

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11263 SENATE LABOR & COMMERCE

AS 45.63.010. Registration.

(a) A person may not sell or attempt to sell property or services by telephonic means if the person makes substantially the same offer on substantially the same terms to two or more persons, unless the telephonic seller is registered with the Department of Law at least 30 days before the solicitation campaign.

(b) To register under (a) of this section, a person shall file with the department

(1) a notice of intent to engage in a solicitation campaign; a separate notice of intent shall be filed for each solicitation campaign;

(2) an irrevocable consent appointing the department the person's agent for the receipt of service of process in a court action or other proceeding against the person, or the successor in interest of the person, for a violation of this chapter; and

(3) a signed statement that the person has read and will comply with this chapter and the regulations adopted under this chapter.

(c) Registration under (b) of this section is not complete until the telephonic seller receives an acknowledgement from the department that the seller has complied with (b) of this section.

(d) The notice of intent must be on a form provided and established by the department by regulation. The notice of intent must include detailed information about the nature of the solicitation campaign and the identity and business practices of the telephonic seller, including information on the employees, agents, and officers affiliated with the telephonic seller. The notice of intent must disclose criminal convictions, civil judgments, orders, consent decrees, or administrative determinations involving allegations of unfair or deceptive business practices by the telephonic seller.

(e) A person may not provide false information in a notice of intent.

AS 45.63.020. Written contract required.

Until a telephonic seller receives from a buyer a signed, written contract for the purchase, the telephonic seller may not solicit payment for the purchase, charge a credit card account for the purchase, negotiate a check or other commercial instrument intended for payment of the purchase, or accept a cash payment for the purchase. The written contract must notify the buyer of the rights of the buyer under AS 45.63.030(a) and disclose the information required by the department by regulation.

AS 45.63.030. Cancellation or replacement.

(a) Notwithstanding AS 45.01 - AS 45.08, AS 45.12, AS 45.14, and AS 45.29 (Uniform Commercial Code), a telephonic seller shall give the buyer a refund, credit, or replacement, at the option of the buyer, if

(1) the property or services purchased are defective, not as represented, or not received as promised by the seller;

(2) within seven days after receiving the purchased property, the buyer returns the purchased property and makes a written request for the refund, credit, or replacement; or

(3) within seven days after paying for the purchased services and before the services are provided, the buyer makes a written request for the refund or credit.

(b) A return or request is timely under (a) of this section if the return or request is made in person within the seven days or if the return or request is mailed, properly addressed and postmarked, postage prepaid, within the seven days.

(c) Notwithstanding AS 45.01 - AS 45.08, AS 45.12, AS 45.14, and AS 45.29 (Uniform Commercial Code), a purchase of property from a telephonic seller becomes final seven days after receipt of the property, unless the buyer requests a refund, credit, or replacement under (a) of this section, or the telephonic seller fails to obtain the contract required by AS 45.63.020.

(d) A purchase of services from a telephonic seller becomes final seven days after receipt of the contract required by AS 45.63.020, unless the buyer requests a refund or credit under (a) of this section.

#### AS 45.63.040. Prohibited representations.

(a) Unless the telephonic seller is asked for the information by the buyer, the seller may not state or imply that the seller has a license, consent, or other form of permission from the state.

(b) A telephonic seller may not state or imply that

(1) the seller is complying with state law; or

(2) the seller's compliance with the laws of this state or a municipality constitutes approval or endorsement by the state or municipality.

#### AS 45.63.050. Waiver prohibited and void.

A telephonic seller may not request or obtain from a buyer a waiver of the rights of the buyer under this chapter. A waiver of the rights of a buyer under this chapter is void.

#### AS 45.63.060. Criminal penalties.

(a) A person who sells or attempts to sell property or services by telephonic means by making substantially the same offer on substantially the same terms to two or more persons without complying with the registration requirements of AS 45.63.010, or who solicits, or receives, payment for a purchase before receiving the written contract required by AS 45.63.020 is guilty of a class C felony.

(b) A person who violates AS 45.63.030 - 45.63.050 is guilty of a class A misdemeanor.

#### AS 45.63.070. Remedies not exclusive.

The remedies in this chapter are in addition to other remedies available to a buyer or the department.

AS 45.63.080. Exemptions.

This chapter does not apply to a sale or attempted sale

(1) of a security regulated under AS 45.55 or a security that is exempted by AS 45.55.900 from regulation under AS 45.55;

(2) by a person registered with the United States Securities and Exchange Commission when acting within the scope of the person's Securities and Exchange Commission license;

(3) by an issuer, or a subsidiary of an issuer, of a class of securities that is

(A) subject to 15 U.S.C. 78a - 78lll (Securities Exchange Act of 1934); and

(B) either registered under 15 U.S.C. 78a - 78lll (Securities Exchange Act of 1934) or exempt from registration under 15 U.S.C. 78l(g)(2)(A) - (C) or (E) - (H);

(4) by a real estate broker, associate real estate broker, or real estate salesperson licensed under AS 08.88 and acting in a capacity covered by the license;

(5) by a person who has a certificate of registration under AS 08.18 to operate as a contractor and is acting in a capacity covered by the certificate of registration;

(6) by an embalmer or funeral director licensed under AS 08.42 and acting in a capacity covered by the license;

(7) by an insurance agent, general agent, broker, solicitor, or adjuster licensed under AS 21.27 and acting in a capacity covered by the license;

(8) by a person who is primarily soliciting the sale of a subscription to, or advertising in, a newspaper of general circulation;

(9) by a charitable organization or paid solicitor if the organization or solicitor is registered to make charitable solicitations under AS 45.68 and is acting in a capacity that is covered by the registration;

(10) by a person who is primarily soliciting the sale of a magazine, periodical, sound recording, book, or membership in a book or record club

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

(B) that is regulated by the Federal Trade Commission as a negative option plan under 16 CFR 425;

(11) of services provided by a cable television system operating under a franchise issued by a municipality;

(12) by a person who is soliciting for a business, or for an affiliate of a business, that is regulated by the Regulatory Commission of Alaska;

(13) by a person whose solicitation is solely for telephone answering services provided by the person or the person's employer;

(14) of property from a mail order catalog that is published on a regular, periodic basis and that describes or pictures the items for sale and prominently provides the specific price of each item;

(15) by a supervised financial institution or the parent, subsidiary, or affiliate of a supervised financial institution; in this paragraph, "supervised financial institution" means a commercial bank, savings bank, mutual savings bank, trust company, savings and loan association, credit union, industrial loan company, personal property broker, consumer finance lender, commercial finance lender, or other financial institution if the financial institution is subject to regulation by this state or the United States;

(16) by an insurer or the parent, subsidiary, or affiliate of an insurer;

(17) by a person who solicits a sale by a contact by telephonic means without intending to complete the sales presentation during the contact, who does not complete the sales presentation during the contact, and who only completes the sales presentation at a later meeting in person, unless at the later meeting the solicitor attempts to collect payment for property or services delivered before the later meeting;

(18) of an item of personal property, including a food product, that is made by hand by an individual, if the sale or attempted sale of the item is made by the individual who made the item; in this paragraph, "made by hand" includes the use of ordinary household devices if the majority of the value of the item is added by the labor of the individual.

#### AS 45.63.090. Regulations.

The department shall adopt regulations under AS 44.62 (Administrative Procedure Act) to implement this chapter.

#### AS 45.63.100. Definitions.

In this chapter,

(1) "buyer" means a person who buys from or is solicited by a telephonic seller;

(2) "department" means the Department of Law;

(3) "notice of intent" means the notice of intent required by AS 45.63.010 to engage in a solicitation campaign;

(4) "solicitation campaign" means a sale or attempt to sell property or services by telephonic means by making substantially the same offer on substantially the same terms to two or more persons;

(5) "telephonic means" means a telephone or another method using telephone lines, and includes a facsimile machine and electronic communication between electronic computing devices; "telephonic means" includes a letter, postcard, notice, or other written communication advising, requesting, motivating, or otherwise encouraging a person to contact a seller by telephonic means;

(6) "telephonic seller" means a person who is required to be registered under AS 45.63.010.

February 18, 2004

## Do-Not-Call Registry for Telemarketing Upheld in Court

By DAVID STOUT

WASHINGTON, Feb. 17 - A federal appeals court on Tuesday upheld the government's right to help people shield themselves from unwanted telemarketing calls.

A panel of the United States Court of Appeals for the Tenth Circuit in Denver ruled that a do-not-call registry created by the federal government last fall helped to combat abusive telemarketing and "prevents the invasion of consumer privacy."

"The challenged regulations do not hinder any business's ability to contact consumers by other means, such as through direct mailings or other forms of advertising," the ruling said.

The telemarketing industry said it was considering an appeal to the United States Supreme Court. But the Supreme Court may not feel the need to take the case because it does not involve any conflicts among circuit courts, said Gregory A. Castanias, a Washington lawyer who specializes in appeals involving constitutional issues and technology law.

The chairman of the Federal Trade Commission, Timothy J. Muris, said Tuesday that the do-not-call registry had been very successful and that "we are pleased that this popular program, like America's dinner hour, will not be interrupted."

H. Robert Wientzen, president and chief executive of the Direct Marketing Association, which represents nearly 5,000 companies in the United States and elsewhere, said an appeal to the full Tenth Circuit or to the Supreme Court was possible. Meanwhile, he said, his group will follow the voluntary policy it has had for 18 years: "If people don't want to be called, we don't want to call them."

Since the F.T.C. and the Federal Communications Commission established the registry last fall, it has grown enormously. It now includes more than 50 million telephone numbers.

Telemarketing interests have maintained that the calls are a legitimate business technique, and that the new federal regulations could cost as many as 2 million jobs in an industry that now has 6.5 million workers. But the court was not swayed. "Just as a consumer can avoid door-to-door peddlers by placing a 'no solicitation' sign in his or her front yard, the do-not-call registry lets consumers avoid unwanted sales pitches that invade the home via telephone," Judge David M. Ebel wrote.

The appeals court set aside a ruling by Federal District Judge Edward W. Nottingham of Denver, who had found that the list violated the right to free speech. The appeals court said that the First Amendment did not prevent the government from giving consumers the do-not-call option. It had allowed the government to enforce the program pending the outcome of the case decided Tuesday.

The ruling combined the government's appeal of Judge Nottingham's decision with two related cases. One was a case brought against the Federal Communications Commission by Denver telemarketers, and the other was an appeal by the Federal Trade Commission of an Oklahoma ruling that said it had no authority to create and enforce a do-not-call list.

FOR IMMEDIATE RELEASE

CONTACT: David Schneier, 202-434-2561

AARP REACTION STATEMENT ON NATIONAL DO NOT CALL LIST RULING

AARP is very pleased with the Tenth Circuit's ruling today in upholding the constitutionality of the National Do Not Call Registry. The ruling of the court adheres closely to the AARP amicus brief filed in support of the do not call legislation.

This ruling affirms the long and hard campaign that AARP has waged at the state and national level to put control of the telephone back where it belongs – with the consumer.

AARP's survey of older telemarketing fraud victims revealed they find it almost impossible to tell the difference between fraudulent and legitimate sales calls, underscoring the importance of allowing them to stop calls in the first place.

"Baby boomers have been called the most savvy and informed consumers of any generation of Americans," said AARP Foundation Litigation senior attorney Deborah Zuckerman. "Yet many of them, like their parents and their children, have been victims of an unrelenting deluge of unwanted telemarketing sales calls."

AARP will continue to advocate for state laws that compliment the federal rule in scope and jurisdiction.

# # #

Public Law 108-10  
108th Congress

An Act

To authorize the Federal Trade Commission to collect fees for the implementation and enforcement of a "do-not-call" registry, and for other purposes.

Mar. 11, 2003  
[H.R. 395]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Do-Not-Call Implementation Act".

Do-Not-Call  
Implementation  
Act.  
15 USC 6101  
note.

SEC. 2. TELEMARKETING SALES RULE; DO-NOT-CALL REGISTRY FEES.

15 USC 6101  
note.

The Federal Trade Commission may promulgate regulations establishing fees sufficient to implement and enforce the provisions relating to the "do-not-call" registry of the Telemarketing Sales Rule (16 CFR 310.4(b)(1)(iii)), promulgated under the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101 et seq.). Such regulations shall be promulgated in accordance with section 553 of title 5, United States Code. Fees may be collected pursuant to this section for fiscal years 2003 through 2007, and shall be deposited and credited as offsetting collections to the account, Federal Trade Commission—Salaries and Expenses, and shall remain available until expended. No amounts shall be collected as fees pursuant to this section for such fiscal years except to the extent provided in advance in appropriations Acts. Such amounts shall be available for expenditure only to offset the costs of activities and services related to the implementation and enforcement of the Telemarketing Sales Rule, and other activities resulting from such implementation and enforcement.

SEC. 3. FEDERAL COMMUNICATIONS COMMISSION DO-NOT-CALL REGULATIONS.

15 USC 6101  
note.

Not later than 180 days after the date of enactment of this Act, the Federal Communications Commission shall issue a final rule pursuant to the rulemaking proceeding that it began on September 18, 2002, under the Telephone Consumer Protection Act (47 U.S.C. 227 et seq.). In issuing such rule, the Federal Communications Commission shall consult and coordinate with the Federal Trade Commission to maximize consistency with the rule promulgated by the Federal Trade Commission (16 CFR 310.4(b)).

Deadline.

SEC. 4. REPORTING REQUIREMENTS.

15 USC 6101  
note.  
Deadline.

(a) REPORT ON REGULATORY COORDINATION.—Within 45 days after the promulgation of a final rule by the Federal Communications Commission as required by section 3, the Federal Trade Commission and the Federal Communications Commission shall each transmit to the Committee on Energy and Commerce of the

House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report which shall include—

(1) an analysis of the telemarketing rules promulgated by both the Federal Trade Commission and the Federal Communications Commission;

(2) any inconsistencies between the rules promulgated by each such Commission and the effect of any such inconsistencies on consumers, and persons paying for access to the registry; and

(3) proposals to remedy any such inconsistencies.

(b) ANNUAL REPORT.—For each of fiscal years 2003 through 2007, the Federal Trade Commission and the Federal Communications Commission shall each transmit an annual report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report which shall include—

(1) an analysis of the effectiveness of the “do-not-call” registry as a national registry;

(2) the number of consumers who have placed their telephone numbers on the registry;

(3) the number of persons paying fees for access to the registry and the amount of such fees;

(4) an analysis of the progress of coordinating the operation and enforcement of the “do-not-call” registry with similar registries established and maintained by the various States;

(5) an analysis of the progress of coordinating the operation and enforcement of the “do-not-call” registry with the enforcement activities of the Federal Communications Commission pursuant to the Telephone Consumer Protection Act (47 U.S.C. 227 et seq.); and

(6) a review of the enforcement proceedings under the Telemarketing Sales Rule (16 CFR 310), in the case of the Federal Trade Commission, and under the Telephone Consumer Protection Act (47 U.S.C. 227 et seq.), in the case of the Federal Communications Commission.

Approved March 11, 2003.

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**LEGISLATIVE HISTORY—H.R. 395:**

HOUSE REPORTS: No. 108-8 (Comm. on Energy and Commerce).

CONGRESSIONAL RECORD, Vol. 149 (2003):

Feb. 12, considered and passed House.

Feb. 13, considered and passed Senate.



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TITLE 16--COMMERCIAL PRACTICES

CHAPTER I--FEDERAL TRADE COMMISSION

PART 310--TELEMARKETING SALES RULE--Table of Contents

Sec. 310.1 Scope of regulations in this part.

This part implements the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101-6108.

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TITLE 16--COMMERCIAL PRACTICES

CHAPTER I--FEDERAL TRADE COMMISSION

PART 310--TELEMARKETING SALES RULE--Table of Contents

Sec. 310.2 Definitions.

