PERSON HAS TAKEN THE REAL ESTATE BROKERS] examination,
22 [IF THE PERSON] furnishes satisfactory proof of successful completion of the
23 education requirements of AS 08.88.091, [IF THE PERSON] has had at least 24
24 months of active and continuous experience as a licensed real estate salesperson
25 within the 36 months immediately preceding application for the broker license,
26 [SALESMAN, IF THE PERSON] is not under indictment for, or seven years have
27 elapsed since the person has completed a sentence imposed upon conviction of,
28 forgery, theft, extortion, conspiracy to defraud creditors, or any other felony involving
29 moral turpitude, and [IF THE PERSON] is an owner of a real estate business or
30 employed as a real estate broker by a foreign or domestic corporation, [OR A]
31 partnership, limited partnership, or limited liability company [AND IF THAT

1 CORPORATION OR PARTNERSHIP DOES NOT HAVE AN EXISTING
2 LICENSED BROKER]. Unless the broker fails to renew the license [PAY THE
3 BIENNIAL RENEWAL FEE] or unless the broker's license is suspended or revoked
4 [UNDER AS 08.88.071(a)(3)], the [REAL ESTATE] broker's license continues in
5 effect as [SO] long as the broker's license is active or inactive [BROKER IS AN
6 OWNER OF A REAL ESTATE BUSINESS, OR THE BROKER IS EMPLOYED
7 AS A REAL ESTATE BROKER BY A CORPORATION OR A PARTNERSHIP].
8 If the broker stops being an owner of a real estate business [,] or stops being employed
9 as a real estate broker by a foreign or domestic corporation, [OR] partnership, limited
10 partnership, or limited liability company, the broker's license is suspended from the
11 time the broker stops until

12 (1) the broker again becomes an owner of a real estate business or is
13 again employed as a real estate broker by a foreign or domestic corporation, [OR A]
14 partnership, limited partnership, or limited liability company; or

15 (2) the broker is employed by another [A LICENSED REAL
16 ESTATE] broker as an associate [REAL ESTATE] broker, in which case the real
17 estate broker license shall be [IS] returned to the commission by the broker, and the
18 commission shall issue [ISSUES] the broker an associate real estate broker license.

19 (b) A natural person qualifies [IS ELIGIBLE] for an associate real estate
20 broker license if the person passes the [REAL ESTATE] brokers examination, [IF THE
21 PERSON] applies for the [A] license within six months after passing [THE PERSON
22 HAS TAKEN] the examination, [IF THE PERSON] submits satisfactory proof of
23 successful completion of the education requirements of AS 08.88.091, [IF THE
24 PERSON] has had at least 24 months of active and continuous experience as a licensed
25 real estate salesperson within the 36 months immediately preceding application for
26 the license, [SALESMAN, IF THE PERSON] is not under indictment for, or five
27 years have elapsed since the person has completed a sentence imposed upon conviction
28 of, forgery, theft, extortion, conspiracy to defraud creditors, or any other felony
29 involving moral turpitude, and [IF THE PERSON] is employed by a licensed real
30 estate broker as an associate real estate broker. Unless the associate broker fails to
31 renew the license [PAY THE BIENNIAL RENEWAL FEE] or unless the associate

1 broker's license is suspended or revoked [UNDER AS 08.88.071(a)(3)], the associate
2 [REAL ESTATE] broker's license continues in effect as [SO] long as the associate
3 broker is employed by a licensed real estate broker as an associate broker. If the
4 associate broker stops being employed by a licensed real estate broker, the associate
5 broker's license is suspended from the time the associate broker stops until

6 (1) the associate broker again is employed by a real estate broker as an
7 associate broker; or

8 (2) the associate broker becomes an owner of a real estate business or
9 is employed as a real estate broker by a foreign or domestic corporation,
10 partnership, limited partnership, or limited liability company, in which case the
11 associate broker's [ASSOCIATE REAL ESTATE BROKER] license shall be [IS]
12 returned to the commission by the associate broker, and the commission shall issue
13 [ISSUES] the licensee [ASSOCIATE BROKER] a broker's [REAL ESTATE
14 BROKER] license.

15 (c) A natural person qualifies [IS ELIGIBLE] for a real estate salesperson
16 [SALESMAN] license if the person passes the real estate salesperson [SALESMAN]
17 examination, [IF THE PERSON] applies for the [A] license within six months after
18 passing [THE PERSON HAS TAKEN] the examination, [IF THE PERSON] submits
19 satisfactory proof of successful completion of the education requirements of
20 AS 08.88.091, [IF THE PERSON] is at least 19 years old, [IF THE PERSON] is not
21 under indictment for forgery, theft, extortion, conspiracy to defraud creditors, or any
22 other felony involving moral turpitude, or, if convicted of such an offense, the person
23 has completed the sentence imposed upon conviction, and [IF THE PERSON] is
24 employed by a real estate broker. Unless the salesperson [SALESMAN] fails to
25 renew the license [PAY THE BIENNIAL RENEWAL FEE] or unless the real estate
26 salesperson's [SALESMAN'S] license is suspended or revoked [UNDER
27 AS 08.88.071(A)(3)], a real estate salesperson's [SALESMAN'S] license continues in
28 effect as [SO] long as the salesperson [SALESMAN] is employed as a salesperson
29 [SALESMAN] by a licensed real estate broker. If the salesperson [SALESMAN]
30 stops being employed as a real estate salesperson [SALESMAN], the real estate
31 salesperson's [SALESMAN'S] license is suspended from the time the salesperson

1 [SALESMAN] stops until the salesperson [SALESMAN] again is employed as a real
2 estate salesperson [SALESMAN] by a licensed real estate broker.

3 (d) A real estate licensee shall promptly inform the commission of a change
4 in business association that affects the status of the licensee's license under this
5 section.

6 * **Sec. 11.** AS 08.88.171 is amended by adding new subsections to read:

7 (e) Notwithstanding (a) - (d) of this section, a natural person qualifies for a
8 limited license to practice community association management under (f) of this section
9 if the person

10 (1) applies by January 1, 1999;

11 (2) pays the required fees;

12 (3) demonstrates to the commission's satisfaction that the person has
13 engaged in the practice of community association management for at least 24 months
14 before January 1, 1999; and

15 (4) meets other requirements that may be established by the
16 commission in its regulations for issuance of a license under this subsection.

17 (f) A person who qualifies under (e) of this section shall be issued an associate
18 broker license if, at the time of issuance, the person is employed by a broker. A
19 person who qualifies under (e) of this section shall be issued a broker license if, at the
20 time of issuance, the person is the owner of a community association management
21 business or is employed as a community association manager by a foreign or domestic
22 corporation, partnership, limited partnership, or limited liability company. After initial
23 issuance of a license to a person under this subsection, the person is subject to the
24 same requirements that exist for other brokers and associate brokers licensed under this
25 chapter. However, notwithstanding other provisions of this chapter, under a license
26 issued under this subsection, a person may practice only community association
27 management and does not qualify as a broker or associate broker for purposes of
28 AS 08.88.161(1) - (4), (7), or (8) or 08.88.165(2). A person issued a limited license
29 to practice community association management under this section may not use the
30 terms "salesperson," "broker," or "associate broker" for any business purpose unless
31 the person is also licensed appropriately under other provisions of this chapter.

