

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11270 SENATE LABOR & COMMERCE

**SECTION C. CERTIFICATION/LICENSURE (permit) STATUS:**

Certificate to Practice Public Accounting:

If licensing is the responsibility of another agency, please forward and request completion of applicable section.

1. The individual identified in Section A of this form holds a certificate/license/permit issued by this board on \_\_\_\_/\_\_\_\_/\_\_\_\_, which remains valid until \_\_\_\_/\_\_\_\_/\_\_\_\_, and is currently in good standing in this state. (Please note any exceptions to the above statements in Section E of this form.)

2. The individual completed an Ethics examination.  Yes  No

If yes, please state: Type \_\_\_\_\_ Date Passed: \_\_\_\_\_ Grade: \_\_\_\_\_

3. If the individual does not hold a certificate/license/permit from your board, please indicate the requirements to be met for issuance or reinstatement:

- \_\_\_\_\_ Pay appropriate fees and/or post bond
- \_\_\_\_\_ Complete acceptable accounting/auditing experience
- \_\_\_\_\_ Complete continuing professional education requirements
- \_\_\_\_\_ Other (please specify): \_\_\_\_\_

**SECTION D. ADDITIONAL INFORMATION REQUESTED:**

**SECTION E. EXCEPTIONS OR EXPLANATIONS OF INFORMATION PROVIDED:**

The information provided herein is correct to the best of my knowledge

OFFICIAL BOARD SEAL

\_\_\_\_\_  
Board

\_\_\_\_\_  
Board Official Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Please return this form to:

Department of Community and  
Economic Development  
Alaska State Board of Public Accountancy  
P.O. Box 110806  
Juneau, Alaska 99811-0806  
(907) 465-3811



- (4) Experience in the preparation of written explanations and comments on the findings of the examination and on the content of the accounting records. YES NO
- (a) Has the applicant prepared written explanations and comments on the findings of the examination and on the content of the accounting records-either in the working papers or in reports to clients or both? .....
- (b) In your opinion, does this preparation constitute satisfactory qualifying experience?.....
- (5) Experience in the analysis and preparation of audited or reviewed financial statements including explanations and notes.
- (a) Has the applicant experience in the analysis and preparation of audited or reviewed financial statements and explanations and notes of them? .....
- (b) Has the applicant prepared analysis or explanations of such financial statements-either as a result of an audit or otherwise?.....
- (c) In your opinion, does such preparation constitute satisfactory qualifying experience?.....
- (6) Has the applicant 500 hours of experience performing the attest function under the direct supervision of a CPA? (No more than 100 review hours may be used to satisfy the 500-hour requirement. No compilation is acceptable as attest functions hours.) If no, please indicate how many hours applicant has in this area. \_\_\_\_\_ hours. ....

Attest Classification/Categorization (Government, Retail, Construction, etc.)	Number of Engagements	Audit Hours	Review Hours
<b>TOTAL</b>			

I, \_\_\_\_\_, certify that the above-named applicant has been employed by me or my  
 Printed name of Supervising CPA

firm for the period indicated herein, and in the course of such employment has obtained experience under my supervision as outlined on this form. I FURTHER CERTIFY that as the supervising CPA, I have held an active CPA certificate/license/permit during this period of supervision.

Firm Name: \_\_\_\_\_ Type of Firm: \_\_\_\_\_  
 Position: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Business Telephone: \_\_\_\_\_

\_\_\_\_\_  
 Date Signed (Current Date) Signature  
 \_\_\_\_\_  
 CPA Certificate Number State of Issuance

**Please return this form directly to:**  
 Department of Community and Economic Development  
 Division of Occupational Licensing  
 Alaska State Board of Public Accountancy  
 P.O. Box 110806, Juneau, Alaska 99811-0806  
 (907) 465-3811

**ALASKA STATE BOARD OF PUBLIC ACCOUNTANCY  
CERTIFICATION OF QUALIFYING EXPERIENCE IF APPLYING BY RECIPROCITY**

An applicant for Reciprocal Certification must have five years of experience outside Alaska in the practice of **Public Accounting**. The five years must occur after the applicant passes the Uniform CPA Examination and within the 10 years immediately preceding the application.

This form is essential to the application you are filing with this board. Before your application can be considered for approval, the information requested below must be completed by an employer, partner, or other CPA who can testify to your practice as a certified public accountant. Forward this form to the appropriate person. They will complete the remainder of this form and return it directly to this agency. **(Copy the form as needed before completing Section A.)**

**SECTION A - To be completed by applicant (Please type or print legibly):**

FULL NAME of Applicant: \_\_\_\_\_  
First Middle Last

Period of Employment:	
<b>FULL TIME:</b> From _____ To _____ <span style="margin-left: 40px;">Mo. Day Yr.      Mo. Day Yr.</span>	<b>PART TIME:</b> From _____ To _____ <span style="margin-left: 40px;">Mo. Day Yr.      Mo. Day Yr.</span>
Total Hours: _____	Hours per week (average): _____

**SECTION B – To be completed by employer, partner, or other CPA who can verify applicant's practice:**

Briefly describe applicant's job duties and responsibilities: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

I CERTIFY THAT THE ABOVE-NAMED APPLICANT HAS BEEN EMPLOYED BY THIS FIRM FOR THE PERIOD INDICATED HEREIN.

Firm Name: \_\_\_\_\_ Type of Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Business Telephone: \_\_\_\_\_

\_\_\_\_\_  
 Date Signed (Current Date) Signature

\_\_\_\_\_  
 CPA Certificate Number Printed Name

\_\_\_\_\_  
 State of Issuance Title

**Please return this form directly to:**

Department of Community and Economic Development  
 Division of Occupational Licensing  
 Alaska State Board of Public Accountancy  
 P.O. Box 110806, Juneau, Alaska 99811-0806  
 (907) 465-3811

**State of Alaska**  
**Department of Community and Economic Development**  
**Division of Occupational Licensing**  
**Alaska State Board of Public Accountancy**  
 P.O. Box 110806, Juneau, AK 99811-0806  
 (907) 465-3811  
 E-mail: license@dced.state.ak.us

**CPA SUPERVISOR VERIFICATION**

In order to verify your experience under the direct supervision of a CPA, this form must be completed by the licensing authority in the jurisdiction where the supervising CPA is certified and permitted to engage in the practice of public accountancy. You are advised to check with that board before forwarding this form to determine if there is a fee or additional requirements need to be met before the information will be released.

**SECTION A. To be completed by applicant**

After completing Section A, submit this form for verification to the State Board of Accountancy where the supervising CPA holds a certificate/license/permit to practice public accounting.

Please type or print legibly:

Applicant's Last Name	First Name	Middle Initial	Maiden Name
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SUPERVISING CPA INFORMATION	
Name of Direct Supervisor	Name of Firm/Company
CPA Certificate Number	State of Issuance
Duration of Supervised Experience: From: _____ To: _____	
Date	Date

**SECTION B.**

**TO BE COMPLETED BY THE BOARD OF ACCOUNTANCY WHERE THE ABOVE SUPERVISING CPA IS CERTIFIED AND PERMITTED TO ENGAGE IN THE PRACTICE OF PUBLIC ACCOUNTING, AND MAILED DIRECTLY TO THE ALASKA BOARD OF PUBLIC ACCOUNTANCY AT THE ABOVE ADDRESS.**

By completion of this form, I acknowledge that the above-referenced supervisor was certified/licensed/permitted to engage in the practice of public accounting during the period(s) specified above:

I certify that \_\_\_\_\_, certificate number \_\_\_\_\_ in the state of \_\_\_\_\_ held a certificate/license/permit to engage in the practice of public accounting during the period(s) specified above.