(a) Acquirer means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

(b) Attorney General means the chief legal officer of a State.

(c) Cardholder means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(d) Commission means the Federal Trade Commission.

(e) Credit means the right granted by a creditor to a debtor to defer payment

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of debt or to incur debt and defer its payment.

(f) Credit card means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(g) Credit card sales draft means any record or evidence of a credit card transaction.

(h) Credit card system means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(i) Customer means any person who is or may be required to pay for goods or services offered through telemarketing.

(j) Investment opportunity means anything, tangible or intangible, that is offered, offered for sale, sold, or traded based wholly or in part on representations, either express or implied, about past, present, or future income, profit, or appreciation.

(k) Material means likely to affect a person's choice of, or conduct regarding, goods or services.

(l) Merchant means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services.

(m) Merchant agreement means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services.

(n) Outbound telephone call means a telephone call initiated by a telemarketer to induce the purchase of goods or services.

(o) Person means any individual, group, unincorporated association,

limited or general partnership, corporation, or other business entity.

(p) Prize means anything offered, or purportedly offered, and given, or purportedly given, to a person by chance. For purposes of this definition, chance exists if a person is guaranteed to receive an item and, at the time of the offer or purported offer, the telemarketer does not identify the specific item that the person will receive.

(q) Prize promotion means:

- (1) A sweepstakes or other game of chance; or
- (2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize or purported prize.

(r) Seller means any person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.

(s) State means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(t) Telemarketer means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer.

(u) Telemarketing means a plan, program, or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which: Contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term further solicitation does not include providing the customer with information about, or attempting to sell, any other item included in the same catalog which prompted the customer's call or in a substantially similar catalog.

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TITLE 16--COMMERCIAL PRACTICES

CHAPTER I--FEDERAL TRADE COMMISSION

PART 310--TELEMARKETING SALES RULE--Table of Contents

Sec. 310.3 Deceptive telemarketing acts or practices.

(a) Prohibited deceptive telemarketing acts or practices. It is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before a customer pays \1\ for goods or services offered, failing to disclose, in a clear and conspicuous manner, the following material information:

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\1\ When a seller or telemarketer uses, or directs a customer to use, a courier to transport payment, the seller or telemarketer must make the disclosures required by Sec. 310.3(a)(1) before sending a courier to pick up payment or authorization for payment, or directing a customer to have a courier pick up payment or authorization for payment.  
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(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer; \2\  
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\2\ For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 et seq., and Regulation Z, 12 CFR part 226, compliance with the disclosure requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with Sec. 310.3(a)(1)(i) of this Rule.  
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(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;

(iii) If the seller has a policy of not making refunds, cancellations, exchanges, or repurchases, a statement informing the customer that this is the seller's policy; or, if the seller or telemarketer makes a representation about a refund, cancellation, exchange, or repurchase policy, a statement of all material terms and conditions of such policy;

(iv) In any prize promotion, the odds of being able to receive the prize, and if the odds are not calculable in advance, the factors used in calculating the odds; that no purchase or payment is required to win a prize or to participate in a prize promotion; and the no purchase/no payment method of participating in the prize promotion with either instructions on how to participate or an address or local or toll-free telephone number to which customers may write or call for information on how to participate; and

(v) All material costs or conditions to receive or redeem a prize

that is the subject of the prize promotion;

(2) Misrepresenting, directly or by implication, any of the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer;

(ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;

(iii) Any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer;

(iv) Any material aspect of the nature or terms of the seller's refund, cancellation, exchange, or repurchase policies;

(v) Any material aspect of a prize promotion including, but not limited to, the odds of being able to receive a prize, the nature or value of a prize, or that a purchase or payment is required to win a prize or to participate in a prize promotion;

(vi) Any material aspect of an investment opportunity including, but not limited to, risk, liquidity, earnings potential, or profitability; or

(vii) A seller's or telemarketer's affiliation with, or endorsement by, any government or third-party organization;

(3) Obtaining or submitting for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, share, or similar account, without that person's express verifiable authorization. Such authorization shall be deemed verifiable if any of the following means are employed:

(i) Express written authorization by the customer, which may include the customer's signature on the negotiable instrument; or

(ii) Express oral authorization which is tape recorded and made available upon request to the customer's bank and which evidences clearly both the customer's authorization of payment for the goods and services that are the subject of the sales offer and the customer's receipt of all of the following information:

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(A) The date of the draft(s);

(B) The amount of the draft(s);

(C) The payor's name;

(D) The number of draft payments (if more than one);

(E) A telephone number for customer inquiry that is answered during normal business hours; and

(F) The date of the customer's oral authorization; or

(iii) Written confirmation of the transaction, sent to the customer prior to submission for payment of the customer's check, draft, or other form of negotiable paper, that includes:

(A) All of the information contained in Secs. 310.3(a)(3)(ii)(A)-(F); and

(B) The procedures by which the customer can obtain a refund from the seller or telemarketer in the event the confirmation is inaccurate; and

(4) Making a false or misleading statement to induce any person to pay for goods or services.

(b) Assisting and facilitating. It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates Secs. 310.3(a) or (c), or Sec. 310.4 of this Rule.

(c) Credit card laundering. Except as expressly permitted by the

applicable credit card system, it is a deceptive telemarketing act or practice and a violation of this Rule for:

(1) A merchant to present to or deposit into, or cause another to present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant;

(2) Any person to employ, solicit, or otherwise cause a merchant or an employee, representative, or agent of the merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) Any person to obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

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TITLE 16--COMMERCIAL PRACTICES

CHAPTER I--FEDERAL TRADE COMMISSION

PART 310--TELEMARKETING SALES RULE--Table of Contents

Sec. 310.4 Abusive telemarketing acts or practices.

(a) Abusive conduct generally. It is an abusive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Threats, intimidation, or the use of profane or obscene language;

(2) Requesting or receiving payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until:

(i) The time frame in which the seller has represented all of the goods or services will be provided to that person has expired; and

(ii) The seller has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved. Nothing in this Rule should be construed to affect the requirement in the Fair Credit Reporting Act, 15 U.S.C. 1681, that a consumer report may only be obtained for a specified permissible purpose;

(3) Requesting or receiving payment of any fee or consideration from a person, for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not apply to goods or services provided to a person by a licensed attorney; or

(4) Requesting or receiving payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in

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obtaining or arranging a loan or other extension of credit for a person.

(b) Pattern of calls. (1) It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in, the following conduct:

(i) Causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number; or

(ii) Initiating an outbound telephone call to a person when that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered.

(2) A seller or telemarketer will not be liable for violating Sec. 310.4(b)(1)(ii) if:

(i) It has established and implemented written procedures to comply with Sec. 310.4(b)(1)(ii);

(ii) It has trained its personnel in the procedures established pursuant to Sec. 310.4(b)(2)(i);

(iii) The seller, or the telemarketer acting on behalf of the seller, has maintained and recorded lists of persons who may not be contacted, in compliance with Sec. 310.4(b)(1)(ii); and

(iv) Any subsequent call is the result of error.

(c) Calling time restrictions. Without the prior consent of a person, it is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in outbound telephone calls to a person's residence at any time other than between 8 a.m. and 9 p.m. local time at the called person's location.

(d) Required oral disclosures. It is an abusive telemarketing act or practice and a violation of this Rule for a telemarketer in an outbound telephone call to fail to disclose promptly and in a clear and conspicuous manner to the person receiving the call, the following information:

(1) The identity of the seller;

(2) That the purpose of the call is to sell goods or services;

(3) The nature of the goods or services; and

(4) That no purchase or payment is necessary to be able to win a prize or participate in a prize promotion if a prize promotion is offered. This disclosure must be made before or in conjunction with the description of the prize to the person called. If requested by that person, the telemarketer must disclose the no-purchase/no-payment entry method for the prize promotion.

[Code of Federal Regulations]  
[Title 16, Volume 1]  
[Revised as of January 1, 2003]  
From the U.S. Government Printing Office via GPO Access  
[CITE: 16CFR310.5]

[Page 377-378]

TITLE 16--COMMERCIAL PRACTICES

CHAPTER I--FEDERAL TRADE COMMISSION

PART 310--TELEMARKETING SALES RULE--Table of Contents

Sec. 310.5 Recordkeeping requirements.

(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

(1) All substantially different advertising, brochures, telemarketing scripts, and promotional materials;

(2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of \$25.00 or more;

(3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services;

\3\  
-----

\3\ For offers of consumer credit products subject to the Truth in Lending Act, 15 U.S.C. 1601 et seq., and Regulation Z, 12 CFR part 226, compliance with the recordkeeping requirements under the Truth in Lending Act, and Regulation Z, shall constitute compliance with Sec. 310.5(a)(3) of this Rule.  
-----

(4) The name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees directly involved in telephone sales; provided, however, that if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and

(5) All verifiable authorizations required to be provided or received under this Rule.

(b) A seller or telemarketer may keep the records required by Sec. 310.5(a) in any form, and in the manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required by Sec. 310.5(a) shall be a violation of this Rule.

(c) The seller and the telemarketer calling on behalf of the seller may, by

[[Page 378]]

written agreement, allocate responsibility between themselves for the recordkeeping required by this section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern, and the seller or telemarketer, as the case may be, need not keep records that duplicate those of the other. If the agreement is unclear as to who must maintain any required record(s), or if no such

agreement exists, the seller shall be responsible for complying with Secs. 310.5(a)(1)-(3) and (5); the telemarketer shall be responsible for complying with Sec. 310.5(a)(4).

(d) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this section. In the event of any sale, assignment, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records required under this section.

[Code of Federal Regulations]  
[Title 16, Volume 1]  
[Revised as of January 1, 2003]  
From the U.S. Government Printing Office via GPO Access  
[CITE: 16CFR310.6]

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TITLE 16--COMMERCIAL PRACTICES

CHAPTER I--FEDERAL TRADE COMMISSION

PART 310--TELEMARKETING SALES RULE--Table of Contents

Sec. 310.6 Exemptions.

The following acts or practices are exempt from this Rule:

(a) The sale of pay-per-call services subject to the Commission's Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992, 16 CFR part 308;

(b) The sale of franchises subject to the Commission's Rule entitled Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, 16 CFR part 436;

(c) Telephone calls in which the sale of goods or services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the seller;

(d) Telephone calls initiated by a customer that are not the result of any solicitation by a seller or telemarketer;

(e) Telephone calls initiated by a customer in response to an advertisement through any media, other than direct mail solicitations; provided, however, that this exemption does not apply to calls initiated by a customer in response to an advertisement relating to investment opportunities, goods or services described in Secs. 310.4(a) (2) or (3), or advertisements that guarantee or represent a high likelihood of success in obtaining or arranging for extensions of credit, if payment of a fee is required in advance of obtaining the extension of credit;

(f) Telephone calls initiated by a customer in response to a direct mail solicitation that clearly, conspicuously, and truthfully discloses all material information listed in Sec. 310.3(a)(1) of this Rule for any item offered in the direct mail solicitation; provided, however, that this exemption does not apply to calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, goods or services described in Secs. 310.4(a) (2) or (3), or direct mail solicitations that guarantee or represent a high likelihood of success in obtaining or arranging for extensions of credit, if payment of a fee is required in advance of obtaining the extension of credit; and

(g) Telephone calls between a telemarketer and any business, except calls involving the retail sale of nondurable office or cleaning supplies; provided, however, that Sec. 310.5 of this Rule shall not apply to sellers or telemarketers of nondurable office or cleaning supplies.

[Code of Federal Regulations]  
[Title 16, Volume 1]  
[Revised as of January 1, 2003]  
From the U.S. Government Printing Office via GPO Access  
[CITE: 16CFR310.7]

[Page 378-379]

TITLE 16--COMMERCIAL PRACTICES

CHAPTER I--FEDERAL TRADE COMMISSION

PART 310--TELEMARKETING SALES RULE--Table of Contents

Sec. 310.7 Actions by States and private persons.

(a) Any attorney general or other officer of a State authorized by the State to bring an action under the Telemarketing and Consumer Fraud and Abuse Prevention Act, and any private person who brings an action under that Act, shall serve written notice of its action on the Commission, if feasible, prior to its initiating an action under this Rule. The notice shall be sent to the Office of the Director, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, and shall include a copy of the State's or private person's complaint and any other pleadings to be filed with the court. If prior notice is not feasible, the State or private person shall serve the Commission with the required notice immediately upon instituting its action.

(b) Nothing contained in this section shall prohibit any attorney general or

[[Page 379]]

other authorized State official from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of such State.

[Code of Federal Regulations]  
[Title 16, Volume 1]  
[Revised as of January 1, 2003]  
From the U.S. Government Printing Office via GPO Access  
[CITE: 16CFR310.8]

[Page 379]

TITLE 16--COMMERCIAL PRACTICES

CHAPTER I--FEDERAL TRADE COMMISSION

PART 310--TELEMARKETING SALES RULE--Table of Contents

Sec. 310.8 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

HB

29

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

# SENATE COMMITTEE REPORT

E: 3/5/04

FURTHER: Judiciary

DATE TURNED IN TO OFFICE: 4/29/04

for & Commerce Committee considered:  
**FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 29(JUD) am**

## HB 29 REAL PROPERTY TRANSACTIONS/LICENSEES

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

and recommends:

- be replaced with S CS CSSS HB 29 (LEC)
- adopt previous CS
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

<b>Senate Bill:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<b>House Bill:</b>	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	Indet.	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	Indet.	FN#
DCED	2/2/04		✓		1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	NO REC	AMEND
	✓			
				X
			X	
CHAIR:			✓	

PRIORITY - RUSH  
4/21/2004

Members of the Senate Labor and Commerce Committee.  
Members of the Senate Judiciary Committee:  
Members of the Senate Judiciary Committee:

4/21/04  
Newly CONDENSED  
SUMMARY

My name is Linda Garrison and I am a licensed Real Estate Broker in Alaska and I intend to speak on HB 29. I RESPECTFULLY ASK THAT THE SENATE LABOR AND COMMERCE NOT PASS THIS BILL OUT OF COMMITTEE. MY REASONS CONTINUE BELOW. Please note that the American Homeowners Grassroots Alliance has come out against HB 29 and the concept of Designated Agency (as they have in other states). And, although I cannot speak for AKPIRG, they have come out with concerns on Designated Agency also. HB 29 is one of the most dangerous bills to be put forward affecting the Alaskan consumer this legislative session, while self-serving for real estate brokerages and their agents.

HB 29 deals with the abrogation of common law of agency, limitation of protection for the Alaskan home-selling and Alaskan home-buying public, limitation of legal recourse for the Alaskan consumer; increased protection/decreased liability for brokerages & agents; establishment of designated agency (actually, undisclosed dual agency) and establishment of a "neutral facilitator position.

Salient points:

1. The Alaskan home-selling and home-buying public are poorly served by the current requirement for only 20 hours of education and passage of a single test for a person to become a real estate agent. So, someone with only 20 hours of education can write a contract affecting what is quite possibly the largest financial decision in a person's life. So, the consumer is already lacking sufficient protection and HB 29 proposes to remove what still currently exists.
2. HB 29 basically abrogates the Common Law of Agency. It is this Common Law that creates the fiduciary duties currently owed by the agents to the Alaskan consumer. Such fiduciary duties include, but not limited to – confidentiality, accountability, loyalty, obedience, diligence, etc. The Common Law of Agency has functioned for hundreds of years; abrogation of common law (even limitation of it) greatly opens the doors for harm to occur to the consumer. The Common Law of Agency allows for seller representation, buyer representation, and dual agency (dual agency is a viable form of representation if explained correctly). Understanding of agency appeared to have no problem with the consumer or the agents, until in a major lawsuit, one agent was found to have been a dual agent without the legally statutory explanation. Only then was there a problem understanding agency. I only mention this because it is important to know that this bill is really an industry protection bill – benefits the agents and harms the consumer.
3. With HB 29 the consumer's legal recourse is limited while protection for the agents and the brokerages is increased.
4. HB 29 proposes that designated agency will "do away with problems of dual agency." That is simply not true. One type of current Dual agency exists when one agent in a brokerage represents the buyer and another agent in the same firm represents the seller. Currently, the Alaskan consumer is protected with the Common Law of Agency. Now, with designated agency, the broker appoints one agent to represent the seller and another agent to represent the buyer. Sound familiar? DESIGNATED AGENCY IS NOTHING

MORE THAN UNDISCLOSED DUAL AGENCY, BUT WITH DESIGNATED AGENCY, THE CONSUMER LOSES THE PROTECTION OF THE COMMON LAW OF AGENCY.