1 * **Sec. 12.** AS 08.88 is amended by adding new sections to read:

2 **Sec. 08.88.173. Fidelity bond for community association managers.** (a) If
3 the board of directors of a community association allows a broker to exercise control
4 over community association fees or other community association funds, the broker
5 must provide evidence to the commission that the broker is covered by a blanket
6 fidelity insurance bond. The bond may be in the name of the broker with the
7 association as an additional insured or in the name of the association with the broker
8 as an additional insured. The bond must cover the maximum funds that will be within
9 the control of the community association manager at any time while the bond is in
10 force. The commission may grant an exemption from the bonding requirement of this
11 subsection if the commission determines that the community association manager has
12 equivalent comparable coverage or that coverage is unavailable. The commission may
13 adopt regulations to implement this subsection, including regulations concerning the
14 minimum coverage and terms of coverage that are required and proof of bond and the
15 granting of exemptions.

16 (b) If a loss covered by the fidelity bond required under this section is also
17 reimbursable from the real estate surety fund, the owners' association that suffered the
18 loss may not recover under the bond until the association has filed a claim for
19 reimbursement under AS 08.88.460 and proceedings relating to the claim are
20 concluded.

21 **Sec. 08.88.175. Limitations on community association managers.** A
22 licensee may not, within the practice of community association management, exercise
23 control over the

24 (1) reserves or investment accounts of a community association;

25 (2) operating account of a community association unless

26 (A) allowed under a contract that has been approved by the
27 association's board of directors; and

28 (B) duplicate financial statements concerning the account are
29 sent by the institution holding the account to the licensee and the association's
30 board of directors at separate addresses.

31 * **Sec. 13.** AS 08.88.181(a) is amended to read:

1 (a) The real estate examinations [EXAMINATION] may include [, BUT IS
2 NOT NECESSARILY LIMITED TO,] questions on real estate business ethics and
3 standards; arithmetic and accounting; elementary principles of land economics and
4 appraisal; the general principles in state statutes relating to deeds, mortgages, real
5 estate contracts, subdivisions, common interest communities, legal descriptions,
6 building restrictions, agency, [AND] brokerage, disclosure requirements, trust
7 accounting requirements, and landlord and tenant law; property management
8 ethics and standards; community association management operations, ethics, and
9 standard; and the general provisions of this chapter and of the regulations of the
10 commission.

11 * Sec. 14. AS 08.88.191(b) is amended to read:

12 (b) If the commission authorizes the department to contract with a national
13 testing service to prepare, administer, and grade examinations,

14 (1) the commission or its designee shall review the examination and
15 approve its contents;

16 (2) application for an [THE] examination [, ACCOMPANIED BY THE
17 PROPER FILING FEE,] may be transmitted by the applicant directly to the national
18 testing service; payment of an examination fee shall be made by the applicant
19 directly to the national testing service's designated representative before the
20 examination is taken by the applicant.

21 * Sec. 15. AS 08.88.201 is amended to read:

22 **Sec. 08.88.201. Reexamination.** A person who fails an examination may
23 apply for a subsequent examination, but shall pay the application fee with [FOR] each
24 application.

25 * Sec. 16. AS 08.88.221 is amended to read:

26 **Sec. 08.88.221. Fees.** The Department of Commerce and Economic
27 Development shall set fees under AS 08.01.065 for a real estate broker, associate
28 broker, or salesperson [SALESMAN] licensee or applicant for the following:

29 (1) examination;

30 (2) [RECIPROCITY;

31 (3)] initial license;

- 1 (3) [(4)] renewal of an active license;
- 2 (4) [(5)] renewal of an inactive license;
- 3 (5) [(6)] amending or transferring a license;
- 4 (6) [(7)] publications offered by the commission;
- 5 (7) [(8)] seminars offered by the commission;
- 6 (8) reinstatement of a lapsed license;
- 7 (9) changes to registered office information;
- 8 (10) course certification and recertification; and
- 9 (11) instructor approval and renewal of approval.

10 * Sec. 17. AS 08.88.241 is repealed and reenacted to read:

11 Sec. 08.88.241. **Reinstatement of lapsed license.** (a) A person whose real
12 estate license has lapsed less than 24 months is eligible for reinstatement of the license
13 if the person provides the required application, license fees, proof of continuing
14 education as required by AS 08.88.091 for licensing periods during which the license
15 was inactive or lapsed.

16 (b) A real estate licensee whose license has been lapsed for more than 24
17 months is not eligible for reinstatement of the license and is eligible for the license
18 only by meeting the qualifications applicable to initial licensure under AS 08.88.171.

19 * Sec. 18. AS 08.88.251 is amended to read:

20 Sec. 08.88.251. **Inactive license.** (a) A real estate licensee who intends to
21 [PERSON LICENSED BY THE COMMISSION MAY] become inactive shall return
22 [BY RETURNING] to the commission the person's license certificate and a completed
23 inactivation form provided by the commission along with any applicable fees. [IN
24 THE FORM, THE PERSON SHALL STATE THE DATE ON WHICH THE PERSON
25 INTENDS TO BECOME INACTIVE. THE PERSON'S INACTIVE STATUS
26 BEGINS ON THE DATE STATED.] The commission shall issue the person an
27 inactive license certificate.

28 (b) An inactive licensee may not attempt or offer to do any of the activities
29 listed in AS 08.88.161, but may receive commissions or other payments from the
30 broker who previously contracted with or employed the licensee for services
31 performed while actively licensed [EXCEPT AS OTHERWISE ALLOWED FOR

1 UNLICENSED PERSONS UNDER AS 08.88.165].

2 (c) A person who has an [IS] inactive license certificate under (a) of this
3 section may reactivate the license [BECOME ACTIVE] by applying for an active
4 license and paying the required fees. [IN THE APPLICATION FORM THE PERSON
5 SHALL STATE THE DATE ON WHICH THE PERSON INTENDS TO BECOME
6 ACTIVE. THE PERSON'S ACTIVE STATUS BEGINS ON THE DATE STATED.
7 THE COMMISSION SHALL SEND THE PERSON A LICENSE CERTIFICATE.]
8 A person is eligible for change from an inactive to an active status under this
9 subsection only [WITHOUT EXAMINATION] if the person has [NOT] been in
10 inactive status for less [MORE] than 24 months [TWO YEARS]. If the person has
11 been in inactive status for 24 months or for more than 24 months [TWO YEARS],
12 the person is required to meet the requirements for initial licensure in order to be
13 licensed under this chapter again [TAKE AN EXAMINATION].

14 * Sec. 19. AS 08.88.281 is amended to read:

15 **Sec. 08.88.281. Real estate surety fund.** Before issuing a license to an
16 applicant under this chapter, the commission shall ensure [DETERMINE] that the
17 applicant has complied with the provisions of AS 08.88.455 and is covered by the real
18 estate surety fund established in AS 08.88.450.

19 * Sec. 20. AS 08.88.291 is amended to read:

20 **Sec. 08.88.291. Location.** A person licensed as a real estate broker shall, by
21 registering with the commission, inform the commission of the person's
22 [BROKER'S] principal office and of any branch offices of the person's real estate
23 business and include in the information the names of the real estate licensees who
24 are employed at each office. A [BROKER HAS. THE BROKER AND THE
25 ASSOCIATE] real estate licensee [BROKERS AND REAL ESTATE SALESMEN
26 THE BROKER EMPLOYS] may do real estate business only through a [IN OR OUT
27 OF THE BROKER'S] principal office or from a [AND THE BROKER'S] branch
28 office registered by the broker by whom the licensee is employed [OFFICES].
29 Failure of a real estate broker to maintain a place of business or to inform the
30 commission of its location and the names and addresses of all real estate licensees
31 employed at each location by the broker is [UNDER THE BROKER'S

1 JURISDICTION AT THE LOCATION ARE] grounds for the suspension or revocation
2 of the broker's license.

3 * Sec. 21. AS 08.88.301 is amended to read:

4 **Sec. 08.88.301. Change of location.** Before [IF] a real estate broker changes
5 the location of the broker's principal office or of a branch office, the broker shall
6 [IMMEDIATELY] notify the commission of the new address and any other office
7 changes on a form provided by the commission and pay the applicable fees.