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

OFFICIAL BOARD SEAL

\_\_\_\_\_  
 Board  
 \_\_\_\_\_  
 Board Official Signature  
 \_\_\_\_\_  
 Title  
 \_\_\_\_\_  
 Date

**HB**

**252**

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

# SENATE COMMITTEE REPORT

DATE: 5/16/03

FURTHER: Judiciary

DATE TURNED  
IN TO OFFICE: 5/19/03

Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 252(STA)

## HB 252 OCC LICENSING: TERMS OF BD & CONT. EDUC

"An Act relating to the terms and duties of the members of the State Board of Registration for Architects, Engineers and Land Surveyors."

and recommends:

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

**Senate Bill:**

- same title
- new title

**House Bill:**

- same title
- technical title
- new: SCR # \_\_\_\_\_

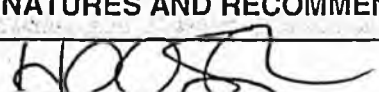

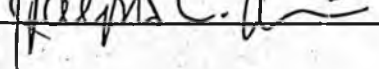
**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#
CED	5/1		✓	1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
			X	
	X			
	✓			
<b>CHAIR:</b>				

# Alaska State Legislature

*Session:*  
State Capitol  
Juneau, AK 99801  
Phone: (907) 465-2995  
Fax: (907) 465-6592



*Interim:*  
716 W 4<sup>th</sup> Avenue, Suite 300  
Anchorage, AK 99501-2133  
Phone: (907) 269-0250  
Fax: (907) 269-0249

## Representative Lesil McGuire

Chair, Judiciary Committee

### Sponsor Statement

#### HB 252

*"An Act relating to the terms of members of boards and commissions that regulate businesses and professions and to the duties of the members of the State Board of Registration for Architects, Engineers and Land Surveyors."*

I have introduced HB 252 by request of the State Board of Registration for Architects, Engineers and Land Surveyors (AELS Board), the regulatory board responsible for adopting regulations to ensure minimum competency of design professionals and to ensure the public health, safety and welfare is met. The AELS Board is also responsible for overseeing the scope of work practices of those professionals. Board members can serve a minimum of two full terms, and the bill would allow board members to serve a minimum of 6 years full years; and would enhance public health, safety, and welfare by allowing the AELS Board to require a mandatory continuing education program for continued professional competency. HB 252 would accomplish two things:

First, HB 252 modifies the existing term limit statute so that serving a partial term of less than two years would not represent a full term on the State Board of Registration for Architects, Engineers, and Land Surveyors defined under AS 08.48.021 but serving a partial term of two or more years would count as a full 4-year term. The AELS Board has, in the past, experienced problems with this statutory provision when a vacancy occurs but is not filled for some time. When an individual fills a partial term, it counts as a full term, no matter how short the partial term may be. This change would allow a Board member filling a partial term of less than two years, to serve the partial term, plus a full 8 years (two 4-year terms).

Second, the AELS Board requires statutory authority in order to adopt regulations concerning continuing education. The first recommendation cited in the Legislative Audit #08-20001-00 dated October 20, 2000 specified this ability be legislated to the AELS Board in order to help implement and maintain high standards in the professions they oversee. HB 52 would provide the AELS Board statutory authority under AS 08.48.101(a) to develop mandatory continuing education programs for the professions it serves. It is important to the Board that the statute not specifically mandate the Board to require a mandatory continuing education as a condition of licensure renewal, because in some instances professionals are already complying with continuing education requirements required by their professional societies. The AELS Board would work with the professional societies before developing any programs.

I would appreciate your support on HB 252.

# Alaska State Legislature

*Session:*  
State Capitol  
Juneau, AK 99801  
Phone: (907) 465-2995  
Fax: (907) 465-6592



*Interim:*  
716 W 4<sup>th</sup> Avenue, Suite 300  
Anchorage, AK 99501-2133  
Phone: (907) 269-0250  
Fax: (907) 269-0249

## Representative Lesil McGuire

Chair, Judiciary Committee

### Explanation of Changes to HB 252

*"An Act relating to the terms of members of boards and commissions that regulate businesses and professions and to the duties of the members of the State Board of Registration for Architects, Engineers and Land Surveyors."*

**CSHB 252(L&C)** – The Labor and Commerce Committee amended HB 252 in Section 1 by applying the changes of the terms and duties of members of boards and commission only to the members of the State Board of Registration for Architects, Engineers, and Land Surveyors rather than to all members of all State boards and commissions. The original version amended AS 08.01.035 and the Labor and Commerce committee substitute amends AS 08.48.021. This amendment necessitated an appropriate title change.

**CSHB 252(STA)** – The State Affairs Committee deleted the word "has" from Page 1, line 10 of CSHB 252(L&C). The amendment has no significant policy impact.

# FISCAL NOTE

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

Fiscal Note Number: 1  
 Bill Version: CSHB 252(L&C)  
 (H) Publish Date: 5/5/03

Revision Date/Time (Note if correction):  
 Title Occ Licensing: Terms of Bd & Cont. Educ.  
 Sponsor Representative McGuire  
 Requester House Labor and Commerce  
 Dept. Affected: DCED  
 BRU Occupational Licensing (117)  
 Component Occupational Licensing  
 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>						
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<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>
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**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)

HB 252 specifies that a person who serves for two years or more of a term on a board is considered to have served a full term. The bill also authorizes the State Board of Registration for Architects, Engineers, and Land Surveyors to establish continuing education requirements by regulation before a license is renewed. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Administrative Manager  
 Division: Occupational Licensing  
 Approved by: Edgar Blatchford, Commissioner  
 Agency: Department of Community & Economic Development

Phone 907-465-2144  
 Date/Time 5/1/03 3:00 PM  
 Date 5/1/2003

HB

255

# SENATE COMMITTEE REPORT

DATE: 5/7/04

FURTHER:

DATE TURNED  
IN TO OFFICE: \_\_\_\_\_

Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 255(FIN)(title am)

## HB 255 WAGES: TRAINING/FLEX-TIME/DEFINITIONS

"An Act amending the Alaska Wage and Hour Act as it relates to the scope of administrative regulations defining a person employed in a bona fide executive, administrative, or professional capacity as it pertains to minimum salaries to require that the minimum salary for that individual be two times the minimum wage for the first forty hours of employment each week."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- 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 type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____


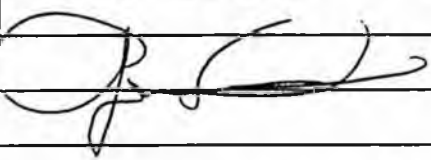
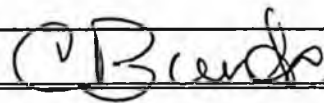
**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
			X	
			X	
CHAIR: 	✓		<del>X</del>	



ALASKA

**National Federation of Independent Business**

**Statement of Support for HB255**

**Minimum Salary for Exempt Administrative and Executive Employees**

**May 7, 2004**

The Alaska Chapter of the National Federation of Independent Business has 2,500 members, making it the largest small-business advocacy group in the state.

This legislation simply changes the formula for calculating minimum wage for exempt employees from 2-½ times minimum wage to 2 times minimum wage. This will help many small businesses that had to put salaried workers back on hourly wages because they could not afford to pay them the minimum salary of \$37,180.

**Issue Background:** In 2002 the legislature passed a bill to increase the minimum wage from \$5.65 to \$7.15 per hour. Alaska now has the highest minimum wage in the United States. The Alaska Wage and Hour Act establishes minimum wage and overtime compensation for many workers in Alaska. The Act exempts executive and professional employees that meet certain criteria. In order for an employee to be exempt from the wage and hour law they must be paid at least two and one-half times the Alaska minimum wage per hour during the first 40 hours of employment each week. Based on the current minimum wage, the minimum salary would be \$715 for the first 40 hours of employment each week. That equates to \$37,180 per year.

This automatic salary increase was not discussed in the hearings when the minimum wage issue was being debated. Changing the multiplier to 2 times minimum wage restores the minimum salary to \$29,744, a slightly higher minimum than the level prior to the increase in the hourly wage. NFIB/Alaska asks for your support of HB 255, which will remedy this problem.

**Vote YES on House Bill 255**

Submitted by Thyess Shaub on behalf of NFIB/Alaska.

# FISCAL NOTE

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

Fiscal Note Number: 1  
 Bill Version: CSHB 255(L&C)  
 (H) Publish Date: 4/24/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Department: Labor and Workforce Development  
 Title: Wages: Training/Flex-Time/Definitions BRU: Labor Standards & Safety  
 Component: Wage and Hour  
 Sponsor: Representative Rokeberg  
 Requester: House L&C Component Number: 345

**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>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<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: None

Check 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)

The department does not anticipate significant fiscal impact from this legislation.

Prepared by: Hali Denton, Acting Director Phone: 465-4855  
 Division: Labor Standards & Safety Date/Time: 4/14/03 2:06 PM  
 Approved by: Greg O'Claray, Commissioner Date: 04/14/03  
 Agency: Department of Labor and Workforce Development

For distribution information, call the Governor's Legislative Office

# LEGISLATIVE RESEARCH REPORT

JANUARY 31, 2003



REPORT NUMBER 03.069

## MINIMUM SALARY FOR EXEMPT ADMINISTRATIVE AND EXECUTIVE EMPLOYEES

PREPARED FOR REPRESENTATIVE NORMAN ROKEBERG

BY DONALD M. BULLOCK JR., LEGISLATIVE ANALYST

You asked for an explanation of the Alaska minimum wage provision that requires an employer to pay an executive or administrative employee two and one-half times the minimum wage. Specifically, you asked for the history of the provision and whether other states currently have or have had similar salary requirements for an exemption from state minimum wage laws.