5. Then, HB 29 also allows a "neutral facilitator" type of position. This means the agents – or there will no longer be agents with the abrogation of the Common Law of Agency (we will be called licensees) will just be order takers. Senators, this is not a fast food restaurant, this is an issue that is dealing with a huge financial commitment and involvement for buyers and sellers.

There is no rush to pass HB 29 this session. There were no public forums held. There was no time for public comment. This bill has been put on the fast track and it is simply not a good bill for the Alaskan public. WITH THE LIMITATION OF ONLY 20 HOURS OF EDUCATION NEEDED TO SECURE A REAL ESTATE LICENSE, THE ALASKAN CONSUMER'S PROTECTION BECOMES NIL WITH HB 29 - ABROGATION OF COMMON LAW, INCREASED PROTECTION FOR THE AGENTS AND THE BROKERAGES, LIMITATION OF THE CONSUMER'S LEGAL RECOURSES THAT SHOULD BE AVAILABLE, CREATION OF A NEW BUZZWORD – DESIGNATED AGENCY - WHICH IS NOTHING MORE THAN UNDISCLOSED AGENCY AND THEN ANOTHER PROTECTION POSITION THAT IS CREATED – NEUTRAL FACILITATOR.

HB 29 IS NOT GOOD FOR THE ALASKAN HOME-BUYING AND HOME-SELLING PUBLIC. I RESPECTFULLY REQUEST THAT THE SENATE LABOR AND COMMERCE NOT PASS THIS BILL FROM COMMITTEE.

Thank you for your consideration. I may be reached at 907-272-8937 in my Anchorage office.

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSSHB 29(JUD) am

- 1 Page 5, line 11:  
2 Delete all material.  
3 Insert "to imply a duty to  
4 (1) investigate  
5 (A) a matter that the licensee has not agreed to investigate; or  
6 (B) a matter that is not known by the seller, prospective buyer,  
7 lessor, prospective lessee, or licensee; or  
8 (2) disclose, unless otherwise provided by law, events that have  
9 occurred on the real estate that might affect whether a person wants to buy or lease the  
10 real estate."

AMENDMENT

OFFERED IN THE SENATE

TO: CSSH B 29(JUD) am

- 1 Page 7, lines 15 - 16:
- 2 Delete "if the licensee's broker maintains"
- 3 Insert "but the licensee's broker has a duty to maintain the"

# ALASKA STATE LEGISLATURE

## House of Representatives

### COMMITTEE ASSIGNMENTS:

RULES COMMITTEE, CHAIRMAN  
LABOR & COMMERCE COMMITTEE, MEMBER  
LEGISLATIVE COUNCIL, MEMBER  
SPECIAL COMMITTEE ON OIL & GAS, MEMBER  
LEGISLATIVE ETHICS COMMITTEE, MEMBER

website: <http://www.akRepublicans.org/rokeberg/>



INTERIM  
716 WEST 4TH AVENUE, SUITE 300  
ANCHORAGE, AK 99501  
PHONE: (907) 269-0117  
FAX: (907) 269-0119

SESSION  
ALASKA STATE CAPITOL  
JUNEAU, AK 99801-1182  
PHONE: (907) 465-4968  
FAX: (907) 465-2040

## Representative Norman Rokeberg

e-mail: [Representative\\_Norman\\_Rokeberg@legis.state.ak.us](mailto:Representative_Norman_Rokeberg@legis.state.ak.us)

**Real Property Transactions/Licensees**  
Sponsor Statement for CSSSHB 29 (JUD) am  
Last Updated: March 29, 2004

**“An Act relating to real estate licenses and real estate transactions; and providing for an effective date.”**

Alaskan consumers and our state's real estate industry have not been well served by the current agency provision of the real estate statute. Practical application of this statute is unworkable. CSSSHB (JUD) am has been proposed to address the problems created for the real estate licensees by the current statute and to provide consumers with protection and written information about the duties and obligations of a real estate licensee.

Working with an Agency Task Force, formed by the real estate industry, I have developed suggested changes to the statutes that would give real estate licensees some guidelines and standards for operating procedures. CSSSHB 29 (JUD) am is the product of their hard work.

The main changes to law contained in CSSSHB 29 (JUD) am are:

- Replacing agency with the types of relationships a licensee may have with a buyer and/or seller.
- Allowing a licensee to work with both the buyer and seller in the same transaction as a neutral licensee. This replaces “dual agency” and sets forth the duties of a neutral licensee explicitly.
- Specifying the duties owed by a real estate licensee in all relationships, as well as the duties owed by a licensee when representing an individual.
- Clarifying what acts do not constitute a conflict of interest.
- Allowing a buyer and seller to be represented by different licensees within the same office, without creating a dual agency transaction.
- Requiring a broker to adopt a written policy identifying and describing relationships into which their licensee may enter.
- Requiring the Real Estate Commission to adopt regulations that establish:
  - Guidelines to assist brokers in adopting their written policies.
  - A written consumer information pamphlet, to be paid for by the brokers, outlining the duties of the types of licensee relationships.

This legislation informs and protects consumers and assists the commerce of our state. This bill is fully endorsed by the real estate community.

Your positive consideration of this legislation is appreciated.

## Sponsor Statement

# LEGAL SERVICES

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

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


State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 20, 2004

**SUBJECT:** Sectional summary of CSSSHB 29(JUD) am  
(Work Order No. 23-LS0189\B.A)

**TO:** Representative Norman Rokeberg  
Attn: Amanda

**FROM:**  Theresa L. Bannister  
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.

**Section 1.** Provides legislative findings and intent for the bill.

**Section 2.** Authorizes the real estate commission to investigate and take administrative action when there is a violation of the new article proposed by this bill.

**Section 3.** Requires a licensee with a conflict to disclose the conflict to persons adversely affected by the conflict and their licensees and to confirm the conflict in writing to the persons or their licensees as soon as possible after identification of the conflict. Requires a license to advise the person verbally of the conflict and to begin any written statement of the conflict with certain words.

**Section 4.** Limits the application of AS 08.88.396 to acts that occur before the effective date of this new subsection.

**Section 5.** Removes AS 08.88.396 from the list of sections whose violation triggers a misdemeanor penalty.

**Section 6.** Establishes a new article relating to licensee relationships and duties.

Sec. 08.88.600. Identifies the types of relationships a licensee may have with parties to real estate transactions.

Sec. 08.88.605. Allows for a licensee to have different licensee relationships with a party in separate transactions if the licensee complies with the new article when establishing the relationships.

**Sectional Analysis**

Sec. 08.88.610. Allows a licensee to obtain preauthorization to act as a neutral licensee. Requires a licensee to obtain written consent to act as a neutral licensee in certain circumstances before the licensee shows the real estate.

Sec. 08.88.615. Identifies the duties that a licensee owes to each person to whom the licensee provides specific assistance.

Sec. 08.88.620. Identifies the duties that a licensee owes to a person whom the licensee represents.

Sec. 08.88.625. With two exceptions, prohibits a licensee or a person to whom a licensee provides specific assistance from waiving the duties identified under secs. 08.88.615 and 08.88.620.

Sec. 08.88.630. Describes the duties that a licensee does not owe to a person.

Sec. 08.88.635. Describes certain acts that do not amount to adverse or detrimental acts by a licensee or to conflicts of interest for the licensee.

Sec. 08.88.640. Provides some guidelines for the designated licensee relationship. Limits the persons to whom the duties, obligations, and responsibilities of the relationship extend and to whom knowledge is imputed. Allows a broker to have different designated licensees working for different parties in the same transaction. Allows a designated licensee to represent or provide specific assistance to the same person in different transactions even though the person has a different interest in each transaction.

Sec. 08.88.645. Identifies the duties of a neutral licensee.

Sec. 08.88.650. States that a neutral licensee's knowledge or information about one client is not imputed to other clients or to other licensees working for the same broker.

Sec. 08.88.655. Establishes certain rules relating to the compensation received by a broker. Allows a broker to be compensated by any party to a transaction, by a third party, or by parties splitting the compensation. States that payment will not be construed as establishing a relationship. In specified circumstances requires a licensee to disclose which party is anticipated to compensate the brokers. Requires the contract to indicate who is compensating the brokers.

Sec. 08.88.660. Establishes when a licensee relationship begins and ends, the effect of termination on other contractual rights, and the licensee's duties after termination.

Sec. 08.88.665. States that a seller, buyer, lessor, or lessee is not liable for an act, error, or omission of a licensee that arises out of the licensee relationship, except in two described circumstances.

Representative Norman Rokeberg  
March 20, 2004  
Page 3

Sec. 08.88.670. Establishes that, unless agreed to otherwise in writing, a seller, buyer, lessor, or lessee is not considered to know a fact known by the person's licensee unless the fact is actually known by the person. Establishes that, unless agreed to otherwise in writing, a licensee does not have knowledge or notice of a fact that is not actually known by the licensee.

Sec. 08.88.675. States that the new article abrogates the common law of agency in real estate transactions to the extent the common law is inconsistent with the new article.

Sec. 08.88.680. Prohibits a person from bringing an action against a neutral licensee for making a required or permitted disclosure. Addresses a plaintiff's remedy in a civil action against a licensee for failing to comply with the new article.

Sec. 08.88.685. Requires a broker to adopt a written policy identifying and describing the relationships the broker and the broker's licensees may engage in. Directs the real estate commission to adopt regulations relating to broker guidelines, the commission's pamphlet on licensee duties, and a broker's supervision of licensees. Requires brokers to produce and pay the production costs of the pamphlet.

Sec. 08.88.690. Establishes three exemptions from the article's signature requirements.

Sec. 08.88.695. Defines certain terms for the new article.

**Section 7.** Provides authority for the real estate commission to adopt regulations before the rest of the Act takes effect (because this section take effect before the rest of the Act; see bill sec. 9).

**Section 8.** Makes most of the bill effective January 1, 2005.

**Section 9.** Gives sec. 7 of this Act an immediate effective date.

If I may be of further assistance, please advise.

TLB:lmb  
04-076.lmb

DRAFT

## Your rights when dealing with a real estate licensee.

Adopted by the (date)

**DRAFT**

Alaska Real Estate Commission

**DRAFT**

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The real estate industry has a significant effect on the economy of Alaska; therefore it is in the best interest of the public to put into law the relationships between real estate licensees and people who wish to use their services.

This brochure describes your legal rights in dealing with a real estate licensee. Please read it carefully before signing it or any document.

First, a definition for specific assistance:

*Includes but is not limited to, a) asking questions regarding confidential information for a real estate transaction; b) showing property selected for your specific needs or desires; c) preparing a written offer; d) entering into a personal services contract. Specific assistance does not include: a) hosting an open house; b) casual conversation regarding real estate; c) receiving calls and electronic inquires on the licensee's advertisements; d) providing information regarding a piece of real estate; e) setting an initial appointment to show a piece of property; f) receiving unsolicited information from a buyer or lessee before or after disclosure of a real estate relationship.)*

### Duties owed to you by the licensee in all relationships:

Unless additional duties are agreed to by you and the licensee in a written, signed document, and regardless of the type of licensee relationship, a licensee owes the following duties to each person to whom the licensee provides specific assistance

- 1 The exercise of reasonable skill and care
- 2 Honest and good faith dealing
- 3 The presentation of all written offers and other written communication in a timely manner. This is regardless if the real estate is subject to an existing contract, or if the person is already a party to an existing contract
- 4 Except as provided elsewhere in the law, the disclosure of all material information known by the licensee and not apparent or readily ascertainable to you regarding the physical condition of real estate if the information substantially adversely affects the real estate or your ability to perform your obligations in the real estate transaction or if the information would materially impair or defeat the purpose of the real estate transaction. *This disclosure requirement does not require the licensee to disclose a fact or suspicion that the real estate or neighboring real estate is or was the site of a murder, suicide, or other death, rape or other sexual crime, assault or other violent crime, burglary, illegal drug activity, gang-related activity, political activity, religious activity, anticipated development, alleged supernatural activity, or another act, occurrence, or use that*

*(Continued on page 2)*

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**Disclosure Document**

(Continued from page 1)

does not adversely affect the physical condition or title to the real estate. These disclosure requirements may not be considered to imply a duty to investigate a matter that the licensee has not agreed to investigate.

- 5 Accounting in a timely manner for all money and other property received from or on your behalf
- 6 Before the licensee provides specific assistance, they must obtain from you a signed document that discloses your relationship with that licensee
- 7 In addition to the above document, the licensee must provide you, when you sign an offer in a real estate transaction, a written statement that states who the licensee represents. That statement must be written in the contract.

**Duties owed by the licensee when they are representing you:**

Unless you both agree to additional duties in writing, the licensee who represents you, owes you the following duties. And they may not waive these duties to you.

- 1 Not taking action that they know is adverse or detrimental to your interest
- 2 Disclosure of a conflict of interest to you in a timely manner (Note: a conflict of interest is not showing you real estate not owned by you, or listing competing properties, the representation of more than one person by the same licensee or by different licensees working for the same broker; showing a property that you are interested in to others; acting as a neutral licensee; disclosing confidential information to the licensee's broker for the purpose of seeking advice or assistance)
- 3 Advising you to obtain expert advice on a matter that relates to the real estate transaction that is beyond their expertise
- 4 Not disclosing confidential information from or about you without your written consent, except under subpoena or another court order, even after termination of the relationship with you
- 5 If you are the seller or lessor, unless you agree in writing, making good faith and continuous efforts to find a buyer or lessee for the property, except that the licensee is not required to seek additional offers while the property is subject to an existing contract
- 6 If you are a buyer or lessee, unless you otherwise agreed to in writing, making a good faith and continuous effort to find real estate to buy or lease, except that the licensee is not obligated to seek additional property for you while you are a party to an existing contract or are they obligated to show you property for which there is not a written agreement to pay the licensee

I have read and acknowledge the above paragraph: \_\_\_\_\_ / \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_

(Continued on page 3)

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(Continued from page 2)

**Duties not owed by the licensee:**

Unless otherwise agreed, a real estate licensee does not owe a duty to a person with whom the licensee has establish a license relationship to:

- 1 Conduct an independent inspection of the real estate that is the subject of your relationship
- 2 Conduct and independent investigation of a person's financial condition
- 3 Independently verify the accuracy or completeness of a statement made by a party to a real estate the transaction or by a person reasonably believed by the license to be reliable

*I have read and acknowledge the above paragraph: \_\_\_\_\_ / \_\_\_\_\_*  
*Date: \_\_\_\_\_ Time: \_\_\_\_\_*

**Designated licensee relationship:**

A broker may have a different designated licensee working for the seller or lessor, and for the buyer or lessee in the same real estate transaction without creating dual agency or a conflict of interest. Unless the broker is a designated licensee, the relationship established between you and designated licensee does not extend to the broker. The extent of the relationship between the designated licensee must be disclosed to you in the real estate transaction.