8 * Sec. 22. AS 08.88.311 is amended to read:

9 **Sec. 08.88.311. Branch offices.** (a) A branch office shall be under the direct
10 supervision of a real estate associate broker whose principal place of business is that
11 office and who is licensed under this chapter. An associate [REAL ESTATE] broker
12 may serve in the capacity of direct supervisor at only one office [ONLY].

13 (b) A [ALL] branch office [OFFICES] shall bear and be advertised only in the
14 name of the principal office but may also indicate that it is a [THEY ARE] branch
15 [OFFICES OF THE PRINCIPAL] office.

16 * Sec. 23. AS 08.88.321 is repealed and reenacted to read:

17 **Sec. 08.88.321. Possession and display of license certificates.** (a) The
18 license certificate of a real estate broker shall be displayed in the broker's principal
19 office.

20 (b) The license certificate of each licensee working in the broker's principal
21 office shall be displayed in that office.

22 (c) The license certificate of the designated associate broker who is in charge
23 of a branch office and the certificate of each licensee working in a branch office shall
24 be displayed in the branch office indicated as the office of the licensees' employment
25 in the registration required under AS 08.88.291.

26 (d) Certificates displayed under this section must be displayed where they are
27 available for public clients and customers to verify the current active status of licensees
28 working in the office.

29 * Sec. 24. AS 08.88.331 is amended to read:

30 **Sec. 08.88.331. Making of transactions.** An active [A] real estate
31 salesperson [SALESMAN] or associate real estate broker may perform activities for

1 which a real estate license is required [MAKE A REAL ESTATE TRANSACTION]
2 only through the real estate broker who employs or contracts with the licensee
3 [REAL ESTATE SALESMAN OR ASSOCIATE REAL ESTATE BROKER]. All
4 money or other proceeds collected in trust and related to a real estate transaction
5 [ON BEHALF OF THE BROKER] shall immediately be turned over to the broker or
6 the broker's authorized representative [AGENT. ALL TRANSACTIONS IN REAL
7 ESTATE BY A REAL ESTATE SALESMAN OR ASSOCIATE REAL ESTATE
8 BROKER SHALL BE PROCESSED THROUGH THE REAL ESTATE
9 SALESMAN'S OR THE ASSOCIATE REAL ESTATE BROKER'S EMPLOYING
10 REAL ESTATE BROKER'S OFFICE, WHETHER THE TRANSACTIONS ARE FOR
11 THE REAL ESTATE SALESMAN'S OR ASSOCIATE REAL ESTATE BROKER'S
12 OWN USE OR THE USE OF A CLIENT].

13 * Sec. 25. AS 08.88.341 is amended to read:

14 Sec. 08.88.341. Listings or management contracts. All real estate listings
15 or management contracts must be in writing and must be signed by the broker
16 [SELLER] or associated licensee [BY AN AGENT] of the broker and by the client
17 or an authorized representative of the client for whose benefit the real estate
18 licensee will act [SELLER]. All real estate exclusive listings or management
19 contracts must have a definite expiration date that may be renewed or extended
20 only by a written agreement signed by the client or the client's authorized
21 representative.

22 * Sec. 26. AS 08.88.351 is amended to read:

23 Sec. 08.88.351. Accounts; records of transactions [RECORD OF
24 TRANSACTION]. A real estate broker shall

25 (1) keep a complete record, [OF ALL REAL ESTATE
26 TRANSACTIONS MADE BY THE BROKER OR EMPLOYEES OF THE BROKER]
27 for [AT LEAST] three years, of all real estate transactions in which the broker or
28 employed licensees of the broker engaged;

29 (2) provide upon request to any principal in a transaction an
30 [MAKE A CLOSING STATEMENT SHOWING DISBURSEMENTS AND]
31 accounting for all money or other property collected or held in the course of each

1 transaction:

2 (3) keep a separate trust account in a bank [,] into which the broker
3 shall deposit all earnest money deposits, [AND] purchase money, security deposits,
4 contingency funds, collected rental money, rental receipts, or other money
5 collected in trust until it is appropriate [PROPER] for the broker to distribute the
6 money to the proper persons;

7 (4) if authorized by the board of directors of a community
8 association to collect, control, or disburse association funds, keep a separate
9 account in a financial institution for the funds;

10 (5) make available to the commission, on request, account records and
11 all other documents [RELATING TO TRANSACTIONS UNDER (3) OF THIS
12 SECTION] that the commission may require in order to conduct an investigation or
13 to [A COMPLETE] audit an account required under this section;

14 (6) if records are delivered to a partnership, corporation, or
15 business entity other than another licensed broker upon termination of
16 employment, ensure by contract the maintenance and availability of those records
17 for a minimum of three years in accordance with this section [OF TRUST
18 ACCOUNTS].

19 * Sec. 27. AS 08.88.351 is amended by adding new subsections to read:

20 (b) A real estate licensee

21 (1) shall keep, for a minimum of three years, a complete record of all
22 real estate transactions in which the licensee was a principal;

23 (2) who maintains records concerning management or sale of the
24 licensee's own properties or the licensee's client properties separate from the broker's
25 file, shall retain those records for a minimum of three years;

26 (3) shall make available to the commission, on request, records and
27 other documents that the commission may require to conduct an investigation;

28 (4) shall promptly deposit community association funds or proceeds
29 from periodic community association assessments into either a community association
30 reserve account or a community association operating account; if, at any time, the
31 community association operating account contains more money than is estimated to be

1 needed for budgeted expenditures for the subsequent three months, the licensee shall
2 transfer the excess funds to the community association reserve account as soon as
3 practicable;

4 (5) may not commingle funds of a community association with funds
5 of another community association or with the licensee's funds.

6 (c) For the purposes of this section, the three-year requirement for records
7 maintenance begins at the initiation of a transaction and continues, as applicable, until
8 three years after the date

9 (1) a listing agreement ends;

10 (2) a sales transaction closes or otherwise ends;

11 (3) a management contract ends; or

12 (4) another contractual or fiduciary obligation ends.

13 * Sec. 28. AS 08.88.361 is amended to read:

14 Sec. 08.88.361. When a commission or other fee is earned. An obligation
15 to pay a [A] commission, management fee, or other compensation to a real estate
16 broker must be based on [IS EARNED WHEN THE REAL ESTATE BROKER
17 FULFILLS] the terms of a written listings or management [PERSONAL SERVICES]
18 contract. Other than through enforcement of the terms of a written listings or
19 management contract, a licensee has no right under law to enforce collection of
20 a commission or other fee for a service that requires a real estate license.