### METHODS FOR DETERMINING MINIMUM SALARIES

The Alaska Wage and Hour Act (AWHA or Act) establishes minimum wage and overtime compensation for many workers in Alaska.<sup>1</sup> However, not all employees are covered by the AWH—the Act specifically exempts "an individual employed in a bona fide executive, administrative, or professional capacity."<sup>2</sup> State labor regulations set the criteria to be used when determining whether an employee is employed in one of the exempt categories.

According to regulations adopted by the Department of Labor (DOL), one of the requirements for exempting an administrative or executive employee from the AWH is that the employee be paid

<sup>1</sup> The Alaska Wage and Hour Act is codified at AS 23.10.050. The public policy underlying the act is set forth in AS 23.10.050.

<sup>2</sup> Section 23.10.055 of the Alaska Statutes list individuals for whom the AWH is not applicable. Bona fide executive and administrative employees are exempt from the Act pursuant to AS 23.10.055(9). Individuals employed in a professional capacity and certain salesmen are also exempt from coverage under the Act.

two and one-half times the Alaska minimum wage per hour during the first 40 hours of employment each week.<sup>3</sup> Based on the current Alaska minimum wage, \$7.15 per hour, an employer must pay an administrative or executive employee a total of \$286 for the first 40 hours of each workweek to continue the employee's exemption from the AWhA.<sup>4</sup> Besides Alaska, California is the only other state we identified that requires, or has required in the past, the salary of an exempt executive or administrative employee to be a multiple of the state's minimum wage. In California, the minimum salary is twice the minimum wage, computed on a monthly basis using a 40-hour workweek.<sup>5</sup>

Regulations adopted by the U.S. Department of Labor under the Fair Labor Standards Act (FLSA), and other states pursuant to state wage and hour laws, also require employers to pay administrative and executive employees a minimum salary as a condition of exemption. Federal regulations and the regulations in other jurisdictions, such as the District of Columbia and North Carolina, require an employer to pay an exempt employee a minimum weekly salary of a fixed dollar amount.<sup>6</sup> For example, the minimum salary under the FLSA to exempt an executive or administrative employee from the provisions of that act is \$155 per week under one test and \$250 per week under the alternative test.<sup>7</sup>

### ALASKA'S MINIMUM WAGE MULTIPLIER FOR EXEMPT EXECUTIVE AND ADMINISTRATIVE EMPLOYEES

In order for an executive or administrative employee to be exempt from the AWhA, the employer must satisfy the requirements in 8 AAC 15.910. One of the requirements is that the employer pay an exempt employee a salary of two and one-half times the minimum wage for the first 40 hours of employment during each week. The two and one-half minimum wage multiplier was adopted by DOL in 1993.

According to Randy Carr, Chief of Labor Standards and Safety in DOL's Anchorage office, the department adopted the two and one-half minimum wage multiplier after the legislature had

<sup>3</sup> The DOL's definitions of an administrative employee and an executive employee are in the Alaska Administrative Code at section 8 AAC 15.910(a)(1) and (a)(7), respectively. Other criteria for determining an employee's status include the type work performed, the degree of supervision over the employee, and the extent to which the employee engages in work that is not classified as executive or administrative.

<sup>4</sup> The Alaska minimum wage is defined in AS 23.10.065 as \$7.15 per hour.

<sup>5</sup> California determines exemptions from its wage and hour act on an industry basis. For example, the exemptions for executive and administrative employees in the mercantile industry are defined in Barclay's Official Code of California Regulations at 8 CCR 11070 (2003).

<sup>6</sup> Other states adopting a minimum salary for exempt employees, using a fixed dollar amount, are Montana (Montana Admin. R. 24.16.204), Minnesota (Minn.R. 5200.0200 [2002]), and New Jersey (NJAC §4A:3-5.4, applicable to state service). Regulations for the District of Columbia and North Carolina, CDCR 7-999 (2002) and 25 NCAC 1D.1942 - 43 (2002), respectively, follow the federal minimum salary requirements.

<sup>7</sup> The federal regulations have two tests for exempting administrative and executive employees from the FLSA. The two tests differ in the amount of minimum salary required and the nature and time devoted to executive and administrative activities. The higher minimum salary, \$250 per week, is generally applicable to employees who supervise others. The requirements for meeting the executive and administrative employee exemptions are located in the Code of Federal Regulations at 29 C.F.R. 541.1 and 541.2, respectively.

considered a bill to enact a minimum salary of twice the minimum wage.<sup>8</sup> Mr. Carr said that the department worked with Senator Drue Pearce, a proponent of establishing a minimum salary for exempt executive and administrative employees.

During the Seventeenth Alaska Legislature, lawmakers considered SB 262, by the Senate Labor and Commerce Committee, entitled, "An Act relating to coverage of certain executive or administrative employees of retail or service establishments under the state minimum wage laws; and providing for an effective date." According to Senator Pearce, chair of the Senate Labor and Commerce Committee, the bill was introduced at the request of the restaurant and hotel owners and operators in the state because many managers in the hotel and restaurant business spend considerable time performing non-managerial duties. The original bill proposed to reduce the time an executive or administrative employee was required to spend on exempt work—executive and administrative activities—without becoming subject to the AWhA.<sup>9</sup>

The Senate Labor and Commerce Committee substituted the original bill with a committee substitute, CSSB 262 (L&C). The committee minutes report the reasons for the substituted bill as follows:

Senator Pearce pointed out that a committee substitute had been drafted to address concerns expressed by the Department of Labor. First, there was concern that some managers who are barely making minimum wages would be adversely affected if they were not able to collect overtime. To address that concern, the committee substitute applies the exemption for overtime only to employees who make at least two times the minimum wage. As a result of that amendment, the legislation no longer logically fit in [AS] 23.10.055, so, instead, it is now amending 23.10.060, which deals with overtime workers' compensation.<sup>10</sup>

The committee substitute contained two significant changes. First, the focus of the bill was limited to an exemption from overtime pay rather than an exemption from all provisions of the AWhA. Second, the committee substitute established a minimum salary for the executive and administrative employees who would be ineligible for overtime because of their employment status. The proposed minimum salary was twice the minimum wage.

Nancy Bear Usera, Commissioner of the Department of Labor, testified in support of establishing a minimum salary for exempt administrative and executive employees and calculating that minimum salary as a multiple of the minimum wage. With regard to setting a minimum salary, the minutes reflect the commissioner's opinion that people who are called managers ought to be paid a salary that is comparable to management wages, especially in light of the fact that there is no additional restriction on the number hours that those people would have to work.<sup>11</sup>

The commissioner favored using the minimum wage in calculating the minimum salary for the exempt employees. She explained that the minimum salary under the FLSA—\$155 per week for exempt employees—was established in 1972 and had not been adjusted. She recommended

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<sup>8</sup> J.R. "Randy" Carr can be contacted at 907-269-4914.

<sup>9</sup> Minutes of the Senate Labor and Commerce Committee, May 8, 1991.

<sup>10</sup> Minutes of the Senate Labor and Commerce Committee, May 8, 1991.

<sup>11</sup> Minutes of the Senate Labor and Commerce Committee, May 8, 1991.

using the minimum wage as a factor in determining the minimum salary was a better alternative, because the minimum wage changes over time.<sup>12</sup>

Although SB 262 was limited to the exemption from the overtime provisions of the AWhA and did not pass the legislature, the DOL subsequently adopted a regulation—8 AAC 15.910—that defined executive and administrative employees for all purposes of the Act. Pursuant to that regulation, an employer must pay an executive or administrative employee two and one-half times the minimum wage during the first 40 hours of employment as a condition of exempting the employee from the AWhA.<sup>13</sup>

---

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

---

<sup>12</sup> Minutes of the Senate Labor and Commerce Committee, May 8, 1991. Commissioner Usera estimated that the \$155 per week in 1972 would be the equivalent of \$372 in 1990 dollars.

<sup>13</sup> "Administrative employee" is defined in 8 AAC 15.910(a)(1); "executive employee" is defined in 8 AAC 15.910(a)(7).