**Duties of a neutral licensee:**

Unless additional duties are agreed to in a written document signed by the neutral licensee and all parties, the duties of a neutral licensee (*when one licensee is working with both sides in the transaction*) are limited to the duties already established for a licensee and the following duties:

- 1 Not to take action that the neutral licensee knows is adverse or detrimental to the parties to the transaction or to whom the neutral licensee provides services
- 2 To disclose a conflict of interest in a timely manner
- 3 To advise all parties to obtain expert advice on a matter relating to the transaction that is beyond their expertise
- 4 Not to disclose without written consent confidential information to another party to whom the licensee is providing specific assistance (except under a subpoena or another court order, even after the relationship terminates)
- 5 Not to disclose without the consent of the person to whom the information relates, that someone is willing to pay more, or sell for less, or accept financing terms other than what is offered. A neutral licensee does not violate their duties if, with written consent, engages in the following conduct in a good faith effort to assist in reaching final agreement in a real estate transaction: a) analyzing, providing information on, or reporting on the merits of the transaction to each party;

(Continued on page 4)

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(Continued from page 3)

b) discussing the price, terms, or conditions that each party would or should offer or accept; or c) suggesting compromises in the parties respective bargaining positions.]

In a neutral licensee relationship, the knowledge of information of the licensee about one client is not imputed to other clients or to other licensees who work for the same broker.

I have read and acknowledge the above paragraphs: \_\_\_\_\_ / \_\_\_\_\_  
Date: \_\_\_\_\_ Time: \_\_\_\_\_

**Compensation:**

A broker may be compensated by any party to a transaction, by a third party, or by one or more of the parties to the transaction splitting or sharing the commission. Compensation does not establish a relationship between the broker and the party who pays. Licensees must inform all parties to a transaction who is paying within the real estate contract.

**Duration of the relationship:**

A licensee's relationship with you begins when they provide specific assistance and continues until the earliest of the following events:

- 1 They complete the specific assistance
- 2 The relationship terms that you agreed to terminates
- 3 You and the licensee terminate by mutual agreement
- 4 One party gives notice to the other party terminating the relationship

The termination does not affect other contractual rights of the parties. And, except as otherwise agreed to in writing, after termination the licensee still has the duties for accounting for all money and other property received during the relationship and not disclosing confidential information.

**Vicarious liability:**

You are not liable for an act, error, or omission of a licensee that arises out of the licensee relationship unless you participated or authorized the act, error or omission and then only to the extent of the participation or authorizations and, except to the extent that you benefited for the act, error, or omission, and the court determines that it is highly probable that the person claiming damages would be unable to enforce a judgment against the licensee.

**Imputed knowledge and notice:**

Unless otherwise you agree in writing, you are not considered to have knowledge or notice of a fact known by a licensee of the other party, and conversely unless otherwise agreed to in writing, the licensee does not have knowledge or notice of a fact

(Continued on page 5)

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(Continued from page 4)

that is not actually known by the licensee.

**Causes of action:**

No one can bring an action against a neutral licensee for making a disclosure that is required or permitted by law. In a civil action for the failure of a licensee to comply with the provisions of these laws, the plaintiff's remedy is limited to the recovery of actual damages. You may still take any other action or pursue any other remedy to which you may be entitled under law.

**Policies, guidelines, and requirements:**

A broker must have a written policy that identifies and describes the relationships in which the broker and the licensees who work for them, practice. The broker has the policy available to the Real Estate Commission and to the public upon request.

**Exemption:**

When a licensee proceeds specific assistance to a governmental agency or to a corporation that issues publicly traded securities, the licensee is exempt from obtaining signatures called for within this law.

I hereby acknowledge receiving and reading this pamphlet on the type of relationships I may have with a real estate licensee (including a broker).

I understand and acknowledge that \_\_\_\_\_  
(licensee) of \_\_\_\_\_ (agency) will  
be working with me as a \_\_\_\_\_, until and  
unless the relationship is terminated or the status changes by prior  
mutual agreement.

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_

THE  
L·A·W  
OF REAL ESTATE  
AGENCY

*This pamphlet describes your legal rights in dealing with a real estate broker or salesperson. Please read it carefully before signing any documents.*

THE FOLLOWING IS ONLY A BRIEF SUMMARY OF THE ATTACHED LAW:

**SECTION 1. DEFINITIONS.** Defines the specific terms used in the law.

**SECTION 2. RELATIONSHIPS BETWEEN LICENSEES AND THE PUBLIC.** States that a licensee who works with a buyer or tenant represents that buyer or tenant — unless the licensee is the listing agent, a seller's sub-agent, a dual agent, the seller personally or the parties agree otherwise. Also states that in a transaction involving two different licensees affiliated with the same broker, the broker is a dual agent and each licensee solely represents his or her client — unless the parties agree in writing that both licensees are dual agents.

**SECTION 3. DUTIES OF A LICENSEE GENERALLY.** Prescribes the duties that are owed by all licensees, regardless of who the licensee represents. Requires disclosure of the licensee's agency relationship in a specific transaction.

**SECTION 4. DUTIES OF A SELLER'S AGENT.** Prescribes the additional duties of a licensee representing the seller or landlord only.

**SECTION 5. DUTIES OF A BUYER'S AGENT.** Prescribes the additional duties of a licensee representing the buyer or tenant only.

**SECTION 6. DUTIES OF A DUAL AGENT.** Prescribes the additional duties of a licensee representing both parties in the same transaction, and requires the written consent of both parties to the licensee acting as a dual agent.

**SECTION 7. DURATION OF AGENCY RELATIONSHIP.** Describes when an agency relationship begins and ends. Provides that the duties of accounting and confidentiality continue after the termination of an agency relationship.

**SECTION 8. COMPENSATION.** Allows brokers to share compensation with cooperating brokers. States that payment of compensation does not necessarily establish an agency relationship. Allows brokers to receive compensation from more than one party in a transaction with the parties' consent.

**SECTION 9. VICARIOUS LIABILITY.** Eliminates the common law liability of a party for the conduct of the party's agent or sub-agent, unless the agent or sub-agent is insolvent. Also limits the liability of a broker for the conduct of a sub-agent associated with a different broker.

**SECTION 10. IMPUTED KNOWLEDGE AND NOTICE.** Eliminates the common law rule that notice to or knowledge of an agent constitutes notice to or knowledge of the principal.

**SECTION 11. INTERPRETATION.** This law replaces the fiduciary duties owed by an agent to a principal under the common law, to the extent that it conflicts with the common law



# SECTION ONE

## 18.86.010. DEFINITIONS.

Unless the context clearly requires otherwise, the definitions in this chapter apply throughout this chapter.

(1) "Agency relationship" means the agency relationship created under this chapter or by written agreement between a licensee and a buyer and/or seller relating to the performance of real estate brokerage services by the licensee.

(2) "Agent" means a licensee who has entered into an agency relationship with a buyer or seller.

(3) "Business opportunity" means and includes a business, business opportunity, and goodwill of an existing business, or any one or combination thereof.

(4) "Buyer" means an actual or prospective purchaser in a real estate transaction, or an actual or prospective tenant in a real estate rental or lease transaction, as applicable.

(5) "Buyer's agent" means a licensee who has entered into an agency relationship with only the buyer in a real estate transaction, and includes sub-agents engaged by a buyer's agent.

(6) "Confidential information" means information from or concerning a principal of a licensee that:

- (a) Was acquired by the licensee during the course of an agency relationship with the principal;
- (b) The principal reasonably expects to be kept confidential;
- (c) The principal has not disclosed or authorized to be disclosed to third parties;
- (d) Would, if disclosed, operate to the detriment of the principal; and
- (e) The principal personally would not be obligated to disclose to the other party.

(7) "Dual agent" means a licensee who has entered into an agency relationship with both the buyer and seller in the same transaction.

(8) "Licensee" means a real estate broker, associate real estate broker, or real estate salesperson, as those terms are defined in Chapter 18.85 RCW.

(9) "Material fact" means information that substantially adversely affects the value of the property or a party's ability to perform its obligations in a real estate transaction, or operates to materially impair or defeat the purpose of the transaction. The fact or suspicion that the property, or any neighboring property, is or was the site of a murder, suicide or other death, rape or other sex crime, assault or other violent crime, robbery or burglary, illegal drug activity, gang-related activity, political or religious activity, or other act, occurrence, or use not adversely affecting the physical condition of or title to the property is not a material fact.

(10) "Principal" means a buyer or a seller who has entered into an agency relationship with a licensee.

(11) "Real estate brokerage services" means the rendering of services for which a real estate license is required under Chapter 18.85

"Real estate transaction" or "transaction" means an actual or prospective transaction involving a purchase, sale, option, or exchange of any interest in real property or a business opportunity, or a lease or rental of real property. For purposes of this chapter, a prospective transaction does not exist until a written offer has been signed by at least one of the parties.

(13) "Seller" means an actual or prospective seller in a real estate transaction, or an actual or prospective landlord in a real estate rental or lease transaction, as applicable.

(14) "Seller's agent" means a licensee who has entered into an agency relationship with only the seller in a real estate transaction, and includes sub-agents engaged by a seller's agent.

(15) "Sub-agent" means a licensee who is engaged to act on behalf of a principal by the principal's agent where the principal has authorized the agent in writing to appoint sub-agents. ■

# SECTION TWO

## 18.86.020. AGENCY RELATIONSHIP.

(1) A licensee who performs real estate brokerage services for a buyer is a buyer's agent unless the:

- (a) Licensee has entered into a written agency agreement with the seller, in which case the licensee is a seller's agent;
- (b) Licensee has entered into a sub-agency agreement with the seller's agent, in which case the licensee is a seller's agent;
- (c) Licensee has entered into a written agency agreement with both parties, in which case the licensee is a dual agent;
- (d) Licensee is the seller or one of the sellers; or
- (e) Parties agree otherwise in writing after the licensee has complied with RCW 18.86.030(1)(f).

(2) In a transaction in which different licensees affiliated with the same broker represent different parties, the broker is a dual agent, and must obtain the written consent of both parties as required under RCW 18.86.060. In such a case, each licensee shall solely represent the party with whom the licensee has an agency relationship, unless all parties agree in writing that both licensees are dual agents.

(3) A licensee may work with a party in separate transactions pursuant to different relationships, including, but not limited to, representing a party in one transaction and at the same time not representing that party in a different transaction involving that party, if the licensee complies with this chapter in establishing the relationships for each transaction. ■

# SECTION THREE

## 18.86.030. DUTIES OF A LICENSEE.

(1) Regardless of whether the licensee is an agent, a licensee owes to all parties to whom the licensee renders real estate brokerage services the following duties, which may not be waived:

- (a) To exercise reasonable skill and care;
- (b) To deal honestly and in good faith;
- (c) To present all written offers, written notices and other written communications to and from either party in a timely manner, regardless of whether the property is subject to an existing contract for sale or the buyer is already a party to an existing contract to purchase;
- (d) To disclose all existing material facts known by the licensee and not apparent or readily ascertainable to a party; provided that this subsection shall not be construed to imply any duty to investigate matters that the licensee has not agreed to investigate;
- (e) To account in a timely manner for all money and property received from or on behalf of either party;
- (f) To provide a pamphlet on the law of real estate agency in the

form prescribed in RCW 18.86.120 to all parties to whom the licensee renders real estate brokerage services, before the party signs an agency agreement with the licensee, signs an offer in a real estate transaction handled by the licensee, consents to dual agency, or waives any rights, under RCW 18.86.020(1)(e), 18.86.040(1)(e), 18.86.050(1)(e), or 18.86.060(2)(e) or (f) whichever occurs earliest; and

(2) To disclose in writing to all parties to whom the licensee renders real estate brokerage services, before the party signs an offer in a real estate transaction handled by the licensee, whether the licensee represents the buyer, the seller, both parties, or neither party. The disclosure shall be set forth in a separate paragraph entitled "Agency Disclosure" in the agreement between the buyer and seller or in a separate written document entitled "Agency Disclosure."

(2) Unless otherwise agreed, a licensee owes no duty to conduct an independent inspection of the property or to conduct an independent investigation of either party's financial condition, and owes no duty to independently verify the accuracy or completeness of any statement made by either party or by any source reasonably believed by the licensee to be reliable. ■

## SECTION FOUR

### 18.86.040. SELLER'S AGENT — DUTIES.

(1) Unless additional duties are agreed to in writing and signed by a seller's agent, the duties of a seller's agent are limited to those set forth in RCW 18.86.030 and the following, which may not be waived except as expressly set forth in (e) of this subsection:

- (a) To be loyal to the seller by taking no action that is adverse or detrimental to the seller's interest in a transaction;
- (b) To timely disclose to the seller any conflicts of interest;
- (c) To advise the seller to seek expert advice on matters relating to the transaction that are beyond the agent's expertise;
- (d) Not to disclose any confidential information from or about the seller, except under subpoena or court order, even after termination of the agency relationship; and
- (e) Unless otherwise agreed to in writing after the seller's agent has complied with RCW 18.86.030(1)(f), to make a good faith and continuous effort to find a buyer for the property; except that a seller's agent is not obligated to seek additional offers to purchase the property while the property is subject to an existing contract for sale.

(2)

- (a) The showing of properties not owned by the seller to prospective buyers or the listing of competing properties for sale by a seller's agent does not in and of itself breach the duty of loyalty to the seller or create a conflict of interest.
- (b) The representation of more than one seller by different licensees affiliated with the same broker in competing transactions involving the same buyer does not in and of itself breach the duty of loyalty to the sellers or create a conflict of interest. ■

## SECTION FIVE

### 18.86.050. BUYER'S AGENT — DUTIES.

(1) Unless additional duties are agreed to in writing signed by a buyer's agent, the duties of a buyer's agent are limited to those set forth in RCW 18.86.030 and the following, which may not be waived except as expressly set forth in (e) of this subsection:

- (a) To be loyal to the buyer by taking no action that is adverse or detrimental to the buyer's interest in a transaction;
- (b) To timely disclose to the buyer any conflicts of interest;
- (c) To advise the buyer to seek expert advice on matters relating to the transaction that are beyond the agent's expertise;
- (d) Not to disclose any confidential information from or about the buyer, except under subpoena or court order, even after termination of the agency relationship; and
- (e) Unless otherwise agreed to in writing after the buyer's agent has complied with RCW 18.86.030(1)(f) of this act, to make a good faith and continuous effort to find a property for the buyer; except that a buyer's agent is not obligated to: (i) Seek additional properties to purchase while the buyer is a party to an existing contract to purchase; or (ii) show properties as to which there is no written agreement to pay compensation to the buyer's agent.

(2)

- (a) The showing of property in which a buyer is interested to other prospective buyers by a buyer's agent does not in and of itself breach the duty of loyalty to the buyer or create a conflict of interest.
- (b) The representation of more than one buyer by different licensees affiliated with the same broker in competing transactions involving the same property does not in and of itself breach the duty of loyalty to the buyers or create a conflict of interest. ■

## SECTION SIX

### 18.86.060. DUAL AGENT — DUTIES.

(1) Notwithstanding any other provisions of this chapter, a licensee may act as a dual agent only with the written consent of both parties to the transaction after the dual agent has complied with RCW 18.86.030 (1) (f), which consent must include a statement of the terms of compensation.

(2) Unless additional duties are agreed to in writing signed by a dual agent, the duties of a dual agent are limited to those set forth in RCW 18.86.030 and the following, which may not be waived except as expressly set forth in (e) and (f) of this subsection:

- (a) To take no action that is adverse or detrimental to either party's interest in a transaction;
- (b) To timely disclose to both parties any conflicts of interest;
- (c) To advise both parties to seek expert advice on matters relating to the transaction that are beyond the dual agent's expertise;
- (d) Not to disclose any confidential information from or about either party, except under subpoena or court order, even after termination of the agency relationship;
- (e) Unless otherwise agreed to in writing after the dual agent has complied with RCW 18.86.030 (1)(f), to make a good faith and continuous effort to find a buyer for the property; except that a dual agent is not obligated to seek additional offers to purchase the property while the property is subject to an existing contract for sale; and

(f) Unless otherwise agreed to in writing after the dual agent has complied with RCW 18.86.030 (1)(f), to make a good faith and continuous effort to find a property for the buyer; except that a dual agent is not obligated to: (i) Seek additional properties to purchase while the buyer is a party to an existing contract to purchase; or (ii) show properties as to which there is no written agreement to pay compensation to the dual agent.