21 * Sec. 29. AS 08.88.381 is amended to read:

22 Sec. 08.88.381. Signs. A [LICENSED] real estate broker shall maintain a sign
23 at each of the [REAL ESTATE] broker's registered real estate offices [,] prominently
24 showing the name of the real estate [BROKER'S] business as registered with the
25 commission. The required size, content, and location of signs under this section
26 may be determined by the commission under regulations. The regulations must
27 allow signs in offices located on premises with more restrictive sign requirements
28 than would otherwise be applicable under the commission's regulations to be
29 considered to be in compliance with the regulations if the signs meet the
30 requirements of the premises and the licensee submits a copy of the sign
31 requirements of the premises to the commission.

1 * Sec. 30. AS 08.88.391 is amended to read:

2 Sec. 08.88.391. **Conflict of interest.** A [LICENSED] real estate licensee
3 [BROKER, ASSOCIATE REAL ESTATE BROKER, OR REAL ESTATE
4 SALESMAN] who has a personal financial interest or other conflict of interest
5 relating to [IN] a real estate transaction shall, at the time of initial substantive
6 contact with the principals or agents of the principals, disclose that interest in
7 writing to the principals and agents of the principals [EVERY PERSON] involved
8 in the transaction. In this section, "conflict of interest" is when a licensee

9 (1) has a present personal interest in the property that is the
10 subject of a transaction;

11 (2) is whole or part owner of a business interest in the property
12 being marketed or considered for purchase or lease;

13 (3) represents a person with whom the licensee has a financial
14 relationship or who has a present financial interest in the property being
15 marketed or considered for purchase or lease;

16 (4) represents more than one party in a transaction without giving
17 disclosure notification as required by law;

18 (5) receives compensation from someone other than a party to the
19 contract or another party having a financial interest in the transaction;

20 (6) receives compensation for community association management
21 while simultaneously engaged as a property manager for a unit within the
22 community association.

23 * Sec. 31. AS 08.88.396 is amended to read:

24 Sec. 08.88.396. **Disclosure of agency to prospective buyers and sellers.** (a)
25 A person licensed [HOLDING A LICENSE] under this chapter shall, when acting as
26 an agent for a prospective seller of real estate,

27 (1) disclose in writing the licensee's [PERSON'S] agency relationship
28 with the seller to each prospective buyer at the time that the licensee [PERSON]
29 begins to provide specific assistance to locate or acquire real estate for the buyer, and
30 obtain from each prospective buyer a signed acknowledgement that the buyer is aware
31 of the agency relationship between the licensee [PERSON LICENSED UNDER THIS

1 CHAPTER] and the seller; and

2 (2) include in the purchase agreement a statement of the agency
3 relationship between the licensee [PERSON LICENSED UNDER THIS CHAPTER]
4 and the seller.

5 (b) A person licensed [HOLDING A LICENSE] under this chapter shall, when
6 acting as an agent for a prospective buyer of real estate,

7 (1) disclose the licensee's [PERSON'S] relationship with the buyer to
8 a prospective seller of real estate, or to the seller's agent, at the time of the initial
9 contact between the licensee [PERSON LICENSED UNDER THIS CHAPTER] and
10 the prospective seller or the seller's agent, and confirm the relationship in writing as
11 soon as possible after the initial contact;

12 (2) include in the purchase agreement a statement of the agency
13 relationship between the licensee [PERSON LICENSED UNDER THIS CHAPTER]
14 and the buyer;

15 (3) if the prospective seller has an unexpired exclusive listing contract
16 for a property, present all offers [AN OFFER] to purchase that property through [TO]
17 the seller's agent; and

18 (4) disclose in writing to all parties to a transaction when the licensee's
19 [PERSON'S] compensation as agent for the buyer is to be paid by anyone other than
20 the buyer being represented by the licensee [PERSON].

21 (c) A person licensed under this chapter may [NOT] act as an agent for both
22 a prospective seller and a prospective buyer of real estate only after [UNLESS] the
23 licensee [PERSON] informs both the seller and the buyer of the dual agency and
24 obtains written consent to the dual [JOINT] agency from both principals.

25 (d) When a change occurs during a transaction that makes a prior written
26 disclosure required by this section incomplete, misleading, or inaccurate, the licensee
27 [PERSON LICENSED UNDER THIS CHAPTER] shall make a revised disclosure, in
28 writing, to all parties to the transaction as soon as possible. The revised disclosure
29 must include the date of the revision and shall be acknowledged in writing by all the
30 parties.

31 * Sec. 32. AS 08.88 is amended by adding new sections to read:

1 **Sec. 08.88.397. No duty to disclose nearby sex offenders.** A real estate
2 licensee does not have a duty to notify a client that a person who has been convicted
3 of a sex offense, as defined in AS 12.63.100, resides in the vicinity of the property that
4 is the subject of a potential transaction involving the licensee and the client.

5 **Sec. 08.88.398. Licensed assistants.** A licensed real estate salesperson or
6 licensed associate real estate broker may act as a licensed assistant to a real estate
7 licensee other than the broker who employs the salesperson or associate broker if

8 (1) the employment arrangement between the licensed assistant and the
9 other licensee is in writing and conforms to the applicable state and federal regulations
10 regarding employment;

11 (2) the employment of the licensed assistant is approved in writing by
12 the broker of the licensee who employs the assistant;

13 (3) the licensee who employs the assistant agrees to be responsible for
14 paying the licensed assistant's wages and appropriate taxes and completing the
15 appropriate state and federal tax forms;

16 (4) the broker of the licensee who employs the assistant agrees to be
17 liable for the actions of the licensed assistant.

18 * **Sec. 33.** AS 08.88.401 is amended to read:

19 **Sec. 08.88.401. Prohibited conduct.** (a) A person licensed under this chapter
20 may not falsely represent to

21 (1) have been awarded a degree or other designation;

22 (2) [OR TO] be a member or an affiliate of a professional organization;

23 or

24 (3) be a member of a franchise or other business association.

25 (b) A person

26 (1) who is not a real estate broker licensed in this state may not accept
27 a fee or a commission for performance of an act for which a license is required by this
28 chapter except that a real estate broker validly licensed in another state may accept a
29 fee or commission or a portion of a fee or commission for assisting a real estate broker
30 licensed in this state in the performance of an act for which a license is required by
31 this chapter;

1 (2) who is an associate broker or a real estate salesperson
2 [SALESMAN] licensed in this state may [NOT] accept a fee or commission for
3 performance of an act for which a license is required by this chapter only from
4 [UNLESS ACCEPTANCE IS AUTHORIZED BY] the licensee's employing broker,
5 except that the wages of a person who is engaged as a licensed assistant under
6 AS 08.88.398 may be accepted by the person from the assistant's employer [WHO
7 EMPLOYS THE SALESMAN].

8 (c) A person licensed under this chapter may not knowingly make, authorize,
9 direct, or aid in the publication of a false statement or misrepresentation concerning
10 land or a subdivision or other real estate offered for sale, [OR] lease, or rent or
11 concerning an association being managed.

12 (d) A person who violates [A PROVISION OF] this section, AS 08.88.161,
13 or 08.88.396 is guilty of a class A misdemeanor.

14 * Sec. 34. AS 08.88.401 is amended by adding new subsections to read:

15 (e) A person licensed under this chapter may not knowingly pay any part of
16 a fee, commission, or other compensation received by the licensee in buying, selling,
17 exchanging, leasing, auctioning, or renting real estate to

18 (1) a person who is not licensed under this chapter, except as provided
19 in (f) of this section;

20 (2) another licensee, except through the licensee's responsible broker;
21 or

22 (3) another licensee knowing that the other licensee intends to pay all
23 or a portion of that which is received to a person who is not licensed under this
24 chapter.