LEXSTAT AS 23.10.085

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\*\*\* CURRENT THRU ALL 2003 SESSIONS \*\*\*  
\*\*\* ANNOTATIONS CURRENT THRU OPINIONS DECIDED AS OF JANUARY 20, 2004 \*\*\*

TITLE 23. LABOR AND WORKERS' COMPENSATION  
CHAPTER 10. EMPLOYMENT PRACTICES AND WORKING CONDITIONS  
ARTICLE 3. ALASKA WAGE AND HOUR ACT

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

*Alaska Stat. § 23.10.085 (2004)*

Sec. 23.10.085. Scope of administrative regulations

(a) The director may adopt, amend, or rescind administrative regulations not inconsistent with the purposes and provisions of AS 23.10.050 -- 23.10.150 that are necessary for the administration of AS 23.10.050 -- 23.10.150.

(b) The regulations may, without limiting the generality of (a) of this section, define terms used in AS 23.10.050 -- 23.10.150, and restrict or prohibit industrial homework or other acts or practices that the director finds appropriate to carry out the purpose of AS 23.10.050 -- 23.10.150, or to prevent the circumvention or evasion of AS 23.10.050 -- 23.10.150.

(c) The regulations may permit deductions by an employer from the minimum wage applicable under AS 23.10.050 -- 23.10.150 to employees for the reasonable cost, as determined by the director on an occupation basis, of furnishing board or lodging if board or lodging is customarily furnished by the employer and used by the employee.

**HISTORY:** (§ 6(3) ch 171 SLA 1959)

LEXSTAT 8 AAC 15.910

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\*\*\* THIS SECTION IS CURRENT THROUGH DECEMBER 5, 2003 \*\*\*

TITLE 8. LABOR AND WORKFORCE DEVELOPMENT  
PART 1. INDUSTRIAL WELFARE  
CHAPTER 15. ALASKA WAGES AND HOURS  
ARTICLE 6. GENERAL PROVISIONS

*8 Alaska Admin. Code 15.910 (2003)*

8 AAC 15.910. Definitions

(a) In this chapter and AS 23.10.050 -- 23.10.150, unless the context requires otherwise:

(1) "administrative employee" means an employee

(A) whose primary duty consists of work directly related to management policies or supervising the general business operations of the employer;

(B) who customarily and regularly exercises discretion and independent judgment;

(C) who performs work only under general supervision;

(D) who is paid on a salary or fee basis;

(E) who regularly and directly assists a proprietor or an exempt executive employee of the employer; and

(F) who performs work along specialized or technical lines requiring special training, experience or knowledge and does not devote more than 20 percent, or in the case of an employee of a retail or service establishment who earns at least two and one half times the state minimum wage per hour for the first 40 hours of employment each week and who does not devote more than 40 percent of the employee's weekly hours to activities that are not described in this paragraph or (7) or (11) of this section;

(2) "casual employee," as used in AS 23.10.065(11), means

(A) an employee engaged in an activity that occurs without regularity and is not in the usual course of trade, business, occupation, or profession of the employer; or

(B) an individual employed on a seasonal basis for less than twelve weeks per calendar year at a recreational residential youth camp operated by a nonprofit religious, charitable, or educational organization;

(3) "commissioner" means the commissioner of labor and workforce development;

(4) "department" means the Alaska Department of Labor and Workforce Development;

(5) "director" means the director of the labor standards and safety division of the department, or the director's designee;

(6) "domestic service in or about a private home," as used in AS 23.10.055(4), means an individual employed in or about a private home of a person by whom the individual is employed and who performs services or activities such as a babysitter, a cook, a butler, a valet, a maid, a housekeeper, a governess, a janitor, a laundress, a caretaker, a handyman, a gardener, a footman, a groom, or a chauffeur of automobiles for family use;

(7) "executive employee" means an employee

(A) whose primary duty consists of the management of the enterprise in which the employee is employed or of a customarily recognized branch, department, or subdivision of the enterprise;

(B) who customarily and regularly directs the work of two or more other employees;

(C) who has the authority to hire or fire or effect any other change of status of other employees or whose suggestions or recommendations regarding these kinds of changes are given particular weight;

(D) who customarily and regularly exercises discretionary authority;

(E) who does not devote more than 20 percent, or in the case of an employee of a retail or service establishment who earns at least two and one half times the state minimum wage per hour for the first 40 hours of employment each week and who does not devote more than 40 percent of the employee's weekly hours to activities that are not directly and closely related to the work described in this paragraph or (1) or (11) of this section; and

(F) who is compensated on a salary basis;

(8) "nonprofit," as used in AS 23.10.055(6), means an organization no part of the income or profit of which is distributable to its members, directors, or officers and whose status has been determined by the U.S. Internal Revenue Service as nonprofit;

(9) "on call" means time that an employee is required to remain on call on the employer's premises or other place of employment or so close to them that the time cannot be used effectively for the employee's own purposes, but does not include the time an employee is not required to remain on or near the employer's premises or other place of employment but is merely required to leave word with the employer where the employee may be reached by cellular phone, beeper, or other means;

(10) "outside salesman" means a person

(A) who is customarily and regularly away from the employer's place of business;

(B) who is employed for the purpose of making sales, contracts for sales, consignments, or shipment for sale, or for obtaining orders for service or for use of facilities for which consideration will be paid by the client or customer; and

(C) whose hours of work of a nature other than that described in this paragraph or in (12) of this subsection do not exceed 20 percent of the hours worked in the workweek;

(11) "professional employee" means an employee, except for the classifications of registered nurse and licensed practical nurse

(A) whose primary duty is

(i) to perform work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

(ii) to perform work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work that can be produced by a person with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee; or

(iii) to teach, tutor, instruct, or lecture in the activity of imparting knowledge, and who is employed and engaged in this activity as a teacher certified or recognized in a school or other educational establishment or institution; or

(iv) to perform computer-related occupations that are exempted from the Fair Labor Standards Act under 29 C.F.R. Part 541.303, which is hereby adopted by reference; and

(B) whose work

(i) requires the consistent exercise of discretion and judgment in its performance;

(ii) is predominately intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized on a time basis; and

(iii) is compensated on a salary or fee basis;

(12) "salesman employed on a straight commission basis" means a person

(A) who is regularly employed on the business premises of the employer;

(B) who is compensated on a straight commission basis for the purpose of making sales, contracts for sales, consignments, or shipments for sale or for obtaining orders for services or the use of facilities for which a consideration will be paid by the client or customer; and

(C) whose hours of work of a nature other than that described in this paragraph or in (10) of this subsection do not exceed 20 percent of the hours worked in the workweek;

(13) "standby or waiting time" means time that an employee is required to be at or near the place of employment and is required to wait for work or an assignment, whether or not because of shutdown or repair, and during which the time cannot be used effectively for the employee's own purposes;

(14) "supervisory capacity" means those primary duties performed by an employee who is employed solely for the purpose of regularly assigning and directing the activities of other employees; and is responsible for results of the work performed; and who does not perform duties regularly performed by the employees supervised, except for brief periods of time not to exceed 20 percent of the hours worked in the workweek; for the purpose of AS 23.10.060, "supervisory capacity" does not apply to an employee required by the employer to perform those activities on an intermittent or substitute basis during the course of employment;

(15) "workweek" means a fixed and regularly recurring period of 168 hours that is seven consecutive 24-hour periods; it may begin on any day of the week and need not coincide with the calendar week; an individual employee's workweek is the statutory or contract number of hours that the employee is to regularly work during that period; the workweek may not be artificially adjusted for the purpose of avoiding the payment of overtime; however the workweek may be changed for any other purpose as provided in AS 23.05.160;

(16) "straight commission" means a fixed percentage of each dollar of sales an employee makes;

(17) "workday" means a fixed and regularly recurring period of 24 consecutive hours;

(18) "child care facility," as used in AS 23.10.055(12), includes those treatment programs that require that the children live in facilities provided, under the 24-hour care of program personnel, for a period of at least 30 consecutive days;

(19) "parent of children," as used in AS 23.10.055(12), means those individuals whose duties involve the provision of care, treatment, supervision, and oversight of children residing in the child care facility, and whose duties require that they reside with the children, in the facilities provided by the program, 24 hours a day, for a period of at least 30 consecutive days;

(20) "fee basis" means an agreed sum for a single job regardless of the time required for its completion as specified in 29 C.F.R. Parts 541.313(b), which is hereby adopted by reference;

(21) "regular course of business," as used in AS 23.10.060(d)(1), means those activities that are integral and necessary to any enterprise or activity in which the employer is primarily engaged;

(22) "salary" means, subject to the provisions of 8 AAC 15.908, a fixed and recurring amount of money constituting all or part of an exempt employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed.

(b) Repealed 4/29/99.

(c) For the purposes of AS 23.10.060(d)(12), "hospital" includes a nursing facility as described in 7 AAC 12.250 and licensed in accordance with 7 AAC 12.610.