- (a) The showing of properties not owned by the seller to prospective buyers or the listing of competing properties for sale by a dual agent does not in and of itself constitute action that is adverse or detrimental to the seller or create a conflict of interest.
- (b) The representation of more than one seller by different licensees affiliated with the same broker in competing transactions involving the same buyer does not in and of itself constitute action that is adverse or detrimental to the sellers or create a conflict of interest.

(4)

- (a) The showing of property in which a buyer is interested to other prospective buyers or the presentation of additional offers to purchase property while the property is subject to a transaction by a dual agent does not in and of itself constitute action that is adverse or detrimental to the buyer or create a conflict of interest.
- (b) The representation of more than one buyer by different licensees affiliated with the same broker in competing transactions involving the same property does not in and of itself constitute action that is adverse or detrimental to the buyers or create a conflict of interest. ■

## SECTION SEVEN

### 18.86.070. DURATION OF AGENCY RELATIONSHIP.

(1) The agency relationships set forth in this chapter commence at the time that the licensee undertakes to provide real estate brokerage services to a principal and continue until the earliest of the following:

- (a) Completion of performance by the licensee;
- (b) Expiration of the term agreed upon by the parties; or
- (c) Termination of the relationship by mutual agreement of the parties; or
- (d) Termination of the relationship by notice from either party to the other. However, such a termination does not affect the contractual rights of either party.

(2) Except as otherwise agreed to in writing, a licensee owes no further duty after termination of the agency relationship, other than the duties of:

- (a) Accounting for all moneys and property received during the relationship; and
- (b) Not disclosing confidential information. ■

## SECTION EIGHT

### 18.86.080. COMPENSATION.

In any real estate transaction, the broker's compensation may be paid by the seller, the buyer, a third party, or by sharing the compensation between brokers.

(2) An agreement to pay or payment of compensation does not establish an agency relationship between the party who paid the compensation and the licensee.

(3) A seller may agree that a seller's agent may share with another broker the compensation paid by the seller.

(4) A buyer may agree that a buyer's agent may share with another broker the compensation paid by the buyer.

(5) A broker may be compensated by more than one party for real estate brokerage services in a real estate transaction, if those parties consent in writing at or before the time of signing an offer in the transaction.

(6) A buyer's agent or dual agent may receive compensation based on the purchase price without breaching any duty to the buyer.

(7) Nothing contained in this chapter negates the requirement that an agreement authorizing or employing a licensee to sell or purchase real estate for compensation or a commission be in writing and signed by the seller or buyer. ■

## SECTION NINE

### 18.86.090. VICARIOUS LIABILITY.

(1) A principal is not liable for an act, error, or omission by an agent or sub-agent of the principal arising out of an agency relationship:

- (a) Unless the principal participated in or authorized the act, error, or omission; or
- (b) Except to the extent that: (i) The principal benefited from the act, error, or omission; and (ii) the court determines that it is highly probable that the claimant would be unable to enforce a judgment against the agent or sub-agent.

(2) A licensee is not liable for an act, error, or omission of a subagent under this chapter, unless the licensee participated in or authorized the act, error, or omission. This subsection does not limit the liability of a real estate broker for an act, error, or omission by an associate real estate broker or real estate salesperson licensed to that broker. ■

## SECTION TEN

### 18.86.100. IMPUTED KNOWLEDGE AND NOTICE.

(1) Unless otherwise agreed to in writing, a principal does not have knowledge or notice of any facts known by an agent or sub-agent of the principal that are not actually known by the principal.

(2) Unless otherwise agreed to in writing, a licensee does not have knowledge or notice of any facts known by a sub-agent that are not actually known by the licensee. This subsection does not limit the knowledge imputed to a real estate broker of any facts known by an associate real estate broker or real estate salesperson licensed to such broker. ■

## SECTION ELEVEN

### 18.86.110. APPLICATION.

This chapter supersedes only the duties of the parties under the common law, including fiduciary duties of an agent to a principal, to the extent inconsistent with this chapter. The common law continues to apply to the parties in all other respects. This chapter does not affect the duties of a licensee while engaging in the authorized or unauthorized practice of law as determined by the courts of this state. This chapter shall be construed broadly. ■



REALTOR®

ALASKA ASSOCIATION OF REALTORS, INC.  
741 Sesame Street, Suite 100 • Anchorage, Alaska 99503  
Telephone 907-563-7133 • Fax 907-563-8478

February 3, 2004

The Honorable Norm Rokeberg  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99801

RE: House Bill 29, relating to real estate licensee and real estate transactions

Dear Representative Rokeberg,

The Alaska Association of REALTORS and the following member Boards;

Anchorage Board of REALTORS  
Greater Fairbanks Board of REALTORS  
Kachemak Board of REALTORS  
Kenai Peninsula Board of REALTORS  
Kodiak Board of REALTORS  
Southeast Board of REALTORS  
Valley Board of REALTORS

supports House Bill 29, which would update the agency statute to conform to current real estate business practices.

The Association is in favor of this proposed legislation that would standardize the disclosure form that is used by real estate licensees statewide. It would define specific duties of licensees that are not currently in the statute, giving the consumers clearer expectations and guidelines.

The Alaska Association of REALTORS encourages the passage of House Bill 29.

Sincerely,

Kathryn Clark  
President

The Voice for Real Estate™ in Alaska

REALTOR® is a registered mark which identifies a professional in real estate who subscribes to a strict Code of Ethics as a member of the NATIONAL ASSOCIATION OF REALTORS





ALASKA ASSOCIATION OF REALTORS, INC.  
741 Sesame Street, Suite 100 • Anchorage, Alaska 99503  
Telephone 907-563-7133 • Fax 907-563-8478

February 3, 2004

The Honorable Tom Anderson  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99801

RE: House Bill 29, relating to real estate licensee and real estate transactions

Dear Representative Anderson,

The Alaska Association of REALTORS with over 1,100 members statewide supports House Bill 29, which would update the agency statute to conform to current real estate business practices.

The Association is in favor of this proposed legislation that would standardize the disclosure form that is used by real estate licensees statewide. It would define specific duties of licensees that are not currently in the statute, giving the consumers clearer expectations and guidelines.

The Alaska Association of REALTORS encourages the passage of House Bill 29.

Sincerely,

Kathryn Clark  
President

Cc; Representative Norm Rokeberg





# ANCHORAGE BOARD OF REALTORS, INC.

REALTOR® *The Voice for Real Estate™* In Anchorage

741 Sesame Street  
Suite #100  
Anchorage, Alaska 99503  
(907) 561-2338  
(907) 563-8478 Fax

Tuesday, February 10, 2004

The Honorable Lesil McGuire  
Chairwoman, Judiciary Committee  
Alaska House of Representatives  
State Capitol Building  
Juneau AK. 99801

RE: House Bill 29, relating to real estate licensees and real estate transactions.

Dear Chairwoman McGuire,

The Anchorage Board of Realtors Supports HB 29, which would update the agency statute to conform to current real estate business practices.

This legislation will standardize the disclosure forms and requirements through out the state.

Agents in all over the state would be required to use the same format for disclosure of duties to the parties involved in a real estate transaction.

This will give the public more protection in real estate transactions, by providing clearer expectations and guidelines.

The Anchorage Board of Realtors, Board of Directors unanimously encourages passage of House Bill 29.

Please feel free to contact me should you have further questions.

Sincerely

Eva Loken  
President

- cc: The Honorable Tom Anderson
- The Honorable Les Gara
- The Honorable Max Gruenberg
- The Honorable Jim Holm
- The Honorable Dan Ogg
- The Honorable Norm Rokeberg
- The Honorable Ralph Samuels





Prudential Vista Real Estate  
4241 B Street  
Anchorage, AK 99503  
Bus 907 562-6464  
Fax 907 562-5485  
www.alaskahousehunters.com

Representative Tom Anderson  
State Capitol, Room 432  
Juneau, AK 99801-1182

Dear Representative Anderson,

I am writing to you in support of HB 29. I have been in the real estate industry over 20 years and have seen the agency laws change from traditional agency where all brokers in the transaction represent the seller and the buyer is left with no representation at all to buyer, seller, and dual agency. Although that was a step in the right direction for the consumer, the way the law was written required a very cumbersome ritual for the real estate salesperson to go through and it was a law that was little understood by both the salesperson and the client. Most times the client would sign documents after having agency explained by the salesman as just another document that must be signed to complete the transaction. They did not care about agency as such unless there was a problem, then they hired an attorney and tried to unravel the contract any way they could and agency was a weak link that they could fall back on. We have never acted as agents in the sense of the definition, "acting on behalf of another." To do that would be more like acting as an attorney in fact, which broker typically does not allow their salespeople to do.

HB 29 was created over many hours by many people looking for a way to complete a transaction being fair to the parties and leaving less liability for the parties on the table. Attorneys have a hard time understanding that in a real estate transaction, both parties can win. There does not have to be an adversarial position between the buyer and seller to conclude a successful transaction. HB 29 builds on this concept by allowing the salesperson to act as a buyer licensee, seller licensee or neutral licensee. The salesperson's job is to help a buyer and a seller close a transaction that both parties have agreed to.

I ask that you and our other legislators heartily support this bill to passage early in the 2004 session.

Sincerely,

Denny Wood, ABR, CRS, GRI  
Sales Manager, Associate Broker  
President Elect Alaska Association of Realtors



POWELL REALTY INC.  
GMAC REAL ESTATE®

February 1, 2004

Representative Norman Rokeberg  
State Capital Building  
Juneau, Alaska 99801

Re: HB 29,

Dear Representative Rokeberg,

Please convey to the House Labor and Commerce members that I am personally supportive of the current version of HB 29. It is my opinion that the current bill will not only protect the public but provide more education to the public, with the state mandated brochure explaining representation issues.

A handwritten signature in cursive script that reads "Ruth Blackwell". The signature is fluid and matches the typed name below it.

Ruth Blackwell, Associate Broker  
Powell Realty, GMAC  
9040 Glacier Highway  
Juneau, Alaska 99801



**Subject: RE: Be it resolved**

**Date:** Wed, 04 Feb 2004 13:05:26 -0900

**From:** PeggyAnn McConnochie <peggyann@gci.net>

**To:** "Shawn C. Paul" <shawn@alaska.com>

**CC:** Sandy Eherenman <seherenman@alaskarealtors.com>. Amanda\_Wilson@legis.state.ak.us,  
Dave Feeken <dfeeken@alaska.net>

Thank you.

-----Original Message-----

**From:** Shawn C. Paul [<mailto:shawn@alaska.com>]

**Sent:** Wednesday, February 04, 2004 11:45 AM

**To:** PeggyAnn McConnochie

**Subject:** Be it resolved

On behalf of the Southeast Board of Realtors and it's governing board I offer our strong support for HB 29. A thorough examination of agency law in Alaska has been long overdue. We feel this provides a much greater level consumer protection and clarifies what has been heretofore an unwieldy law which expert and layman alike had trouble understanding. We ask that the members of the Labor and Commerce Committee of the Alaska State Legislature stand with us in supporting this bill to their colleagues in both houses. We have asked statewide leadership to represent us in answering any questions that may arise. If there are specific colleagues which the members would like us to ask for support from in the Southeast districts we would be happy to do that as well.

Respectfully,  
Shawn C. Paul  
SEBR President

**Subject: Letter of Support HB 29**

**Date: Mon, 19 Jan 2004 20:17:14 -0900**

**From: "David Feeken" <dfeeken@alaska.net>**

**To: "Amanda Wilson" <amanda\_wilson@legis.state.ak.us>, "wendy mulder" <wendym@gci.net>**

**Honorable Representative Norman Rokeberg:**

**RE: Substitute HB 29**

**This proposed legislation will modernize and bring the statute in line with current real estate business practices in this state and throughout the nation.**

**The current statute was put in place in 1990 in response to the public's demand for buyer representation. Prior to 1990, due to common law and common business practice all real estate licensees represented the seller, and the seller was responsible for the actions of all licensees in the transaction. The buyers had no representation in the transaction. The seller knew that the licensee was working on their behalf; but few buyers understood that they were not represented or worse thought the licensee was representing them. The buyers wanted representation, and the seller did not want to be responsible for the actions of the licensee working with the buyer. This practice was called Subagency. Subagency is not allowed in most MLS systems today. The current statute simply informs the seller and the listing agent that the buyers' agent is representing the buyer, and the potential of dual agency when the listing brokerage firm is facilitating the purchase with the buyer.**

**The industry and the public, through education have grown in the last 13 years. The proposed legislation will standardize the disclosure requirements and provide a relationship disclosure form that will be used statewide by all licensees. The public and licensee will have written in statute, the basic duties and responsibilities of all licensees throughout the state. This will protect the public, giving the consuming public clear expectations and guidelines.**

**The proposed legislation will also require brokers to have clear office policies in place as guides to all agents within their offices. These policies will spell out the way all representation will be done, and the procedures used to protect the**

**confidentiality of the transaction. The proposed legislation will require the policy be available for the public to view, in order to make informed decisions when choosing a licensee.**

**Our goal with this legislation is to make the industry consistent throughout the state, enabling the consuming public to make knowledgeable, informed decisions, and provide a more efficient way for licensees to provide services to the public.**

**The proposed legislation will standardize the disclosure form that is used statewide by all licensees. The public will see the duties and responsibilities of a licensee or broker before looking at properties or giving confidential information. The proposed legislation defines specific duties of licensees that are not current in statute, therefore giving the consuming public clear expectations and guidelines.**

**Proposed legislation gives brokers the option of using designated agency to prevent dual agency. When the listing agent is a different person than the buyers' agent within the same firm, the broker can designate an agent representing the seller and a different agent representing the buyer. Neutral Agency (Dual Agency) would only occur when the listing agent is facilitating the transaction with the buyer. Most brokerage firms currently have firewalls in place to control confidential information.**

**The members of our legislative committee would be happy to meet with you to answer your questions and address any concerns you may have with this legislation.**

**Sincerely,**

**Dave Feeken**

**907-283-5888 O 907-252-0348 Cell**

**Industry Issues, Chairman**

**Legislative Committee, Chairman**



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Representative Norm Rokeberg  
State Capitol, Room 214  
Juneau, AK 99801-1182

Dear Representative Rokeberg,

I am writing to you in support of HB 29. I have been in the real estate industry over 20 years and have seen the agency laws change from traditional agency where all brokers in the transaction represent the seller and the buyer is left with no representation at all to buyer, seller, and dual agency. Although that was a step in the right direction for the consumer, the way the law was written required a very cumbersome ritual for the real estate salesperson to go through and it was a law that was little understood by both the salesperson and the client. Most times the client would sign documents after having agency explained by the salesman as just another document that must be signed to complete the transaction. They did not care about agency as such unless there was a problem, then they hired an attorney and tried to unravel the contract any way they could and agency was a weak link that they could fall back on. We have never acted as agents in the sense of the definition, "acting on behalf of another." To do that would be more like acting as an attorney in fact, which broker typically does not allow their salespeople to do.

HB 29 was created over many hours by many people looking for a way to complete a transaction being fair to the parties and leaving less liability for the parties on the table. Attorneys have a hard time understanding that in a real estate transaction, both parties can win. There does not have to be an adversarial position between the buyer and seller to conclude a successful transaction. HB 29 builds on this concept by allowing the salesperson to act as a buyer licensee, seller licensee or neutral licensee. The salesperson's job is to help a buyer and a seller close a transaction that both parties have agreed to.