25 (f) The prohibition of (e)(1) of this section does not prohibit

26 (1) payments by a licensee to a person licensed to perform real estate
27 activities in another jurisdiction if the other person has assisted the licensee in the
28 performance of an act for which a license is required by this chapter; or

29 (2) payments from a real estate licensee to a principal as part of the
30 resolution of a dispute regarding the terms of a transaction or regarding the property
31 transferred.

- 1 (g) A person may not
2 (1) use or attempt to use a license issued under this chapter that was
3 issued to another person;
4 (2) give false or forged evidence to the commission or to a
5 representative of the commission in an attempt to obtain a license;
6 (3) impersonate an applicant under this chapter;
7 (4) knowingly use or attempt to use an expired, suspended, revoked,
8 or nonexistent license; or
9 (5) falsely claim to be licensed and authorized to practice under this
10 chapter.

11 * Sec. 35. AS 08.88.450 is amended to read:

12 **Sec. 08.88.450. Real estate surety fund.** The real estate surety fund is
13 established in the general fund to carry out the purposes of AS 08.88.450 - 08.88.500.
14 The fund is composed of payments made by [LICENSED] real estate licensees
15 [BROKERS AND SALESMEN] under AS 08.88.455 and filing fees retained under
16 [IN ACCORDANCE WITH] AS 08.88.460. The fund may not exceed \$500,000 and
17 amounts in the fund in excess of \$250,000 may be appropriated for real estate
18 educational purposes as provided in AS 08.88.091.

19 * Sec. 36. AS 08.88.455 is amended to read:

20 **Sec. 08.88.455. Payments by real estate licensees [BROKERS AND**
21 **SALESMEN].** (a) A [LICENSED] real estate licensee, [BROKER, ASSOCIATE
22 BROKER, OR SALESMAN] when applying for [OBTAINING] or renewing a real
23 estate license, in lieu of obtaining a corporate surety bond, shall pay to the commission
24 in addition to the license fee, a surety fund fee not to exceed \$125. After the fund
25 reaches \$250,000, the commission shall by regulation adjust the surety fund fees so
26 that, taking into account anticipated expenditures for claims against the fund and real
27 estate educational purposes, the fund is maintained at a level not less than \$250,000.

28 (b) All fees collected under this section shall be paid at least once a month by
29 the department [COMMISSION] into the general fund. These payments shall be
30 credited to the real estate surety fund.

31 * Sec. 37. AS 08.88.460 is amended to read:

1 **Sec. 08.83.460. Claim for payment.** (a) Subject to (e) of this section, a [A]
2 person seeking reimbursement for a loss suffered in a real estate transaction as a result
3 of fraud, misrepresentation, deceit, or the conversion of trust funds or the conversion
4 of community association accounts under the control of a community association
5 manager on the part of a licensee [REAL ESTATE BROKER, ASSOCIATE REAL
6 ESTATE BROKER, OR REAL ESTATE SALESMAN] licensed under this chapter
7 shall make a claim to the commission for reimbursement on a form furnished by the
8 commission. In order to be eligible for reimbursement by the commission, the
9 claim form must be filed within two years after the occurrence of the fraud,
10 misrepresentation, deceit, or conversion of trust funds or the conversion of
11 community association accounts under the control of a community association
12 manager claimed as the basis for the reimbursement. The form shall be executed
13 under penalty of unsworn falsification [,] and must include the following:

14 (1) the name and address of each [THE] real estate licensee involved
15 [BROKER, ASSOCIATE REAL ESTATE BROKER, OR REAL ESTATE
16 SALESMAN];

17 (2) the amount of the alleged loss;

18 (3) the date or period of time during which the alleged loss occurred;

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

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

21 (6) a general statement of facts relative to the claim.

22 (b) A copy of a claim filed with the commission under (a) of this section shall
23 be sent to each [THE] real estate licensee [BROKER, ASSOCIATE REAL ESTATE
24 BROKER, OR REAL ESTATE SALESMAN] alleged to have committed the
25 misconduct resulting in losses, to the principal [AS WELL AS A] real estate broker
26 employing a licensee [AN ASSOCIATE REAL ESTATE BROKER OR REAL
27 ESTATE SALESMAN] alleged to have committed the conduct resulting in losses, and
28 to any other real estate licensee involved in the transaction at least 20 days before
29 any hearing held on the claim by the commission.

30 (c) Within seven days after receipt of notice of a claim under (b) of this
31 section, each [THE] real estate licensee [BROKER, ASSOCIATE REAL ESTATE

1 BROKER, OR REAL ESTATE SALESMAN] against whom the claim is made may
2 elect to defend the claim as a small claims action in district court under District Court
3 Civil Rules 8 - 22 [,] if the claim does not exceed the small claims jurisdictional limit.
4 An election to defend a claim in district court under the small claims rules may not
5 be revoked by the real estate licensee [BROKER, ASSOCIATE BROKER, OR
6 SALESMAN] without the consent of the claimant. Upon receipt of a valid written
7 election under this subsection, the commission shall dismiss the claim filed with the
8 commission and notify the claimant that the claim must be brought as a small claims
9 action in the appropriate state court.

10 (d) A claimant under this section shall pay a filing fee of \$250 to the
11 commission at the time the claim is filed. The filing fee shall be refunded [ONLY]
12 if

13 (1) the commission makes an award to the claimant from the real estate
14 surety fund;

15 (2) the claim is dismissed under (c) of this section; or

16 (3) the claim is withdrawn by the claimant before the commission holds
17 a hearing on the claim.

18 * Sec. 38. AS 08.88.460 is amended by adding a new subsection to read:

19 (e) If the claim is for a loss incurred as a result of acts or omissions occurring
20 in the course of the licensee's practice of community association management, only the
21 owners' association for which the real estate licensee practices community association
22 management may file a claim under this section.

23 * Sec. 39. AS 08.88.465(b) is amended to read:

24 (b) A certified or authenticated copy of a record, including a transcript of
25 testimony, of a hearing held under AS 08.88.071(a)(3) in which fraud,
26 misrepresentation, deceit, or conversion of trust funds or the conversion of
27 community association accounts under the control of a community association
28 manager on the part of a [LICENSED BROKER, ASSOCIATE BROKER, OR] real
29 estate licensee [SALESMAN] is established [,] may constitute sufficient evidence to
30 support a finding that a claim should be paid.

31 * Sec. 40. AS 08.88.465(c) is amended to read:

1 (c) Before the commission finds that payment should be made from the real
2 estate surety fund, each [THE] real estate licensee against whom the claim is made
3 [BROKER, ASSOCIATE BROKER, OR REAL ESTATE SALESMAN] shall be
4 afforded an opportunity to file with the commission, within 10 days after receipt of
5 notification of the claim under AS 08.88.460(b), either a written statement in
6 opposition to the claim or an application for the presentation of additional evidence.

7 * Sec. 41. AS 08.88.465(d) is amended to read:

8 (d) The claimant bears the burden of proof of establishing that the claimant
9 suffered losses in a real estate transaction as a result of fraud, misrepresentation,
10 deceit, or the conversion of trust funds or the conversion of community association
11 accounts under the control of a community association manager on the part of a
12 real estate licensee [BROKER, ASSOCIATE REAL ESTATE BROKER, OR REAL
13 ESTATE SALESMAN] and the extent of those losses. All facts shall be established
14 by a preponderance of the evidence.