(d) As used in AS 23.10.430, "personnel file and other personnel information" means all papers, documents, and reports pertaining to a particular employee that are used or have been used by an employer to determine that employee's

eligibility for employment, promotion, additional compensation, transfer, termination, disciplinary or other adverse personnel action; "personnel file and other personnel information"

(1) includes

- (A) applications;
- (B) notices of commendation, warning or discipline;
- (C) authorization for withholding or deductions from pay;
- (D) leave records;
- (E) formal and informal employee evaluations;
- (F) reports relating to the employee's character, credit, work habits, compensation, and benefits;
- (G) medical records; and
- (H) letters of reference or recommendations from third parties, including former employers;

(2) does not include

- (A) information of a personal nature about a person other than the employee if disclosure of the information would constitute an unwarranted invasion of the other person's privacy;
  - (B) information relating to an ongoing investigation of a violation of a criminal or civil statute by an employee;
- or
- (C) an employer's ongoing investigation of employee misconduct.

AUTHORITY: AS 23.05.060; AS 23.10.085

SOURCE: Eff. 12/9/78, Register 68; am 9/28/85, Register 95; am 10/4/90, Register 115; am 2/10/93, Register 125; am 3/18/93, Register 125; am 4/29/99, Register 150

**NOTES:**

EDITOR'S NOTE: As of Register 151 (October 1999), the regulations attorney made technical revisions under AS 44.62.125(b)(6) to reflect the name change of the Department of Labor to the Department of Labor and Workforce Development made by ch. 58, SLA 1999 and the corresponding title change of the commissioner of labor.



ALASKA

## KEY VOTE

### National Federation of Independent Business Key Vote

#### Vote YES on HB255

#### Minimum Salary for Exempt Administrative and Executive Employees

May 6, 2004

The Alaska Chapter of the National Federation of Independent Business has 2,500 members, making it the largest small-business advocacy group in the state.

This legislation simply changes the formula for calculating minimum wage for exempt employees from 2-½ times minimum wage to 2 times minimum wage. This will help many small businesses that had to put salaried workers back on hourly wages because they could not afford to pay them the minimum salary of \$37,180.

**Issue Background:** In 2002 the legislature passed a bill to increase the minimum wage from \$5.65 to \$7.15 per hour. Alaska now has the highest minimum wage in the United States. The Alaska Wage and Hour Act establishes minimum wage and overtime compensation for many workers in Alaska. The Act exempts executive and professional employees that meet certain criteria. In order for an employee to be exempt from the wage and hour law they must be paid at least two and one-half times the Alaska minimum wage per hour during the first 40 hours of employment each week. Based on the current minimum wage, the minimum salary would be \$715 for the first 40 hours of employment each week. That equates to \$37,180 per year.

This automatic salary increase was not discussed in the hearings when the minimum wage issue was being debated. Changing the multiplier to 2 times minimum wage restores the minimum salary to \$29,744, a slightly higher minimum than the level prior to the increase in the hourly wage. NFIB/Alaska asks for your support of HB 255, which will remedy this problem.

#### Vote YES on House Bill 255

Submitted by Thyges Shaub on behalf of NFIB/Alaska.

Distributed by Representative Norman Rokeberg



SENT VIA FAX TO: Representative Norm Rokeberg

FROM: Karen Rogina, President & CEO

A handwritten signature in black ink, appearing to read "Karen Rogina", is written over the printed name.

RE: Support for CSHB255(FIN) by Rep. Rokeberg

The Alaska Hospitality Alliance is in support of CSHB255 as a compromise bill. This scaled down bill deletes all previous provisions relating to exempt employees, flexible work time schedules and training wages.

The bill is now limited to language repealing regulations mandating that a business must pay salaried employees an annual rate of 2.5 times the min. wage to employees working in executive, administrative or professional capacity. The House Finance CS reduces that multiplier to 2 x the minimum wage and places it in statute.

When the Legislature increased the hourly minimum wage two years ago from \$5.65 to \$7.15 in response to an initiative, the unintended consequence was a .27% increase to employers on these exempt salaried employees.

While we continue to strongly believe that many provisions in the original bill as sponsored by Representative Rokeberg require statutory changes to the definitions of exempt employees, flexible work schedules and training wages, we urge your support for CSHB255(Fin) and look forward to working with all parties to resolve these very important issues next session.



May 6, 2004

RE: Support for CSHB255(FIN) by Rep. Rokeberg

The Alaska Travel Industry (ATIA) is in support of CSHB255 as a compromise bill. This scaled down bill deletes all previous provisions relating to exempt employees, flexible work time schedules and training wages.

The bill is now limited to language repealing regulations mandating that a business must pay salaried employees an annual rate of 2.5 times the min. wage to employees working in executive, administrative or professional capacity. The House Finance CS reduces that multiplier to 2 x the minimum wage and places it in statute.

When the Legislature increased the hourly minimum wage two years ago from \$5.65 to \$7.15 in response to an initiative, the unintended consequence was a 27% increase to employers on these exempt salaried employees.

We urge your support for CSHB255(Fin) and look forward to working with all parties to resolve these very important issues next session.

Sincerely,

A handwritten signature in black ink, appearing to be 'Ron Peck', written over the word 'Sincerely,'.

Ron Peck  
President, ATIA

# 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

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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)

### Sectional Analysis for CSHB 255 (FIN) (title am)

By, Representative Norman Rokeberg

Last Updated May 6, 2004

#### Section 1:

This sets any minimum salary rates adopted in regulations at two times minimum wage for the first 40 hours of employment each week.

# ALASKA STATE LEGISLATURE

## House of Representatives

### COMMITTEE ASSIGNMENTS:

RULES COMMITTEE, CHAIRMAN  
LABOR & COMMERCE COMMITTEE, MEMBER  
LEGISLATIVE COUNCIL, MEMBER  
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SESSION:  
ALASKA STATE CAPITOL  
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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)

### Sponsor Statement for CSHB 255 (FIN) (title am)

By, Representative Norman Rokeberg

Last Updated May 6, 2004

CSHB 255 (FIN) (title am) is a compromise between the labor groups and the small business groups. This bill sets reasonable minimum salary rates.

Current Alaska Wage & Hour regulations were enacted in 1976. The regulations set a minimum salary rate that applied to certain administrative and executive employees. Employees who (1) were in the retail or service industry and (2) who spent no more than 40% of their time outside of their primary administrative or executive duties, could be exempted from overtime provisions if they were salaried at 2.5 times minimum wage for the first forty hours of employment per week.

The minimum wage increase that went into effect January 1, 2003 rendered this multiplier unworkable. Prior to 2003, minimum wage was set at \$5.65 per hour. The 2.5 multiplier set the minimum salary for certain employees at \$565 per week or \$29,380 per year.

In 2003, minimum wage was increased to \$7.15 per hour. At no time during the process of increasing minimum hourly wages was the resulting increase in minimum salary rates discussed. This increase inadvertently increased minimum salary rates to \$715 per week or \$37,180 per year for entry-level management positions. This was nearly an \$8000 yearly increase that caused many small business owners to reduce their number of employees.

By changing the multiplier to 2.0, minimum salaries will be set at \$572 per week or \$29,744 per year. This is a salary that small business owners can afford and a reasonable salary for entry-level management positions.

I urge your support for CSHB 255 (FIN) (title am).

SPONSOR STATEMENT

**HB**

**257**

THE  
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## SENATE COMMITTEE REPORT

DATE: 5/10/03

FURTHER:

DATE TURNED  
IN TO OFFICE: \_\_\_\_\_

Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 257(JUD) am

### HB 257 DISCLOSURES BY REAL ESTATE LICENSEES

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

and recommends:

be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

attached amendment(s)

adopt Letter of Intent by \_\_\_\_\_ Committee

further referral to \_\_\_\_\_ Committee

**Senate Bill:**

same title

new title

**House Bill:**

same title

technical title

new: SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	No REC	AMEND
<i>Ralph J. Jelen</i>	✓			
<i>[Signature]</i>	✓			
CHAIR: <i>A. Brando</i>	✓			

# LEGAL SERVICES

## SENATE COMMITTEE REPORT

DATE: 5/10/03

FURTHER:

DATE TURNED  
IN TO OFFICE: \_\_\_\_\_

Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 257(JUD) am

### HB 257 DISCLOSURES BY REAL ESTATE LICENSEES

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

and recommends:

**Senate Bill:**

be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

same title

new title

adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

**House Bill:**

same title

technical title

attached amendment(s)

new: SCR # \_\_\_\_\_

adopt Letter of Intent by \_\_\_\_\_ Committee

further referral to \_\_\_\_\_ Committee

**NEW FISCAL NOTE(S):**

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Zero	FN#

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Caesar J. J. [Signature]</i>	✓			
<i>[Signature]</i>	✗			
<i>[Signature]</i>	✓			

(907) 465-3867 or 465-2451  
FAX (907) 465-2029  
Mail Stop 3101

## LEGAL SERVICES

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STATE OF ALASKA


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

### MEMORANDUM

May 16, 2003

**SUBJECT:** SCS CSHB 257(L&C): Issues (Work Order No. 23-LS0893\B)

**TO:** Senator Con Bunde  
Chair, Senate Labor and Commerce Committee  
Attn: Jane Alberts

**FROM:**   
Theresa L. Bannister  
Legislative Counsel

This memo accompanies a draft of the bill described above.