I ask that you and our other legislators heartily support this bill to passage early in the 2004 session.

Sincerely,

A handwritten signature in cursive script, appearing to read "Denny Wood".

Denny Wood, ABR, CRS, GRI  
Sales Manager, Associate Broker  
President Elect Alaska Association of Realtors



Gene DuVal  
REALTOR®

February 3, 2004

To Chairman Anderson,

I have carefully reviewed the Sponsor Substitute for House Bill Number 29, "an Act relating to real estate licensees and real estate transactions; and providing for an effective date."

I am a Real Estate member of the Alaska Association of Realtors, and an Associate Broker real estate licensee in Alaska. I believe this Act would offer needed protection to the public, and significantly simplify the process of explaining and documenting agency representation by licensees to the public.

I urge you to support it. Feel free to contact me via phone, fax, or e-mail for comments or inquires.

Best wishes,

*Gene DuVal*  
Gene DuVal



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Gene Duval  
REALTOR®

February 17, 2004

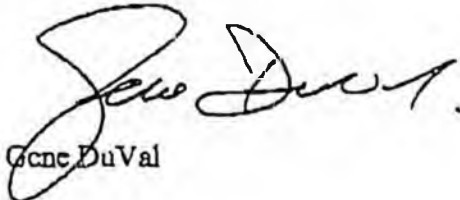
Dear Representative Lesil McGuire,

I have carefully reviewed the Sponsor Substitute for House Bill Number 29, "an Act relating to real estate transactions," sponsored by Representative Rokeberg.

I am a member of the Alaska Association of Realtors, and an Associate Broker real estate licensee in Alaska. I believe this Bill would offer needed protection to the public since it clearly defines and determines when and in what manner licensees must disclose agency to clients/customers. It also significantly simplifies the process of explaining and documenting agency representation to the public.

I urge you to support it. Feel free to contact me via phone, fax, or e-mail for comments or inquiries.

Best wishes,



Gene DuVal

**RE/MAX** Associates of Fairbanks

529 5th Avenue, Suite #200  
Fairbanks, Alaska 99701  
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January 19, 2004

The Honorable Norman Rokeberg  
Alaska House of Representatives  
State Capitol Building  
Juneau, Alaska 99801

Dear Representative Rokeberg;

House Bill 29 is probably the most important piece of legislation affecting the real estate brokerage industry in over a decade. It is supported almost unanimously by REALTORS®, the Alaska Real Estate Commission and real estate licensees throughout the State. I also support this legislation.

The present statutes regarding real estate licensee disclosure of duties and responsibilities became effective in January of 1991. There has been only minor modification to the laws since then and the way real estate is transacted has changed considerably. Most other states have modified their laws to reflect these changes but Alaska has not.

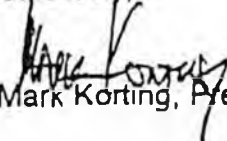
In June of 2002 the Alaska Association of REALTORS® formed a Task Force, of which I was a member, to address this situation. After over a year of extensive research, review and debate along with the input and consultation of the Alaska Real Estate Commission, a consensus was reached. The result is HB 29 along with some Regulation changes that have been approved and are in the process of being adopted.

This legislation will benefit the public as well as the industry in that it more clearly and concisely defines the duties, responsibilities and disclosures of all the parties to a real estate transaction.

Again, I support HB 29 and would be glad to try to answer any questions you or any of your colleagues may have.

Thank you for your efforts and thank you for serving in the Legislature. I understand and appreciate the sacrifice you have to make.

Sincerely,

  
Mark Korting, President

**RE/MAX** of alaska, inc.  
2600 cordova street, suite 100  
anchorage, alaska 99503  
phone: (907) 276-2761

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: SSHB 29  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
Title Real Property Transactions/Licensees RDU Occupational Licensing (117)  
Component Occupational Licensing  
Sponsor Representative Rokeberg  
Requester House Labor and Commerce Component No. 2360

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

SSHB 29 makes changes to practices conducted by real estate licensees. New funds are not required to implement these changes.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144  
Division Occupational Licensing Date/Time 2/2/04 1:42 PM  
Approved by: Edgar Blatchford, Commissioner Date 2/2/2004  
Agency Department of Community & Economic Development

Members of the Senate Labor and Commerce Committee:  
(Copied to the Senate Judiciary Committee)

My name is Linda Garrison. I am a licensed Real Estate Broker in Alaska and I will be testifying at Thursday's hearing 4/15/04 regarding HB 29. I will be faxing each of your offices concerns and testimony against HB 29 from the American Homeowners Grassroots Alliance and other individuals. Concerns center around the fact that HB 29 reduces consumer protection with basic abrogation of the Common Law of Agency, while extending protection to the real estate licensees and limits brokerages liabilities for their actions in dealing with the Alaska consumer/home-buying and home-selling public.

The public is already poorly protected. Were you aware that with only 20 hours of education and passing a single test, a person can become a real estate agent and write a contract in what is usually the largest sale or purchase of a consumer's life? My hairdresser is required to have 1,650 hours of classroom, educational and hands-on training to cut my hair. Obviously, this is ludicrous; however, this bill does not deal with increasing education required to secure a real estate license, but HB 29 takes away what little protection the Alaskan home-seller or home-buyer is now afforded.

HB 29, bluntly, is a devastating bill for the Alaskan consumer.

- If passed, HB 29 guts protection to the Alaskan home buying or selling consumer – HB 29 effectively abrogates the Common Law of Agency. It is the Common Law of Agency that provides the consumer/public their best protection – with the common law of Agency, agents owe their clients the fiduciary duties of confidentiality, accountability, responsibility, loyalty, obedience, diligence, etc. IF HB 29 is passed, the public's protection is substantially limited – the Alaskan public deserves these fiduciary duties and the responsibilities mandated by the Common Law of Agency.
- If passed, HB 29 perpetuates one type of dual agency but will now use the new buzzword of DESIGNATED LICENSEE. Agents will no longer be giving the full fiduciary responsibilities to their clients required with Common Law. We will no longer be agents, we will be called licensees. One type of current dual agency exists when one agent in one brokerage represents the buyer and another agent in the same brokerage represents the seller. , HB 29 continues dual agency with designated agency – With this new buzzword, DESIGNATED REPRESENTATION WILL EXIST WHEN THE BROKER APPOINTS ONE LICENSEE OF THE FIRM TO REPRESENT THE BUYER AND ANOTHER LICENSEE OF THE SAME FIRM TO REPRESENT THE SELLER DESIGNATED AGENCY IS UNDISCLOSED DUAL AGENCY. PERIOD. The current Alaskan statute at least requires disclosure of dual agency; designated agency will be toted as representation, which it isn't.
- If passed, HB 29 limits the Alaskan consumer/public in their course of action for violation of statute. The only damages become "actual damages." The consumer is limited in onerous agent's/licensee's actions – but the agent/oops – the licensee is further protected and insulated from lawsuits.

There has been no opportunity for the general public to give their opinion on this statute change. AKPIRG only became aware of HB 29 when I contacted just before the first hearing at the House L&C The original bill was changed in H L&C Committee, modified further in Judiciary/House but the attempts were only band-aids and HB 29 is still detrimental to the public while extending protection for agents liability and limiting brokerage liability.

I respectfully ask that the members of the Senate Labor and Commerce Committee hold this bill until the process is set in motion for the Alaskans to review and comment on the proposals in this bill. There is absolutely no reason to rush passage of HB 29 – that will only harm the Alaskan consumer house-selling and house-buying public, while furthering protection of agents and brokerages. The public, at a minimum, deserves the following:

- Common Law of Agency must be maintained as the pinnacle of consumer protection – protection is the right of every Alaskan consumer. The current statutes protect the Alaskan consumer and mandate the necessary disclosure to the public. The Alaskan home-buying and home-selling public deserves fiduciary responsibility and representation from their agent – confidentiality, accountability, responsibility, loyalty, diligence, obedience, etc.
- Educational hours for acquisition of a real estate license should be increased to a minimum of 200 hours for initial license – the current need for only 20 hours of education is a farce and an insult to the public, who depend upon you for their protection.

I sincerely thank you for reading this e-mail and forthcoming faxes. I ask for your in depth consideration of the consequences of HB29. Thank you very much.

Linda Garrison  
Real Estate Broker  
State of Alaska  
AAR #1 Buyers Agency  
907-272-8937  
907-277-3443(fax)

[buyers@alaska.net](mailto:buyers@alaska.net)

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Friday, March 19, 2004

**Coldwell Banker pulls out of largest MLS**  
Listings data control at center of controversy in Chicagoland

**Realtors, don't worry, sell real estate**  
Opinion: Outlook sunny, despite competition, cut-rate commissions higher costs

**Boob tube captures real estate leads**  
So you want to be a star? Part 2: Creating cable advertising that works

**Fed less optimistic about economy**  
New low-wage jobs aren't enough to stir inflation

**Alaska's home ownership rate surpasses national average**  
Special loan options lure teachers nurses, first-time buyers out of rental market

**Hispanic, Asian populations likely to triple by 2050**  
Non-Hispanic whites may drop to half of total population, Census Bureau predicts

**Wizard conjures up better credit scores**  
CreditXpert says loan officer tool isn't 'manipulation'

**Real estate writers to convene in Houston**  
NAREE conference will include panel on defining property rights in

## LETTERS TO THE EDITOR

### Designated agency under attack

Re: 'Alaska takes swipe at dual agency' (March 16)

Dear Editor:

This legislation abrogates the fiduciary duty of real estate agents towards their clients. It speaks volumes about the disrespect that real estate companies supporting the measure have for their clients. The sad thing is that the commissions paid by those customers are being used to undermine their rights.

Beth Hahn  
President  
American Homeowners  
Grassroots Alliance

Re: 'The Rookie Realtor: Do you want fries with that?' (March 15)

Dear Editor:

I am an OA in a busy real estate office, and here are the most valuable lessons I have learned in my 15 years: I am who I am. I never get in a row boat with a negative person. I answer to my

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## Dual agency under attack

### More states attempt designated agency amid protests

Thursday, November 13, 2003

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### LETTERS TO THE EDITOR

**'Designated agency not there to benefit client'**

Re: 'Alaska takes swipe at dual agency' (March 16)

Dear Editor:

Unbelievable! The obvious implication is that designated agency is better, according to the Alaska Association of Realtors, than the common law of agency.

Under the common law, the standard is simple: The agent and firm must put the interests of the

The concept of dual agency could be dying a slow death nationwide as more states reconfigure laws involving relationships between real estate brokers and consumers. But some of those new laws don't prevent agents from the same brokerage from handling opposite ends of real estate deals, and some observers say consumers are still being hurt in the deal.



*(SAME DEFINITION AS ONE TYPE OF DUAL AGENCY)*  
The new legislation has been prompted by concerns over dual agency and what is perceived as an inherent conflict of interest when one real estate broker represents both the buyer and the seller in a real estate transaction.

According to a recent National Association of Realtors survey, 90 percent of U.S. states have changed their laws on real estate agency since 2000, with 69 percent making "substantive changes" in the past year. The laws involved everything from consumer disclosures to confidentiality rules to inspection duties and other issues.

Dual agency is among the top reasons state laws are being changed and it has been outlawed in several states already.

Colorado, Florida and Kansas recently outlawed dual agency, which NAR thinks could be a new trend. In its place, some states are enacting designated agency laws. In fact, nearly half of all states have provisions involving designated

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client ahead of all others, even their own.

agents. Yet disagreement continues over what this term does and doesn't mean. Sign up now!



Further, the common law mandates that agents not make misrepresentations to non-client parties and hold agents liable if they engage in fraud against non-client parties (Restatement of Agency 2nd, Section 348).

"It's smoke and mirrors," said Thomas Wemett, a Rochester, N.Y., buyer's agent and president of the National Association of Exclusive Buyers Agents, which is one of a number of industry and consumer groups fighting designated agency bills in several states.

The problem has always been one of Realtor associations refusing to educate their licensees on how to conform to the common law because it puts the double dip in jeopardy...and it also sends buyers looking for representation outside of the firm that has loyalty obligations to sellers. This, of course, is anathema to the megabrokers who control the national and state associations of Realtors.

One of those states is Colorado, which began making significant changes in its brokerage laws in 1994, when the transaction brokers, sub-agency, single agency and dual agency were first recognized. Its statutes were changed again earlier this year, when the state created designated agency.

According to NAR, designated agency allows brokers to designate one agent to represent the seller and another to represent the buyer without creating a dual agency relationship and theoretically without creating a conflict of interest.

Prior to the designated agency law, if a Colorado consumer hired an agent in a broker's office, all the agents in the office owed the consumer a fiduciary duty to represent his or her interests, said Fran Winston, chief enforcement officer for the Colorado Real Estate Commission.

As Linda Garrison has said, designated agency is virtually the same as dual agency...except that the liability mostly accrues to the client, whereas under the common law it mostly accrues to the agent!

"Designated brokerage allows me to enter into a brokerage relationship with a given licensee," Winston said. "The employing broker designates that agent as my agent. The relationship begins and ends with that agent and does not extend to the other agents in the office or that broker."

When Colorado enacted designated agency, it also eliminated dual agency as an option, Winston said. But it doesn't stop one agent from handling both sides of a real estate transaction, as long as the proper disclosures are made to both parties.

Designated agency is not there to benefit the client. It is there to benefit large companies and the licensees who affiliate with them. It allows licensees to engage in activities that conflict with the best interests of their clients, without any disclosure to the client of these conflicts. The common law, by contrast, makes the agent liable to the client for engaging in such behavior.

If Winston were an agent, "I can maintain my agency relationship with the seller and treat the buyer as a customer," she said. "The customer relationship is a non-brokerage relationship." Colorado's recent changes to real estate brokerage laws and dual agency stem from the belief that dual agency is impossible. One person can't serve two masters, or in this case, the buyer and the seller.

Designated agency, however, has plenty of opponents. Consumer advocate Ralph Nader recently tried to stop Connecticut from enacting designated agency, arguing that it was a "a blatant attempt by the real estate industry to dilute its obligations and loyalty to consumers while still charging the same commissions."

Ralph Nader

A similar fight is going on in Massachusetts, where the

~~Shame on the Alaska Association of Realtors and every other state that has passed, or will attempt to pass, designated agency or one of its morphs. I sincerely hope, and believe, that your day of reckoning is coming.~~

Jay Reifert  
Broker/Owner  
Excel-Exclusive Buyer Agency  
Madison, Wis.

Re: 'Full-service discounter puts squeeze on commissions' (March 5)

Dear Editor:

Coldwell Banker CEO Alex Perriello called your article "Full-service discounter puts squeeze on commissions" misleading. What was really misleading was Perriello's failure to tell you that the firm he runs also owns Blue Edge Realty, a very similar discounter to Foxtons that operates in the Pennsylvania and Illinois markets.

The entire premise of Foxtons and Blue Edge's model is anti-consumer. It reduces the transaction from a buyer's agent and a seller's agent to a dual agency situation. It eliminates the cost of the second agent at the price of a creating conflict of interest. No agent can serve two masters and act in both of their best interests.

Secondly, Foxtons and Blue Edge's model denies the seller MLS

National Association of Exclusive Buyer Agents is among the leading opponents of that state's proposed designated agency law. NAEBA's Wemett thinks strong grassroots opposition will successfully defeat it.

The mainstream real estate industry understands dual agency is under attack and just "wants it to go away" by creating designated agency laws.

"Because real estate companies recognize the dangers of dual agency, they're trying to, in essence, get out of the liability aspect of it by calling it something else," he said. "That something else is designated agency, and designated agency is still dual agency."