15 * Sec. 42. AS 08.88.470 is amended to read:

16 **Sec. 08.88.470. Findings and payment.** At the conclusion of the
17 commission's consideration of a claim made under AS 08.88.460, it shall make written
18 findings and conclusions on the evidence. If the commission finds that the claimant
19 has suffered a loss in a real estate transaction as a result of fraud, misrepresentation,
20 deceit, or the conversion of trust funds or the conversion of community association
21 accounts under the control of a community association manager on the part of a
22 real estate licensee [BROKER, ASSOCIATE BROKER, OR SALESMAN], the
23 commission may award a claimant reimbursement from [OUT OF] the real estate
24 surety fund for the claimant's loss up to \$10,000. Not [HOWEVER, NOT] more than
25 \$10,000 may be paid for each transaction regardless of the number of persons injured
26 or the number of parcels of real estate involved in the transaction.

27 * Sec. 43. AS 08.88.472(a) is amended to read:

28 (a) The [WHEN AN AWARD IS MADE FROM THE REAL ESTATE
29 SURETY FUND UNDER AS 08.88.470, THE] commission may charge to the real
30 estate surety fund the costs of a hearing on a claim for reimbursement held under
31 AS 08.88.465. The commission shall deposit into the real estate surety fund

1 **amounts** [AS 08.88.071 OR 08.88.465. AMOUNTS SUBSEQUENTLY] recovered
2 [BY THE COMMISSION] for these costs from the licensee under AS 08.88.071(b) or
3 from other parties under AS 08.88.490 [SHALL BE DEPOSITED TO THE REAL
4 ESTATE SURETY FUND].

5 * Sec. 44. AS 08.88.474 is amended to read:

6 **Sec. 08.88.474. Payment of small claims judgment.** If a claim originally
7 filed with the commission is dismissed and is heard as a small claims action under
8 AS 08.88.460(c) and the claimant prevails in the small claims action against a [THE]
9 real estate licensee [BROKER, ASSOCIATE REAL ESTATE BROKER, OR
10 SALESMAN], the commission shall make an award from the fund of any outstanding
11 portion of the small claims judgment on receipt of a copy of the final judgment and
12 an affidavit from the claimant stating that more than 30 days have elapsed since the
13 judgment became final and that the judgment has not yet been satisfied by the
14 licensee determined responsible [BROKER, ASSOCIATE BROKER, OR
15 SALESMAN HAS NOT SATISFIED THE JUDGMENT DURING THAT TIME].
16 After payment of a small claims judgment, the commission is subrogated to the
17 claimant's rights in the judgment under AS 08.88.490.

18 * Sec. 45. AS 08.88.475 is amended to read:

19 **Sec. 08.88.475. Maximum liability.** (a) The maximum liability of the real
20 estate surety fund may not exceed \$50,000 for any one real estate licensee [BROKER
21 OR SALESMAN].

22 (b) If the \$50,000 liability of the fund as provided in (a) of this section is
23 insufficient to pay in full the valid claims of all persons who have filed claims against
24 an individual licensee [ONE BROKER OR SALESMAN], the \$50,000 shall be
25 distributed among the claimants in the ratio that their individual claims bear to the
26 aggregate of valid claims, or in another manner that the commission considers
27 equitable. Distribution shall be among the persons entitled to share in the recovery [,]
28 without regard to the order [OF PRIORITY] in which their claims were filed.

29 * Sec. 46. AS 08.88.490 is amended to read:

30 **Sec. 08.88.490. Right to subrogation.** When the commission has paid to a
31 claimant from the real estate surety fund the sum awarded by the commission, the

1 commission shall be subrogated to all of the rights of the claimant to the amount paid,
2 and the claimant shall assign all right, title, and interest in that portion of the claim to
3 the commission. Money collected [AMOUNTS SUBSEQUENTLY REALIZED] by
4 the commission on the claim shall be deposited to the real estate surety fund.

5 * Sec. 47. AS 08.88.900 is amended to read:

6 **Sec. 08.88.900. Exceptions. (a) Except as provided in (b) of this section,**
7 **this** [THIS] chapter does not apply to

8 (1) a person who is not licensed under this chapter who manages or
9 makes a real estate transaction with respect to real estate the person owns or is seeking
10 to own so long as the compensation the person receives does not include any
11 portion of the commission or other compensation paid to a real estate licensee in
12 the transaction [ON THE PERSON'S OWN BEHALF, UNLESS THE
13 TRANSACTION INVOLVES LAND DEFINED IN AS 34.55.044(7) THAT IS NOT
14 IN ALASKA];

15 (2) an attorney in fact under a power of attorney authorizing the
16 consummation of a specific real estate transaction; an attorney in fact may not act as
17 such under this paragraph for more than two transactions in a calendar year;

18 (3) a lawyer performing duties as a lawyer;

19 (4) a public official in the conduct of official duties;

20 (5) a person acting as receiver, trustee, administrator, executor, or
21 guardian;

22 (6) a person acting under court order;

23 (7) a person acting under the authority of a will or trust instrument;

24 (8) a person dealing in mineral rights transactions;

25 (9) an [A DOMESTIC OR FOREIGN CORPORATION, A GENERAL
26 OR LIMITED PARTNERSHIP, OR A PARTNER OR REGULAR] employee of a
27 domestic or foreign corporation, [OR A] general or limited partnership, or limited
28 liability company when performing an act described in AS 08.88.161 incidental to
29 [IN] the regular course of business when the act relates [, OR AS AN INCIDENT]
30 to [,] the management, sale, or other disposition of real estate owned by the foreign
31 or domestic corporation, general or limited partnership or limited liability company;

1 the exemption under [PROVIDED IN] this paragraph does not apply to a person
2 employed by a foreign or domestic corporation, partnership, limited partnership,
3 or limited liability company who performs an act described in AS 08.88.161 [,
4 UNLESS ALLOWED FOR UNLICENSED PERSONS UNDER AS 08.88.165.] either

5 (A) as a vocation; or

6 (B) for compensation if the amount of the compensation is
7 dependent upon or directly related to the value of the real estate with respect
8 to which the act is performed;

9 (10) a person performing duties as a resident manager;

10 (11) a bookkeeper or accountant performing bookkeeping or
11 accounting functions;

12 (12) a secretary or receptionist in a real estate office accepting rent
13 or association fees and providing a written receipt for the rent or fees when a
14 tenant or community association member delivers the rent or fees to the real
15 estate office;

16 (13) tradesmen or vendors of services performing maintenance and
17 repair functions;

18 (14) an employee of a real estate firm or of a property owner
19 delivering or accepting a real estate contract or application, or a related
20 amendment, to or from another person;

21 (15) an individual assisting in the performance of real estate
22 activities only by carrying out administrative, clerical, or maintenance tasks;

23 (16) the management of a total of four or fewer residential units by
24 a natural person for other persons;

25 (17) community association management for property organized
26 under AS 34.07 or AS 34.08 by a resident owner of a unit in the property if the
27 owner is a member of a self-managed community association for the property;

28 (18) real estate transactions by a developer of property organized
29 under AS 34.07 or AS 34.08 during the period that the developer retains control
30 of at least 51 percent of the property if the transactions are within the scope of
31 the activities authorized by the developer's permit to develop the property;

1 or a unit in a warehouse, mini-storage facility, or other facility the function of
2 which is limited to warehousing purposes:

3 * Sec. 51. AS 08.88.990(4) is amended to read:

4 (4) "resident manager" means a person who resides on rented or leased
5 real property or on contiguous property owned by the same owner, [AND] manages
6 the property [IT] for the benefit of another person, and is either employed by the
7 owner of the real estate or employed by, or under contract with, a real estate
8 licensee.