Constitutional issues. Please be aware that the applicability and retrospectivity section raises several constitutional issues: an ex post facto issue, a due process issue, and an equal protection issue. I do not know how they would be resolved, but wanted you to be aware that the issues are present. If you would like further information on these issues, please advise.

If I may be of further assistance, please advise.

TLB:lmb  
03-209.lmb

Enclosure:

# ALASKA STATE LEGISLATURE

## House of Representatives

### COMMITTEE ASSIGNMENTS:

HULES COMMITTEE, CHAIRMAN  
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## Representative Norman Rokeberg

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

### SPONSOR STATEMENT FOR CSHB 257 (JUD) am BY: Representative Norman Rokeberg

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

HB 257 makes several changes to the real estate disclosure statute. First, all references to a real estate "agent" have been replaced with real estate "licensee." This is to conform with the rest of the real estate statutes which use the term "licensee." Second, references to lessors and lessees have been added to the statute to reflect that the disclosure statute also applies to real estate lease transactions. And third, AS 08.88.396(d) allows for written preauthorized consents until the nature of the licensee's relationship is completely established.

In addition to the changes above, HB 257 creates subsection (e), which clarifies that a failure to make a written disclosure or obtain written consent or acknowledgment as required by the statute does not give rise to a private cause of action, but can result in a disciplinary action against the licensee. This does not, however, limit a person's ability to take any other action or pursue any other remedy to which the person may be entitled under other law to recover for damages or losses suffered.

This bill does not repeal the statutory duty for a real estate licensee to inform or obtain written consent for any type of "agency" relationship. It merely changes the sanction for making a technical violation of the statute. That is, instead of suing a real estate broker or licensee, the client can bring a complaint against that person's occupational license. As mentioned previously, all other remedies are still available such as contract, tort or equity law. This could include an action against the real estate surety fund if there is a loss suffered as a result of fraud, misrepresentation or deceit.

I encourage your support of this legislation.

# ALASKA STATE LEGISLATURE

## House of Representatives

### COMMITTEE ASSIGNMENTS:

RULES COMMITTEE, CHAIRMAN  
LABOR & COMMERCE COMMITTEE, MEMBER  
LEGISLATIVE COUNCIL, MEMBER  
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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)

### SECTIONAL ANALYSIS FOR CSHB 257 (JUD) am BY: Representative Norman Rokeberg

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

- Section 1:** Adds the disclosure statute (AS 08.88.396) to the list of actions that the Real Estate Commission can discipline a real estate licensee for violating. Also makes several grammatical corrections.
- Section 2:** Adds real estate licensee relationships to those topics covered by the real estate examine. Clarifies that agency "law" should also be covered.
- Section 3:** AS 08.88.396(a): Changes "agent" to "real estate licensee." Adds references to lessor and lessee. Corrects misspelling of "acknowledgment."  
AS 08.88.396(b): Changes "agent" to "real estate licensee." Adds references to lessor and lessee.  
AS 08.88.396(c): Changes "agent" to "real estate licensee." Adds references to lessor and lessee. Changes "dual agency" to "dual agency representation."  
AS 08.88.396 (d): Adds a provision allowing written preauthorized consent to changes until the nature of the licensee's relationship is completely established.
- Section 4:** AS 08.88.396(e): Failure to make a written disclosure or obtain written acknowledgement or consent as required by this statute does not give a person a cause of action against the licensee for the failure. This does not, however, limit a person's ability to take any other action or pursue any other remedy to which the person is entitled to under other law to recover for damages.
- Section 5:** This Act takes effect immediately.

# FISCAL NOTE

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

Fiscal Note Number: 1  
 Bill Version: HB 257  
 (H) Publish Date: 4/15/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
 Title Disclosures By Real Estate Licensees BRU Occupational Licensing (117)  
 Component Occupational Licensing  
 Sponsor Representative Rokeberg  
 Requester House Labor & Commerce 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>						
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<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>
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**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 (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)

HB 257 amends disclosure requirements for real estate licensees. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Administrative Manager Phone 907-465-2144  
 Division Occupational Licensing Date/Time 4/14/03 2:08 PM  
 Approved by: Edgar Blatchford, Commissioner Date 4/14/2003  
 Agency Department of Community & Economic Development



**ALASKA ASSOCIATION OF REALTORS, INC.**  
741 Sesame Street, Suite 100 • Anchorage, Alaska 99503  
Telephone 907-563-7123 • Fax 207-563-8476

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**Alaska Association of REALTORS Call to Action Regarding HB 257**

Recent substantial changes in the latest CS for HB257, have resulted in the Alaska Association of REALTORS changing their position on this bill.

The current version addresses issues that have arisen from legal interpretations of the licensee relationships, disclosure, and activities that reflect duties that were never the intention of the original bill in 1991. This bill clarifies the process of disclosure to the consumers in a practical manner, while still protects the public from dishonest and fraudulent practices.

The Alaska Association of REALTORS, Board of Directors and Industry Issues Workgroup, have voted to endorse HB 257 and urge its passage.



**Subject: HB 257**

**Date: Tue, 13 May 2003 10:52:40 -0800**

**From: Pete Farris <pfarris@alaska.com>**

**To: Representative\_Norman\_Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>**

Dear Rep. Rokeberg,

I want to be sure that you are aware that I fully support House Bill 257.

I cannot imagine that the intent of agency disclosure legislation now on the books really was to require that I obtain written permission from my client each time one of my listings is shown by another agent at my company, while no such disclosure form is required for an agent from another office, representing the buyer, is required.

HB 257 is a well conceived and much needed clarification of Agency Law, and I appreciate your efforts to see that it receives legislative approval.

Regards,  
pete

--

Pete Farris, Associate Broker  
Dynamic Properties  
3111 C Street #100  
Anchorage, AK 99503  
Mobile# 907-229-1637  
<mailto:pfarris@alaska.com>  
Alaska Real Estate License 9321

**Subject: House Bill 257**

**Date:** Fri, 25 Apr 2003 17:08:32 -0800

**From:** "Dan Wolf" <danwolf@alaska.net>

**To:** <Representative\_Norman\_Rokeberg@legis.state.ak.us>

April 25, 2003

The Honorable Norman Rokeberg

House of Representatives

Alaska State Capitol

Juneau, AK 99801-1182

Dear Representative Rokeberg,

I'm writing you to request your support of HB 257. The purpose of this legislation is to be a "stop gap" measure to prevent lawsuits against real estate agencies and individual agents until a new regulation can be agreed upon and enacted into law. The current law surrounding the disclosure of dual agency is unclear and is very unpractical for the way real estate really functions in today's real estate environment.

Recently lawyers have learned how to exploit dual agency transactions on 'technical violations' where no person has been wronged or harmed, but formal agency notice was not given in strict accordance to the existing statutes.

The real estate industry is under threat from particular lawyers who hope to muster enough buyers and sellers who bought or sold in transactions where the same real estate company represented both parties to the transaction. There is no way to show any harm was done to parties. The only issue is the timing of the 'dual agency' disclosure. Dual agency is very common in small communities where there are few real estate companies and occurs in about 40% of the transactions in the Anchorage area.

If attorneys can gain enough support for a class action suit against real estate agents and offices, the Errors and Omission (E & O) insurance carriers will undoubtedly drop Alaska from further coverage and this will be very harmful to the real estate industry as well as to the public at large.

The Alaska Association of Realtors has been working on proposed legislation for nearly a year but is still not quite in agreement. This bill, although maybe not perfect or fully comprehensive will provide temporary relief from suits on a technical violation.