Another problem with designated agency is that, in many real estate offices, agents work very closely together and will often overhear details or information involving a colleague's client.

"The only way that designated agency works is if there's protection of the information," Wemett said. "You can't have open telephone conversations, shared faxes...you have to protect all the information, and that's simply not happening."

For someone whose job it is to represent buyers only, Wemett seems to be the odd proponent of dual agency.

While "dual agency" can be a deceiving to consumers if the proper disclosures are not made, it is a valid concept under common law, Wemett said. And it's useful in certain situations—such as when one relative sells property to another relative.

"The states that have eliminated dual agency, I think it's wrong," Wemett said. "It's legitimate if it's practiced properly, if it's true, informed consent."

Under Colorado law, a broker can start off as the designated broker for a home seller and, if the broker finds a buyer for the seller's home, negotiate with the seller to switch to being a transaction broker. But the seller has the right to say no.

Winston, who speaks to real estate agents about the new law, said it is working well. "From the very beginning there seemed to be a general acceptance of the concept, because we felt it better represented what the public thought was happening," she said. "It's very well embraced."

(By LARGE BROKERAGE HOUSES!)

Send a Letter to the Editor for publication.  
Send a comment or news tip to our newsroom.  
Please include the headline of the story.

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MASSACHUSETTS CONSUMERS WERE ALASKA STATE- CONSUMERS WERE NEVER GIVEN A CHANCE TO COMMENT.

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## Alaska takes swipe at dual agency

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### Legislation would add designated agency, trim broker liability

Tuesday, March 16, 2004

By Jessica Swesey  
Inman News

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Alaska might be the next state to put the controversial concept of dual agency on the chopping block. Lawmakers are close to passing a bill that would replace dual agency with the highly debated concepts of designated agency and neutral licensees.



The bill's sponsors say it clarifies relationships between consumers and real estate licensees. But critics charge it does nothing more than trim agent and broker liability.

### Take an Inman Pulse survey on dual agency.

The bill, HB29, would prevent agents from practicing dual agency, which occurs when one real estate broker represents both the buyer and seller in a real estate transaction. Instead, state law would allow one agent to act as a "neutral licensee" who could perform specific services for both the buyer and seller, but not represent either of them.

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The bill recently passed a state House vote and now awaits action in the Senate. If it becomes law, it is expected to become effective Jan. 1, 2005.

Sign up now!

Linda Garrison, broker/owner of AAR #1 Buyers Agency in Anchorage, believes the legislation has more to do with



### Advice for the Rookie Realtor

Dear Rookie,

I thought your column was a joke, so I responded in kind. How could I possibly believe your whining was for real!

Now it's clear to me. You really do need to get out of the business.

The Best-Kept Secret in Residential Lending: Union Bank of California

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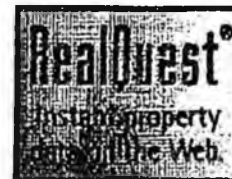
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Marlow C. Harris  
Coldwell Banker Bain  
Associates  
Seattle, Wash.

agent and broker protection than it has to do with consumers. She argued that the bill's contents create a riskier situation for consumers than dual agency does.



Dear Rockie,

"HB29 has nothing to do with clarifying agency, nothing to do with protecting the consumer, no benefits at all to the public. It removes protections already in place with the common law of agency," Garrison wrote in an e-mail message.

Your article is very funny and well-written.

I, also, over the years, have dealt with many negative people in our business. When I come across one of them I simply say to myself "this person is very sad and must be having a hard time with life." I feel that these types of people want to "bring you down to their level," and most of them are just plain jealous of you for some unknown reason. Maybe your freshness and excitement irritates them. Most of these people aren't successful people, and their opinions don't matter anyway. Just check the MLS for their production and that sometimes gives you a clue!

Buyers and sellers who utilized a neutral licensee would be getting only services, not representation. Critics of the legislation question whether those buyers and sellers would grasp the legal implications of no representation. If the deal went awry, they might not be able to sue the broker or agent, for example.

The bill introduces the term "designated licensee," a concept that would allow two agents from the same brokerage company to handle opposite sides of the same deal. A designated licensee works for a real estate broker and represents or provides specific assistance to a person in a real estate transaction when another licensee working for the same broker represents or provides specific assistance to an unrepresented person in the same transaction.

Garrison believes the arguments for designated agency sound like the same arguments that were used 10 years ago for dual agency, except that dual agency had a legal basis in common law, whereas "designated" agency is a made-up term.

"That's bad enough, but couple it with abrogation of the gut of common law and the consumer is in deep trouble—and they won't even know it," she stated.

Lisa Bowser-Hanas  
Century 21 All  
Professionals Inc.

"I don't really care what they call it, but when one agent in a company represents the buyer and another agent represents the seller—just elimination of the term 'agency' doesn't change the relationship," Garrison argued.

Dear Rookie,

The Alaska Association of Realtors, which spent two years drafting the bill, takes a far different position.

Twenty-nine years ago, I, too, was a "rookie," and I, too, did not sell any property in my first six months...but I sure learned a lot. Six hundred-plus transactions later, I pride myself on "doing it right," and, while certainly not a "top gun," I always end each day knowing I told the truth, gave accurate information and was legal, moral and ethical.

Gordan Schadt, an Anchorage attorney who worked on the Realtor group's agency task force, said the legislation's main goal is to end confusion over consumer-agent relationships and representation. He considers elimination of dual agency more of a "sub-goal."

Many real estate brokerages in Alaska consolidated into large firms over the years, Schadt said. That increased the odds of two agents from the same office working on opposite sides of one transaction. The bill outlines how brokers should deal with such situations and forces them to adopt a written office policy.

"Up until this bill was submitted, there basically was nothing

My motto is "Experience Counts." That takes... time! Hang in there! Oh, yes, I grew up in Kentucky.

on the different rules and responsibilities," he said.

Buyers and sellers often believed an agent represented them when that was not the case; however, the new law, if it were enacted, would avoid those situations, he said.

Steve Downs  
Broker Associate  
Steamboat Village  
Brokers Ltd.

The bill doesn't intend to do away with the concept of agency, according to Schadt. But the words "agent" and "agency" don't appear in it, except in one instance to argue that the common law of agency has resulted in public misunderstanding.

Christopher Calhoun, an exclusive buyer's broker with Chris Calhoun Real Estate in Fairbanks, Alaska, said consumers should be worried about the non-liability implications of the new legislation.

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"Any time you take liability and responsibility away, it certainly limits your recourse down the line. And if there's no recourse down the line, then what polices the institution?" he said.

The legislation stems from a July 2000 lawsuit that arose from a dual agency situation. Home buyer Joseph Columbus sued Anchorage real estate agent Bonnie Mehner and her brokerage Prudential Jack White after he found out Mehner acted as a dual agent in his home purchase without first disclosing her representation of the seller.

Mehner and the Prudential broker settled the lawsuit in 2002 and paid Columbus \$200,000. Alaska state officials this month suspended Mehner's real estate license for 120 days and ordered her to pay a \$20,000 fine, according to local news reports. She also must take education classes in ethics and dual agency.

Send tips or feedback to [Jessica@inman.com](mailto:Jessica@inman.com): (510) 658-9252, ext. 133.

\*\*\*

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Please include the headline of the story.

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Linda S Garrison

From: Jay Reifert [true-agents@true-agent.com]  
Sent: Tuesday, March 16, 2004 2:19 PM  
To: NAEBATalk@InternetCrusade.com  
Subject: NAEBATalk: Curious? Text of Section 348 of Restatement and Commentary

NAEBA and the InternetCrusade® Proudly Present NAEBATalk

You've all heard the red herring from the NAR and the State Associations: The common law of agency is confusing. We need to treat non-client parties fairly and honestly and the common law doesn't allow for that.

Ahem.

LIARS!!!!!!!!!!!!!!

Ladies and Gentlemen...here for your review is the text from "Restatement of the Law, Agency 2nd, Section 348". Section 348 is found in Chapter 11, which is called, "Liability of Agent to Third Persons". (That means non-client parties, among others.)

"Section 348. Fraud and Duress

An agent who fraudulently makes representations, uses duress, or knowingly assists in the commission of a tortious fraud or duress by his principal or by others is subject to liability in tort to the injured person although the fraud or duress occurs in a transaction on behalf of the principal."

Folks, their foundation is built on quicksand. The common law most certainly offers protection to non-client parties whom agents defraud. There has been no necessity for deviations from agency, as the common law already offers protection to non-client parties

They--The Realtor Associations--simply chose to ignore this part of the common law and, instead, chose to, dare I say--fraudulently--represent that Designated Agency was the cure for something that simply didn't need fixing!

This may be the key to the destruction of Designated Agency and all the morphs!

Sincerely Yours,

Jay Reifert, Organizer/Director of Operations  
REAL-Reform (Real Estate Agency Law-Reform)

<http://www.real-reform.org>

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or <http://www.Buy-Madison-Real-Estate.com>  
or <mailto:true-agents@true-agent.com>

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**Linda S Garrison**

---

**From:** Jay Reifert [true-agents@true-agent.com]  
**Sent:** Tuesday, March 16, 2004 1:48 PM  
**To:** NAEBATalk@InternetCrusade.com  
**Subject:** NAEBATalk: Call to Action – Please Write Inman News

NAEBA and the InternetCrusade® Proudly Present NAEBATalk  
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Hi Everyone,

I just finished responding to the Inman article on Alaska's attempt to do away with Dual Agency. (In favor of Designated Agency!)

Lately, Inman has not been very interested in what I've had to say, even though the content of what I've sent has been very similar to what you'll see below.

If you think what I've sent them is of value, I'd like each of you to take a moment and forward the message to Inman, asking them to run the piece.

Here are the email addresses to use at Inman:

letters@inman.com  
editor@inman.com  
brad@inman.com  
marcie@inman.com

Inman, in my opinion, has started to play things safe, for the most part. Opinions that are outside the mainstream don't appear to be of much interest to them...and THAT, is dangerous for us.

Here is the piece that I sent:

Unbelievable! The obvious implication is that Designated Agency is better, according to the Alaska Association of Realtors, AAR, than the common law of agency.

Under the common law, the standard is simple: The agent and firm must put the interests of the client ahead of all others, even their own.

Further, the common law MANDATES that agents NOT make misrepresentations to non-client parties and holds agents liable if they engage in fraud against non-client parties. (Restatement of the Law Agency 2nd, Section 348)

The problem has always been one of Realtor Associations refusing to educate their licensees on how to conform to the common law, because it puts the double dip in jeopardy...and it also sends buyers looking for representation outside of the firm that has loyalty obligations to sellers. This, of course, is anathema to the mega-brokers who control the National and State Associations of Realtors.

As Linda Garrison has said, Designated Agency is virtually the same as Dual Agency...except that the liability

mostly accrues to the client, whereas under the common law it mostly accrues to the agent!

For a better understanding of how Designated Agency adversely affects clients, visit <http://www.true-agent.com/conflicts.pdf>. (Or, Inman certainly has my invitation to place this piece on their site, if that is preferable.)

Designated Agency is not there to benefit the client. It is there to benefit large companies and the licensees who affiliate with them. It allows licensees to take engage in activities that conflict with the best interests of their clients, without any disclosure to the client of these conflicts. The common law, by contrast, makes the agent liable to the client for engaging in such behavior.

Shame on the Alaska Association of Realtors and every other state that has passed, or will attempt to pass, Designated Agency or one of its morphs. I sincerely hope, and believe, that your day of reckoning is coming.

Jay Reifert, Broker/Owner  
Excel-Exclusive Buyer Agency

Madison, Wisconsin

Sincerely Yours,

Jay Reifert, Organizer/Director of Operations  
REAL-Reform (Real Estate Agency Law-Reform)