9 * Sec. 52. AS 08.88.990 is amended by adding new paragraphs to read:

10 (5) "community association management" means an activity undertaken
11 for an owners' association with regard to property organized under either AS 34.07 or
12 AS 34.08 under an agreement in exchange for a fee, commission, or other valuable
13 consideration, including the following activities: preparing budgets and other financial
14 documents, collecting, controlling, or disbursing funds, obtaining insurance for the
15 association, contracting for maintenance and repair to association property, and
16 supervising the day-to-day operations of the association under the direction of the
17 association's board of directors;

18 (6) "community association operating account" means an account in a
19 financial institution maintained in the name of a specific community association that
20 contains money used for day-to-day operation and not for other uses;

21 (7) "community association reserve account" means an account in a
22 financial institution maintained in the name of a specific community association that
23 contains money reserved for the expected replacement cost of improvements within the
24 community association or for other future uses;

25 (8) "employ," "employing," "employs," "employed," "employee,"
26 "employees," and "employment" include being an independent contractor with an
27 employer;

28 (9) "knowingly" has the meaning given in AS 11.81.900(a);

29 (10) "mobile home" has the meaning given in AS 08.67.080;

30 (11) "property management" is an activity undertaken for another with
31 regard to real property under an agreement in exchange for a fee, commission, or other

1 valuable consideration, including the following activities: marketing, leasing,
2 contracting for physical, administrative, or financial maintenance, performance of
3 overall management of real property, and the supervision of these actions;

4 (12) "real estate licensee" is a person who holds a license under this
5 chapter; the term includes a broker unless the context clearly excludes brokers;

6 (13) "real estate transaction"

7 (A) in sales, means the transfer or attempted transfer of an
8 interest in a mobile home or a unit of real property, an act conducted as a
9 result of or in pursuit of a contract to transfer an interest in a mobile home or
10 a unit of real property, or an act conducted in an attempt to obtain a contract
11 to market a mobile home or real property;

12 (B) in property management, means the lease or rental of a unit
13 of real property, including collection of rent from a tenant of a unit of rented
14 or leased real property, an attempt to rent or lease a unit of real property, an
15 attempt to collect rent from a tenant of rented or leased real property, or an act
16 conducted as a result of or in pursuit of a contract to manage a unit of leased
17 or rented real property;

18 (C) in community association management, means the collection
19 or attempted collection of dues from a unit owner or an activity conducted as
20 a result of or in pursuit of a contract with a community association to manage
21 the affairs of a community association.

22 * Sec. 53. AS 08.88.111 is repealed.

23 * Sec. 54. TRANSITIONAL PROVISION. Notwithstanding AS 08.88.161(5) and (6),
24 added by sec. 8 of this Act, a person may practice, or negotiate a contract to practice,
25 community association management and may collect fees for community association
26 management without a license issued under AS 08.88 until January 1, 1999.

27 * Sec. 55. REGULATIONS. Notwithstanding sec. 57 of this Act, the Real Estate
28 Commission may proceed to adopt regulations necessary to implement AS 08.88.091(f) and
29 (g), added by this Act. The regulations take effect under AS 44.62 (Administrative Procedure
30 Act), but not before January 31, 1999.

31 * Sec. 56. REVISOR'S INSTRUCTION. Wherever in the Alaska Statutes and the Alaska

1 Administrative Code the term "salesman" is used in a context relating to real estate salesmen
2 licensed under AS 08.88, it shall be read as "salesperson" when to do so would be consistent
3 with changes made by this Act. Under AS 01.05.031, the revisor of statutes shall implement
4 this section in the statutes, and, under AS 44.62.125, the regulations attorney shall implement
5 this section in the administrative code.

6 * Sec. 57. AS 08.88.091(f) and (g), added by sec. 7 of this Act, take effect January 31,
7 1999.

8 * Sec. 58. Except as provided in sec. 57 of this Act, this Act takes effect immediately
9 under AS 01.10.070(c).

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE COMMITTEE, CHAIRMAN
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
JUDICIARY COMMITTEE, MEMBER
CORRECTIONS BUDGET SUBCOMMITTEE, MEMBER
ADMINISTRATION BUDGET SUBCOMMITTEE, MEMBER
HESS BUDGET SUBCOMMITTEE, MEMBER



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Representative Norman Rokeberg

CSHB 33 (L&C) – Real Estate Licensees
Sectional Analysis
By Representative Norman Rokeberg

Date: February 7, 1998

Title: An Act relating to real estate licensees and to the real estate surety fund; and providing for an effective date.

Section 1: **Registration of mobile home dealers**: Exempts a real estate licensee who buys or sells mobile homes from licensing as a mobile home dealer.

Section 2: **Commission meetings and officers**. Amends to provide that the Real Estate Commission ("Commission") is to elect officers at the first meeting of each fiscal year.

Section 3. **Assistants**. Amends to permit the Commission to assign certain duties to assistants. New duties include: issuing licenses, administering examinations, certifying educational courses, approving instructors of educational courses, and negotiating terms and payment of fines and other money due.

Note: AS 08.01.050, referenced in first line, concerns administrative duties of the Department.

Section 4. **Duties of the Commission**. Sets out the specific duties of the Commission. Adds duties to include: issuing temporary permits to personal representative of estate of deceased real estate broker or legally incompetent real estate broker, revising the form of a seller's property disclosure statement, levying civil fines, revoking license of broker or associate broker convicted of felony committed while licensed.

Section 5. **Education of applicants and licensees.** Amends to provide Commission may not prohibit completion of educational requirement within a two-day period.

Section 6. **Education of applicants and licensees.** Amends so that, with certain exceptions in Section 7, in order to be an approved course for education under this chapter, the course must have been approved prior to the time the course was conducted. A course outline or instructor will be considered approved if the commission does not disapprove same within 30 days after the date of receipt of a complete application.

Section 7. **Education of applicants and licensees.** New. Commission is to establish courses for licenses issued. Courses to be allowed include courses developed by national organizations who specialize in real estate, technology courses related to real estate practice, courses offered at accredited college or university as part of real estate curriculum; and courses offered at national conventions for real estate licensees if host state's licensing board has approved same. Sets forth the areas for which Commission should establish continuing education: real estate sales, property management, community association management, commercial sales. A licensee shall complete at least one of the four core curricula during each biennial licensing period.

Section 8. **License required.** Sets forth when a real estate license is required. Major additions are in subsections (4) through (6) concerning property management and community association management.

Section 9. **Civil penalty for unlicensed or unauthorized practice.** New section. Civil penalty for such activities may not exceed \$5,000 or the amount of gain realized plus \$5,000, whichever is greater. Before entering fine, commission must send written notice of the proposed order to licensee and grant 30-day time period in which licensee may request hearing. Commission may issue subpoenas; to compel attendance and testimony of witnesses and disclosure of evidence. Person aggrieved by levy of civil penalty may file an appeal with superior court. If person does not pay fine within 30 days after entry of order or within 10 days after court enters final judgement, Commission may initiate other action to recover amount of the penalty.

Section 10. **Entitlement to license.**

- (a) Amended to provide that a natural person, ~~only~~ not a business entity, can be licensed. The person applies ~~within~~ six months after passing examination, and has at least 24 months of active and continuous experience as licensed real estate salesperson within 36 months immediately preceding application, and is owner of real estate business or employed as a real estate broker by a foreign or

domestic corporation, partnership, limited partnership, or limited liability company.