Thank you,

Dan Wolf

Re/Max Properties, Inc

Anchorage, AK

(907) 257-0114

**Subject: HB257**

**Date:** Fri, 02 May 2003 14:12:52 -0800

**From:** Roger Porto <totem@alaska.com>

**To:** Representative\_Beth\_Kerttula@legis.state.ak.us,  
Representative\_bruce\_weyhrauch@legis.state.ak.us, Senator\_Kim\_Elton@legis.state.ak.us,  
Representative\_Norman\_Rokeberg@legis.state.ak.us

We now support HB257 in its revised form.

Roger Porto	Broker
Janet Argevitch	Associate Broker
Diane Powell	Associate Broker
Jerry Wilson	Associate
Maureen Riley	Associate
Marcia Donnelly	Associate
Crystal Slaughter	Assoaiate

4/20/03

**The Honorable Norman Rokeberg  
House of Representatives  
Alaska State Capitol  
Juneau, AK 99801-1182**

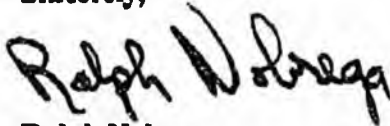
**Dear Representative Rokeberg,**

**Just a personal note to say how much I appreciate you sponsoring HB 257. I have been a full time residential licensed Realtor in Anchorage for 23 years. I have never been involved in a lawsuit or even gone to arbitration. But, I resent the fact that under current statute, I can be sued on a technicality over "what minute I got the proper agency forms signed". I am pleased with HB 257, which does not relieve me of my responsibility to disclose agency, but limits my liability to any act, which results in actual damages to the public that I serve, as a result of fraud, misrepresentation, or deceit on my part.**

**HB 257 goes a long way in deterring fire-truck-chasing attorneys from pursuing "Technicality lawsuits" at the expense of everyone. When this important piece of legislation is passed, they can concentrate on serving the public when they are a victim of misconduct resulting in damages.**

**I strongly support HB 257. If there is anything I can do to assist in getting your bill passed, please contact me immediately.**

Sincerely,



**Ralph Nobrega  
AK licensee #6482  
907-727-6903  
Ralpho@igilde.net**

hb 257...I'm for it!

**Subject: hb 257...I'm for it!**

**Date: Fri, 25 Apr 2003 14:37:03 -0700**

**From: "Marty Van Diest" <marty@valleymarket.com>**

**To: <Representative\_Norman\_Rokeberg@legis.state.ak.us>**

As an active realtor in the Mat-Su Valley I have to say that I am in favor of your bill. Especially the portion about lack of proper agency disclosure being a reason for a suit.

Please feel free to use my letter in support of your bill.

Marty Van Diest  
RE/MAX of Wasilla  
907 373-0999

**Subject: Real Estate Agency**

**Date: Sat, 19 Apr 2003 11:23:03 -0800**

**From: Scott Dennis <sddennis@InfoTechAlaska.com>**

**To: Representative\_Norman\_Rokeberg@legis.state.ak.us**

To the Editor: Please do not edit my letter. It is difficult to be brief enough when discussing legal issues, but this is a response to the piece written by Richard Richtmyer on April 19. I would prefer either to cut it down myself if you declare it is too long, or perhaps to have it published as a voice from the community column or some other means. Thank you.

Dear Editor:

Rep Rokebergs bill limiting liability in dual-agency real estate transactions is a good first step towards tort reform but does not go far enough. This bill limits the liability in transactions in which there are no actual damages, thus removing the threat of punitive lawsuits based on mere technicalities. He obviously understands the fact that lawyers increasingly profit as conflict is prolonged, and that they might be persuaded to bring frivolous lawsuits merely on speculation of personal gain. I believe these lawsuits threaten the real estate industry in Alaska.

The biggest difficulty with Alaskas approach to agency relationships is the fact that representation in law rests with the employing real estate broker. Instead, it should rest with the actual agent who performs the service for the client. Right now, when two agents under the same broker represent the two parties to a transaction (even if one agent is in Anchorage and the other is with another office in Eagle River), it is declared by state law to be technical dual agency. Still, the agents have a duty to adequately represent their clients, and they do so. Yet state law specifies that they must limit the advocacy they give their clients. This is just plain wrong. There would be no true need to limit advocacy in these transactions were it not for the threat of these frivolous lawsuits. Another way to look at it is this: If an agent is taking a buyer on a driving tour, they would be free to show any and all homes on the market, on a moments notice, except for those listed by other agents at their employing brokerage; in those situations the state law implies that they must first obtain written consent from both buyer and the seller. Of course we have a duty to inform the buyer. But the law seemingly departs from the reality, at least in a lawyers eyes. This is obviously not a healthy situation for the industry as a whole as it limits the ability of the agent to adequately represent the buyer due to the fear of frivolous lawsuits.

Since the agents themselves are representing the client it does not make sense to declare that the employing broker is the representative, as the brokers often have no direct involvement in the actual transaction. It is time for the law to accurately reflect the reality. If this were changed, the only dual-agency transactions would be those where a

single agent represents both sides of a transaction, as it should be. Even in these transactions the agent would still be able to help facilitate the transaction. Often this is advantageous, actually, especially in new construction, where the buyer then has an agent with intimate access to the builder.

I strongly support Rep Rokebergs bill as in interim measure to protect the industry from the ambulance-chasers while the Real Estate Commission addresses the real problems in state law.

Scott Dennis  
Anchorage Alaska

(Disclosure: I am a licensed real estate agent)

---

Scott Dennis, Owner and Consulting Engineer  
*InfoTech Alaska*  
POB 240706  
Anchorage, AK 99524  
(907) 441-7776

*"The Impossible just takes a little longer"*

<http://www.InfoTechAlaska.com/>

**Subject: HB 257**

**Date:** Tue, 6 May 2003 18:26:43 -0800

**From:** "Dwight Bowden" <Dwight@erabowden.com>

**To:** <Representative\_Norman\_Rokeberg@legis.state.ak.us>

Thank you for putting together this bill for the good of the real estate industry. As you are aware, Barbara and I have been Realtors in the State of Alaska for 33 years and 38 years respectively. Every year the paperwork gets worse and worse. We do a lot of dual agency transactions, although the percentage has dropped from some 40% prior to the Dual Agency legislation being passed to approximately 25% the last two or three years. We have yet to have any complaints from any of our customers/clients regarding dual agency. Only rarely has a customer declined dual agency when presented to them. Almost all seem to believe that we will treat them fairly.

I think what Wagstaff is trying to do is really awful. He's trying to get rich from the hard work of a lot of real estate agents. He must be stopped and it looks like this bill will do it. Thanks for your hard work. Dwight & Barbara Bowden.

**Subject: HB 257**

**Date:** Tue, 06 May 2003 15:30:36 -0800

**From:** "Carman, John" <JCarman@homestatemtg.com>

**To:** "'Representative\_Norman\_Rokeberg@legis.state.ak.us'" <Representative\_Norman\_Rokeberg@

I appreciate everything you have done to support house bill 257. As the Partner/manager of Homestate Mortgage we deal with realtors everyday and without this change it will be impossible for any Realtor to meet the letter of the current law. Your support is greatly appreciated.

John Carman  
Manager/Partner  
Homestate Mortgage

**Subject: HB 257**

**Date:** Fri, 02 May 2003 15:57:19 -0800

**From:** Julie Dyar <juliedyar@gci.net>

**To:** Representative\_Lesil\_McGuire@legis.state.ak.us,  
Representative\_Tom\_Anderson@legis.state.ak.us,  
Representative\_Jim\_Holm@legis.state.ak.us, Representative\_Dan\_Ogg@legis.state.ak.us,  
Representative\_Ralph\_Samuels@legis.state.ak.us,  
Representative\_Les\_Gara@legis.state.ak.us,  
Representative\_Max\_Gruenberg@legis.state.ak.us

**CC:** Representative\_Norman\_Rokeberg@legis.state.ak.us,  
Representative\_Bruce\_veyhrauch@legis.state.ak.us,  
Representative\_Beth\_Kertulla@legis.state.ak.us, Senator\_Kim\_Elton@legis.state.ak.us

Dear Legislators,

I have been a licensed agent in the State of Alaska for 5 years. During that time I have served on the Southeast Board of Realtors as the Treasurer for one year, Vice President for 2 years and am currently serving as Secretary as well as being a sales agent at Ricker & Associates Real Estate, Inc.

I was originally opposed to this legislation due to concerns for the rights and protection of the general public. Rep. Rokeberg has been willing to listen to the concerns of the Alaska Association Industry Workgroup, and he is proposing substantial changes to HB 257. I am in support of those changes.