<http://www.real-reform.org>

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<http://www.true-agent.com> \*\*\*\*\* (608)273-8388, Fax Machine  
or <http://www.Buy-Madison-Real-Estate.com>  
or <mailto:true-agents@true-agent.com>

~~~~~  
To UNSUBSCRIBE from this list, send a reply with the subject UNSUBSCRIBE. To CHANGE your e-mail address, please send a reply with the subject CHANGE. Be sure to include your name and old e-mail address.

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**Linda S Garrison**

---

**From:** Sherry Edwards [seebcr@one.net]  
**Sent:** Tuesday, March 09, 2004 12:37 PM  
**To:** NAEBATalk@InternetCrusade.com  
**Subject:** NAEBATalk: Question to Mary Richeimer

Hello Mary,

I just wanted to know if the Maryland Association of Realtors or the Maryland real estate licensing authority, allows dual agency, designated agency, transaction or facilitator as forms of representation? If you are fortunate enough to have avoided "designated" until now, don't be surprised if it doesn't raise it's ugly head in the future. It refuses to die in may state.

If yes, then working within the system isn't working. We had dual agency first and now designated (dual) agency. I believe that's a step back for buyers and sellers, and the Code of Ethics. It's a good way for mega brokers to stifle the competition of Ebbs and other firms that specialize.

Thanks for your comments.

Sherry Edwards  
Buyer's Corner Realty, Inc.  
71 Cavalier Blvd. Ste. 205  
Florence, Ky 41042  
1-888-788-8077  
859-647-6111

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3/10/2004

Page 14/14

Apr-12-04 10:57PM;

907 2773443 ;

Sent By: AAR #1 BUYER'S AGENCY;

HB

51

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**SENATE COMMITTEE REPORT**

DATE: 4/8/03

FURTHER:

DATE TURNED  
IN TO OFFICE: 5/6/03

Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 51(HES)

**HB 51 LABELING OF PRESCRIBED DRUGS**

An Act requiring pharmacists to include generic drug information on containers in which brand-name prescription drug orders are dispensed."

and recommends:

- Senate Bill:**  
 same title  
 new title  
**House Bill:**  
 same title  
 technical title  
 new: SCR # \_\_\_\_\_

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**NEW FISCAL NOTE(S):**

| Department | Date | Fiscal | Zero | FN# |
|------------|------|--------|------|-----|
|            |      |        |      |     |
|            |      |        |      |     |
|            |      |        |      |     |
|            |      |        |      |     |
|            |      |        |      |     |

**PREVIOUS FISCAL NOTE(S):**

| Department | Date    | Fiscal | Zero | FN# |
|------------|---------|--------|------|-----|
| DCED       | 3/12/03 |        | ✓    | 1   |
|            |         |        |      |     |
|            |         |        |      |     |
|            |         |        |      |     |
|            |         |        |      |     |

APPROPRIATION - no fiscal note

| SIGNATURES AND RECOMMENDATIONS: | Do PASS | Do NOT PASS | No REC | AMEND |
|---------------------------------|---------|-------------|--------|-------|
| <i>Bethany D. Davis</i>         | X       |             |        |       |
| <i>[Signature]</i>              | X       |             |        |       |
| <i>Joseph Sieburth</i>          | X       |             |        |       |
| <i>[Signature]</i>              | X       |             |        |       |
| CHAIR: <i>[Signature]</i>       | ✓       |             |        |       |

# Alaska State Legislature

State Capitol, Room 428  
Juneau, AK 99802  
Phone: 465-2689  
Fax: 465-3472  
Toll Free (800) 665-2689



345 W. Sterling Highway  
Suite 102B  
Homer, AK 99603  
Phone: 235-2921  
Fax: 235-4008

## REPRESENTATIVE Paul Seaton

District 35

### Sponsor Statement

#### CS HB 51 (HES)

**“An act requiring pharmacists to include generic drug information on containers in which brand-name prescriptions drug orders are dispensed.”**

As medical technology advances, many citizens, especially our seniors, are taking many different prescription medications to live a longer, healthier life. Seniors receive prescriptions from many different sources, AARP, internet pharmacies, mail order companies, insurance companies and local pharmacies. Increased sources of prescription drugs, may lead people to accidentally take multiple medications of the same drug, which could be sold brand or generic names. Double dosing may cause severe over-medication leading to serious side effects or even be life-threatening. House Bill 51 was introduced to safeguard Alaskans from overdosing on the same medication, but labeled under different names.

HB 51 requires state pharmacists to include the generic drug name on containers in which a brand-name prescription drug is dispensed. Under this bill, if a person receives a prescription for drug X, then the generic equivalent would be required to be listed on the label as well. This additional requirement would allow consumers to identify duplicate medications.

One recent case involves a woman with Parkinson's disease. The woman placed an order with her insurance company for a particular drug, which they shipped in the generic form arriving about ten days later. In the meantime, the woman went to her local pharmacy and refilled her brand name prescription. Weeks later, her family became increasingly worried when the woman began hallucinating. The family and her doctor were concerned after learning that the woman was double-dosing on the same drug. If the woman would have had the additional labeling requirement required by HB 51, the woman and her family would have been able to quickly identify her accidental double-dosing.

While no statistics directly measure the extent of the double-dosing problem in Alaska, elderly administrators have implied that it is a serious problem. Providing one extra piece of information when prescriptions are filled could immeasurably help in saving lives. HB 51 simply requires additional generic labeling on all brand-name prescriptions filled in the state, to inform and safeguard all Alaskans from over-dosing on the same medication.

The CS version of the bill made a technical change. The change allows all pharmacies to utilize their current computer system in listing the generic name. The old version of the bill required that the generic name be listed in parenthesis below the name-brand drug. This requirement did not conform to each particular pharmacy, which may have different operating computer software.

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Juneau, AK 99802  
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Fax: 465-3472  
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Suite 102B  
Homer, AK 99603  
Phone: 235-2921  
Fax: 235-4008

## REPRESENTATIVE Paul Seaton

District 35

### Sectional Analysis

#### CS HB 51 (HES)

**“An act requiring pharmacists to include generic drug information on containers in which brand-name prescriptions drug orders are dispensed.”**

**Section 1.** Amends section **08.80.294** of the state statute requiring a pharmacy to list a generic drug equivalent, when the same pharmacy dispenses brand-name prescription drug order.

(b) States that the information required in Section 1 (above) shall be placed directly on the container's label.

**CS -Change from original bill.** The HESS committee removed the requirement for the generic name to be *listed in parenthesis* and be *below* the label. This change allows for all pharmacies to utilize their current computer system.

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: CSHB 51(HES)  
 (H) Publish Date: 2/14/03

Revision Date/Time (Note if correction):  
 Title An Act requiring pharmacists to include generic drug information on containers....

Dept. Affected: DCED  
 BRU Occupational Licensing (117)  
 Component Occupational Licensing

Sponsor Representative Seaton  
 Requester House Health Education & Social Services

Component No. 2360

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2004    | FY 2005    | FY 2006    | FY 2007    | FY 2008    | FY 2009    |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services      |            |            |            |            |            |            |
| Travel                 |            |            |            |            |            |            |
| Contractual            |            |            |            |            |            |            |
| Supplies               |            |            |            |            |            |            |
| Equipment              |            |            |            |            |            |            |
| Land & Structures      |            |            |            |            |            |            |
| Grants & Claims        |            |            |            |            |            |            |
| Miscellaneous          |            |            |            |            |            |            |
| <b>TOTAL OPERATING</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

|                             |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|
| <b>CAPITAL EXPENDITURES</b> |  |  |  |  |  |  |
|-----------------------------|--|--|--|--|--|--|

|                               |            |            |            |            |            |            |
|-------------------------------|------------|------------|------------|------------|------------|------------|
| <b>CHANGE IN REVENUES ( )</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |
|-------------------------------|------------|------------|------------|------------|------------|------------|

**FUND SOURCE** (Thousands of Dollars)

|                                       |            |            |            |            |            |            |
|---------------------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts                 |            |            |            |            |            |            |
| 1003 GF Match                         |            |            |            |            |            |            |
| 1004 GF                               |            |            |            |            |            |            |
| 1005 GF/Program Receipts              |            |            |            |            |            |            |
| 1037 GF/Mental Health                 |            |            |            |            |            |            |
| Other 1156-Receipt Supported Services |            |            |            |            |            |            |
| <b>TOTAL</b>                          | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| Full-time |  |  |  |  |  |  |
| Part-time |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |

**ANALYSIS:** (Attach a separate page if necessary)

This legislation requires pharmacists to include generic drug information on containers in which brand-name prescription drug orders are dispensed.

No new funds are required by the division to implement this bill.

Prepared by: Jennifer Strickler, Administrative Manager  
 Division Occupational Licensing

Phone (907) 465-2144  
 Date/Time 2/12/03 5:18 PM

Approved by: Edgar Blatchford, Commissioner  
 Agency Department of Community & Economic Development

Date 2/12/2003



**Alaska Chapter**

**Mission Statement**

*Provide professional development, advocate responsible legislative action, and maintain the highest ethical business standards for the benefit of the consumer.*

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**Vice-President**  
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**Treasurer**  
*Diana Stewart*

April 3, 2003

To: Sponsors of HE 51

The Alaska Association of Health Underwriters would like to express its support for HB 51 "An Act requiring pharmacists to include generic drug information on containers in which brand-name prescription drug orders are dispensed." If passed, we see this bill as something that will provide consumers in Alaska with much needed education about the use of generic drugs.

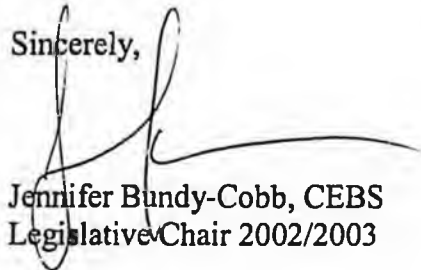
At the present time, the cost of prescription drugs is escalating faster than most, if not all other, sectors of the healthcare industry. According to Premera Blue Cross (sighted from their own claim data), the average cost for a brand name drug is \$101 compared to the average cost for a generic drug, which is \$22. Additionally, the Congressional Budget Office reports that generic drug use can save consumers \$8 to \$10 billion dollars a year in retail pharmacy costs.

From a safety standpoint, consumer can be assured that the FDA requires generics to have the same quality, strength, purity and stability as brand-name drugs.

Brand-name drug companies pay a lot to research, develop, advertise and market their product. When a brand-name drug comes off patent - about 10 years after marketing - other manufacturers can make and market drugs with the same ingredients; they do not have to repeat expensive research or marketing the brand-name company has done, so the savings are passed on to the consumer.

Please let me know if there is anything that my organization or I can do for you regarding this bill.

Sincerely,



Jennifer Bundy-Cobb, CEBS  
Legislative Chair 2002/2003

Cc AAHU Board  
Representative Norm Rokeberg  
Members of the House HESS Committee



Honorable Fred Dyson, Chair  
Senate Health, Education, and Social Services Committee  
Alaska Capitol, Room 121  
Juneau, AK 99801-1182

April 7, 2003

Dear Chair Dyson:

RE: HB 51 (Seaton) – Support

On behalf of the members of AARP in Alaska, we urge you and your colleagues on the Senate Health, Education, and Social Services Committee to support HB 51, authored by Representative Paul Seaton and co-sponsored by twenty-four of his House colleagues.

AARP believes that anything a state can do to ease the confusion of a consumer taking medication is well worth-while. We understand that Representative Seaton has developed this bill due to a real problem faced by one of his older constituents. We can assure you that many older consumers will benefit from having the generic equivalent name added to a brand name prescription. Helpful and "user-friendly" information will be beneficial for both older patients and younger family members who may be assisting them with their medications.

Representative Seaton's bill will be a welcome addition to quality health care in Alaska.

AARP recommends an "AYE" vote on HB 51.

Should you have any questions about our position, please feel free to contact Marie Darlin (586-3637), Coordinator of the AARP Capital City Task Force; Patrick Luby (907-762-3314), AARP Legislative Representative; or me (907-245-5259).

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Marguerite Stetson".

Marguerite Stetson  
Executive Council Member for Advocacy

CC: Vice-Chair Green  
Senator Wilken  
Senator Davis  
Senator Guess

Representative Seaton  
Marie Darlin  
Pat Luby

# Alaska State Medical Association

4107 Laurel Street • Anchorage, Alaska 99508 • (907) 562-0304 • (907) 561-2063 (fax)

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03/24/2003

Honorable Paul Seaton  
State of Alaska  
House of Representatives  
State Capitol, Room 428  
Juneau, AK 99802

Re: HB 51

Dear Representative Seaton:

The Alaska State Medical Association (ASMA) represents Alaska's patients and the physicians who care for them.

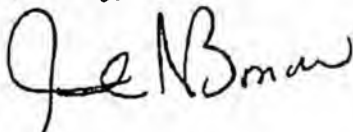
ASMA supports your efforts though HB 51 to help avert over-dosing on redundant medication. Compliance with directions for taking prescribed medication is very important but polypharmacy can provide for harmful situations.

ASMA has partnered with Premera Blue Cross/Blue Cross Blue Shield of Alaska in a program to help deal with potential problems created by multiple medications. This program identified Blue Cross subscribers over the age of 55 taking 5 or more prescription drugs. Those identified are provided with a brown paper bag with printed information to have the patient bring in the bag all medications currently being taken to each doctor's appointment. This program has been well received by both patients and physicians. Soon, it will be expanded to provide the same materials to subscribers of all ages taking 5 or more prescriptions.

By the way, the polypharmacy program instructions ask the patients to also put in the bag all "over the counter" medications or supplements as well. Drug interaction with harmful consequences can occur when mixing certain prescribed medications with "over the counter" products.

Again, thank you for sponsoring HB 51, which will serve to help prevent problems with polypharmacy.

Sincerely,



By: Jeanne Bonar, MD  
President

For: The Alaska State Medical Association

February 3, 2003

Honorable Representative Paul Seaton  
State Capital, Room 428  
Juneau, Alaska 99801-1182

Dear Representative Seaton:

Please accept this letter in support of HB 51 relating to including generic drug information on containers in which brand name prescription drug orders are dispensed. Homer Senior Citizens, Inc. supports this legislation because it would help to eliminate the possibility of an individual taking a double dose of medication. This legislation is particularly important for seniors and caregivers that take care of seniors.

At the present time, because prescriptions are sometimes written using the generic name and sometimes using the brand name, it is possible for an individual to have two bottles of medication with different names on them, which are in fact the same. Because both labels will indicate a dosage such as one pill three times a day, it is very possible for the individual to take a double dose. This is particularly true if the individual is a senior who has some dementia or the individual is being helped by a caregiver that is not totally familiar with the medications and is only reading the dosage levels.

One might ask how an individual could have two prescriptions for the same medication with different names at the same time. What may happen is that a doctor prescribes a medication for an individual to be purchased from a mail in pharmacy. These usually are generic drugs because the mail in pharmacy is usually associated with a medical insurance plan. At some point, a prescription may not arrive and the individual asks the doctor to write a prescription to a local pharmacy to get them by until the other prescription arrives. This prescription may be written for a brand name. Thus the individual now has two bottles of the same drug with different names. This same scenario could also occur between to local pharmacies if the doctor used the generic name for the first pharmacy and for the next used the brand name.

In any case, this legislation would help to eliminate the possible confusion that an individual or caregiver may have and thus a possible overdose. If we can provide additional information, please contact us.

Sincerely,

Fred Lau  
Administrator  
Homer Senior Citizens, Inc.

**Lawrence L. Reynolds MD  
Seldovia Medical Clinic  
Drawer J, Seldovia, Alaska  
99663**

2/19/03

Rep. Paul Seaton  
State Capitol  
Juneau, Alaska  
99802

Re: House Bill 51

Dear Representative Seaton,

We are in overwhelming support of HB 51, requiring that the generic name of drugs be stated on prescriptions.

One of our most common problems with both young and elderly patients is the duplication or omission of prescription medication ingestion due to confusion of ever changing names and appearances of dispensed meds.

This confusion is responsible for increased emergencies and hospital admissions, overdoses, as well as repeat office visits, lab tests, and phone contacts with angry patients thinking their doctors and pharmacists have made errors in the ordering and dispensing of their medicines.

Inclusion of the generic name on script labels - in parentheses - would be of great benefit to our patients and would be economically beneficial to all health care programs.

Sincerely,



Lawrence L. Reynolds, MD

  
Cheryl A. Reynolds, Adm.

02/11/03

To whom it may concern,

Thank you for asking my opinion on this important piece of legislation, House Bill no. 51.

As you know all drugs have generic names and many of them have brand names as well. Many states have, for years, required generic labels on prescriptions since generic labeling is the standard of practice for uniformity and accuracy both medically and scientifically. Unfortunately this not always happening in Alaska for dispensed prescriptions.

I have seen a number of occasions in my own practice where people have mistakenly taken duplicate prescription medications because of these variations in labeling. These have sometimes led to drug intoxication requiring hospitalization. Even then the problem has not been immediately noticed. This unnecessary suffering and cost from drug misadventure can be prevented.

In my opinion I think your wording would be clearer and more concise with changes as written below:

**“An Act requiring Pharmacists to label prescription drug containers with generic drug information.”**

**“In addition to other information that may be required under state or federal laws or regulations, the Pharmacist, when dispensing a prescription drug order, shall label using the generic drug name. If the prescriber wishes- such as when brand name is medically indicated, or the patient requests it, the brand name may also be included in parentheses.”**

I would avoid stipulating exactly where to put labeling since regulations already address this and computer labeling systems have only so many options.

I hope it is obvious that I strongly support generic drug labeling as a matter of education and safety.

The State Board of Pharmacy may also have an opinion on this matter.

Respectfully submitted,

A handwritten signature in cursive script that reads "R P Albertson". The letters are connected and fluid, with a prominent flourish at the end of the name.

R. P. Albertson RPh, CS, CGP, FASCP

**Subject: HB 51 Follow-up**

**Date:** Fri, 24 Jan 2003 17:27:36 -0500

**From:** "Laubacher, Cynthia" <Cynthia\_Laubacher@medcohealth.com>

**To:** "rep.paul.seaton@legis.state.ak.us" <rep.paul.seaton@legis.state.ak.us>

Representative Seaton: Thank you for your call. I apologize for the e-mail, but the (800) number won't work for out of state callers, and I can't seem to access the state website for your office number.

I spoke with my folks in headquarters and explained your goal. They re-thought their initial comments and have no concerns with the proposal as it is written.

On a side note, I looked up your bio and learned that we have something in common - we were both raised in Oxnard! I graduated from Santa Clara High - a long-time football rival of Hueneme. I am always pleased and surprised to meet someone from my hometown. I hope we have the chance to meet if I get a chance to make it up to Alaska!

In the meantime, please feel free to contact me if I can ever be of assistance. Best of luck with HB 51. Have a wonderful weekend!

Cindy

***Cynthia M. Laubacher***

Director, State Government Affairs

Medco Health Solutions, Inc.

916-726-1081

916-726-9756 - fax



Representative Paul Seaton  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99801

Dear Representative Seaton:

This is a letter in support of House Bill 51 "An Act requiring pharmacists to include generic drug information on containers in which brand-name prescription drug orders are dispensed".

The bill should achieve two important benefits.

The first is to avoid confusion by patients inadvertently taking dual dosages of medication because they do not equate a brand name drug with a generic equivalent.

The second may be increased recognition by consumers that there are generic drug equivalents available for many brand name drugs that are equally effective but less expensive than the brand name drugs. The increasing cost of drugs is one of the leading drivers of health insurance costs. Many health benefit plans have provisions which encourage use of generic drugs in order to reduce the cost of health insurance.

Thank you.

Sincerely,

A handwritten signature in cursive that reads "Jeff Beck". To the right of the signature is a small circular stamp containing the initials "JTB".

Jeff Beck  
Aetna