- (b) Amended to provide that a natural person, only, not a business entity, can be licensed. The person applies within six months after passing brokers examination and has at least 24 months of active and continuous experience as a licensed real estate salesperson within 36 months immediately preceding application. Adds a foreign or domestic corporation, partnership, limited partnership, or limited liability company as additional forms of business entities that can employ an associate broker as a broker.
- (c) Amended to provide that a natural person, only, not a business entity, can be licensed. The person applies within six months after passing salesperson examination.

Section 11. **Entitlement to license.** New section concerning community association management. Sets forth qualifications for limited license to practice community association management: applies by January 1, 1999; pays required fees; demonstrates to Commission that has been engaged in practice of community association management for at least 24 months before January 1, 1999; and meets other requirements established by the Commission. Person issued a limited community association management license may not use the term "broker", "associate broker", or "salesperson" for any business purpose.

If employed by broker, will be issued associate broker license. If qualifies for broker license and is owner of community association management business or employed as a community association manager by a foreign or domestic corporation, partnership, limited partnership, or limited liability company will be issued broker license. After initial licensing, a person is subject to same requirements existing for other brokers and associate brokers; however, person may practice only community association management and does not qualify as a broker or associate broker for the purpose of engaging in other types of real estate transactions.

Section 12. **Fidelity bond for community association managers.** New section. Requires that if a broker exercises some control over community association funds that the broker must provide evidence of coverage by blanket fidelity insurance. Bond may be in name of broker with association as additional insured or may be in name of association with broker as an additional insured. Bond must cover maximum funds within control of community association manager. Commission may grant exemptions from this section.

Owners' association is only entity allowed to file claim with surety fund against a community association manager. Surety fund will be in first position on these claims.

Community association managers may not exercise control over reserve or investment accounts and may only exercise control over operating accounts under a contract approved by the association's board and duplicate statements must be sent by the licensee and the association.

Section 13. **Content and purpose of examination.** Amends language concerning real estate examinations to add additional topics to be covered

Section 14. **Content and purpose of examination.** Amends to provide that examination fee payment shall be made by applicant directly to national testing service's designated representative before exam taken.

Section 15. **Reexamination.** Minor language change to current law.

Section 16. **Fees.** Adds language covering fees or courses offered by the commission, reinstatement of lapsed license, changes to registered office, course certification and recertification, and instructor approval and renewal of approval.

Section 17. **Reinstatement of lapsed license.** Repeals and reenacts this section. If license has lapsed less than 24 months is eligible for reinstatement when person provides application, license fee and proof of continuing education. If license has lapsed more than 24 months, not eligible for reinstatement and must meet initial licensure requirements.

Section 18. **Inactive license.** Amends by providing that a licensee who wants to become inactive shall complete an inactivation form along with applicable fees. Inactive licensees may receive commissions or other payments for services performed while actively licensed.

Section 19. **Real estate surety fund.** Minor language change.

Section 20. **Location.** Amends. Broker must register with the commission a principal office and branch office(s) and include information as to which licensees practice where.

Section 21. **Change of location.** Amends. Before a broker changes principal office or branch office, broker must notify commission, and pay a fee.

Section 22. **Branch offices.** Allows an associate broker whose principal place of business is at the branch office to directly supervise that branch office and may only supervise one branch office. All branch offices shall be advertised only in the name of the principal office but indication may be made that it is a branch office.

Section 23. **Possession and display of license certificates.** Repealed and reenacted. Broker must display license at broker's principal office. License of each licensee working in broker's principal office must be displayed in principal office. Designated associate broker who is in charge of branch office and certificate of each licensee working in branch office must be displayed in branch office. Such display of license certificates must be in such a manner that they are available for public to view.

Section 24. **Making of transactions.** Amends to provide that an active sales person or associate broker may perform real estate activities only through broker who employs (which includes contracts) that licensee. All money or other proceeds must be turned over to broker or broker's authorized agent.

Section 25. **Listing and management contracts.** Amends to provide all listings and management contracts must be in writing signed by broker or licensee of broker and client or authorized representative.

Section 26. **Record of transaction.** Amends to provide that a broker needs to keep a complete record, for three years, of all real estate transaction in which broker or employed licensee of broker engaged; provide upon request to any principal in a transaction an accounting for money or other property collected or held; keep a separate trust account in a bank into which broker will deposit all earnest money deposits, purchase money, security deposits, contingency funds, collected rental money, rental receipts, or other money collected in trust; if authorized by board of directors of a community association to collect, control, or disburse association funds, keep a separate account in a bank for the funds; make available to commission, on request, records under this section; ensure that records are kept for a minimum of three years even if delivered to another entity.

Section 27. **Record of transaction.** New. A real estate licensee shall keep, for a minimum of three years, complete record of all real estate transactions in which licensee was principal; if the licensee maintains records concerning management or sale of licensee's own properties or client properties separate from the broker's file, these shall also be retained for a minimum of three years; and licensee shall make available to the commission these records as requested.

Establishes the three-year requirement for records maintenance as beginning at the initiation of a transaction and continues until three years after the date a listing agreement ends, a sales transaction costs or otherwise ends, a management contract ends, or another contract or fiduciary obligation ends.

Section 28. **When commission or other fee is earned.** Amends to provide that an obligation to pay a commission or fee to a broker is based upon the terms of a written contract. Licensee has no right under law to enforce collection of commission or other fee unless contract is in writing.

Section 29. **Signs.** Amends. Provides that signs must be maintained at each registered real estate office. Signs must prominently show real estate business name as registered with Commission. If office located in premises with more restrictive sign requirements than those adopted by the Commission, the premise restrictions will control.

Section 30. **Conflict of interest.** Amends. Describes when a real estate licensee has conflict of interest. Provides that conflict must be disclosed in writing to principals and agents of the principals. Describes "conflict of interest" as: having a present personal interest in property which is subject of transactions; being a whole or part owner of business interest in the subject property; representing a person with whom licensee has a financial relationship or who has a present financial interest in the subject property; representing more than one party in a transaction; receiving compensation from someone other than a party to the contract or another party having a financial interest in the transaction.

Section 31. **Disclosure of agency to prospective buyers and sellers.** Makes minor language changes (i.e., "person's" to "licensee"). Adds reference to "dual agency".

Section 32. **Licensed assistants.** New section. Permits a salesperson or associate broker to act as a licensed assistant to a real estate licensee other than the broker who employs the salesperson or associate person if: employment agreement is in writing and conforms to applicable state and federal employment regulations; is approved in writing by the broker of the licensee who employs the assistant; licensee who employs assistant agrees to be responsible for paying assistant's wages and taxes and completing associated forms; broker of licensee who employs the assistant agrees to be liable for actions of licensed assistant.

Section 33. **Prohibited conduct.** Amended. Licensee may not falsely represent to be a member of a franchise or other business association in addition to current provisions. Licensee may not pay a fee or commission for which licensed required under this chapter to an unlicensed person. Broker may pay fee or commission to broker licensed in another state for assisting in transactions. Associate broker or salesperson may accept fee or commission only from employing broker except when acting as a licensed assistant.

Section 34. **Prohibited conduct.** New subsections. Licensee may not knowingly pay any part of fee, commission, or other compensation: to a person not licensed under this chapter except under certain circumstances; to another licensee except through that licensee's broker; or to another licensee knowing that the other licensee intends to pay all or portion of that fee or commission to an unlicensed person. This prohibition does not apply to payment by a licensee