The reason I have changed my position is due to the fact the current version addresses issues which have arisen from legal interpretations of the licensee relationships, disclosure, and activities that reflect duties which were never the intention of the original bill in 1991. This bill clarifies the process of disclosure to the consumer in a practical manner, while still protecting them from dishonest and fraudulent practices.

The Alaska Association of Realtors Board of Directors and Industry Issues Workgroup voted today to endorse HB257 and urge it's passage. I concur with that position.

I respectfully request the passage of the ammended version of HB 257 out of your committee, and support it's passage on the house floor.

Thank you for your time and consideration in this matter.

Julie Dyar  
Ricker & Associates Real Estate, Inc.  
(907)586-4990 - Office  
(907)723-3613 - Cell

**Subject: RE: HB257-**

**Date:** Fri, 02 May 2003 12:49:51 -0800

**From:** Ruth Blackwell <ruth@aukelake.com>

**Reply-To:** ruthlb@aukelake.com

**Organization:** Ruth Blackwell

**To:** Representative\_Lesil\_McGuire@legis.state.ak.us,  
Representative\_Tom\_Anderson@legis.state.ak.us,  
Representative\_Jim\_Holm@legis.state.ak.us,  
Representative\_Dan\_Ogg@legis.state.ak.us,  
Representative\_Ralph\_Samuels@legis.state.ak.us,  
Representative\_Les\_Gara@legis.state.ak.us,  
Representative\_Max\_Gruenberg@legis.state.ak.us

**CC:** Representative\_Norman\_Rokeberg@legis.state.ak.us,  
"Rep. Bruce Weyhrauch" <representative\_bruce\_weyhrauch@legis.state.ak.us>,  
Representative\_Kerttula <Representative\_Beth\_Kerttula@legis.state.ak.us>,  
Senator Kim Elton <Senator\_Kim\_Elton@legis.state.ak.us>

I have been a licensed agent for 20 years, I have served under 2 governors on the Real Estate Commission, and was chairman for 2 years. I have been an active member of the Alaska Association Industry Issues Workgroup. I am currently an Associate Broker at Powell Realty GMAC here in Juneau.

I was originally opposed to this legislation. Rep. Rokeberg has been willing to listen to my concerns and that of the Alaska Association Industry Issues Workgroup, and he is proposing substantial changes to HB 257. I am in support of those changes.

The reason that I have changed by position is that the current version addresses issues that have arisen from legal interpretations of the licensee relationships, disclosure, and activities that reflect duties that were never the intention of the original bill in 1991. This bill clarifies the process of disclosure to the consumers in a practical manner, while it still protects the public from dishonest and fraudulent practices.

The Alaska Association of REALTORS, Board of Directors and Industry Issues Workgroup, voted today, to endorse HB 257 and urge its passage. I concur with that position.

I respectfully request that you pass the amended version of HB257 out of your committee, and support its passage on the house floor.

Thank you for your consideration. If you or you staff have any questions please feel free to call me at any of the numbers below.

Ruth Blackwell  
Powell Realty/GMAC  
9040 Glacier Highway  
Juneau, Alaska 99801  
907-789-3888 work  
907-789-7038 work fax  
907-789-0582 home  
907-789-2835 home fax  
907-321-0615 cell

**Subject: HB 257**

**Date:** Fri, 2 May 2003 15:32:23 -0800

**From:** "Pam Bauder" <valleybd@mtaonline.net>

**To:** <Representative\_Norman\_Rokeberg@legis.state.ak.us>

We are very much in support of this bill, as amended. Thanks for your help -

Jean Kay, President  
Valley Board of Realtors

**Subject: HB 257**

**Date:** Sat, 10 May 2003 17:02:42 -0800

**From:** "Debra Leisek" <debral@ptialaska.net>

**To:** <Undisclosed-Recipient;.>

Please vote yes for Hb 257

I support this bill 100% This will clarify the relationships for real estate practioneers and the buyer and sellers. I believe this will ultimately protect the buyers and sellers.  
HB 257 will define an easy to comprehend standard of practice in explaining and following the rules of relationship. This will benefit your constituents.

Thank you for your consideration in this matter.

Debra Leisek  
331 E Pioneer Ave #101  
Homer Alaska 99603  
907-235-6183

**Subject: HB 257**

**Date: Fri, 09 May 2003 17:09:46 -0800**

**From: "Gabe Stephan" <gstephan@jackwhite.com>**

**To: <Representative\_Norman\_Rokeberg@legis.state.ak.us>**

MAY 9, 2003

DEAR NORM,

I STRONGLY URGE YOU TO SUPPORT HOUSE BILL 257. THIS IS AN IMPORTANT BILL FOR THE REAL ESTATE INDUSTRY AS A WHOLE.

THE CONSUMER IS PROTECTED IN MANY WAYS THROUGH MUCH LEGISLATION AND THE LANGUAGE IN THIS BILL DOES NOT HARM THE CONSUMER IN ANY WAY.

THANK YOU FOR YOUR CONSIDERATION.

SINCERELY,

GABE STEPHAN  
ASSOCIATE BROKER  
PRUDENTIAL JACK WHITE REAL ESTATE  
FORMER OWNER/BROKER OF POLAR REALTY INC.

**Subject: HB 257**

**Date: Wed, 7 May 2003 17:27:46 -0800**

**From: "Denny Wood" <denny@akhomes.com>**

**To: <Representative\_Norman\_Rokeberg@legis.state.ak.us>**

Representative Norm Rokeberg

Thanks for sponsoring and all of your work on this bill. Below is the letter I am sending to all the house.

Please support HB 257. I have been a Realtor for 20+ years, a member of the Anchorage Board of Realtors and the Alaska association of Realtors, both organizations support this bill. As sales manager of Prudential Vista Real Estate, I review hundreds of transaction from nearly every major broker in Anchorage. I see the dilemma that agents have with the current law and getting buyers and sellers to sign a document before business can be conducted. There is no reason for an ambulance chasing tort attorney to get rich off the backs of real estate agents and their E & O insurance companies over a technical error when no actual harm has been done to any party. This attorney has stated on record that he would sue the Realtor even if neither party had been damaged and wants to go back to 1991 and sue every dual agency case for technical non compliance. As an industry, the real estate profession has a very good record of taking care of problems at the broker level and keeping the public happy with their transactions. It is not the intention of this bill to give Realtors a free ride. It is a tort reform bill to stop frivolous lawsuits. I may be wrong, but I also understand that the Bar Association has no opposition to this bill either. If you have questions, please call, write or email.

Dennis L. Wood  
11200 Polar Drive  
Anchorage, AK 99516  
denny@akhomes.com  
(907) 244-0399 mobile  
(907) 333-4055 home  
Mailing Adress:  
PO Bcx 241727  
Anchorage, AK 99524

**Jermain Dunnagan & Owens, P.C.**

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BRADLEY D. OWENS  
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HOWARD S. TRICKEY  
GREGORY C. TAYLORGARY C. SLEEPER  
SAUL R. FRIEDMAN  
DIANE F. VALLENTINE  
W. MICHAEL STEPHENSON  
ANDRENA L. STONE  
EUCENIA G. SLEEPERERIC J. BROWN  
SARAH E. JOSEPHSON  
MATTHEW SINGER  
MARK P. MELCHERT  
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ANCHORAGE, ALASKA 99503-4097TELEPHONE (907) 563-8844  
FAX (907) 563-7322  
E-MAIL Info@jdoalaw.com

SERVING ALASKANS SINCE 1978

May 13, 2003

Alaskan Legislators

Re: HB 257

Dear Legislators:

INTRODUCTION

The purpose of this legislation is to prevent civil lawsuits and class actions for technical violations of the dual agency disclosure statute by adding a new subsection (g) to AS 08.88.396. The residential real estate industry is threatened with the loss of insurance because the current law may allow a class action suit for technical violations of the statute when neither the buyer nor seller in a transaction suffer any actual damage or loss. The technical violation claimed in the suit involves a failure to make a timely dual agency disclosure, even though a full written disclosure was made before any agreement was reached. A recently filed class action suit, that has not been certified, seeks disgorgement of commissions for the past six years, an estimated \$70 million dollars, even though buyers and sellers suffered no damages. The proposed amendment does not change the current duty of disclosure when an agent acts as a dual agent in a transaction. Let us answer your questions about the amendment.

QUESTIONS AND ANSWERS

1. What is the problem? A group of clever lawyers believes it has hit upon a way to force Alaska real estate agents to disgorge millions of dollars worth of commissions even if no one has done anything wrong and no one has been harmed. They filed a class action lawsuit against Vista seeking that result.

2. How does that work? These lawyers believe that failure to have proper paperwork will justify forfeiting commissions. They believe almost every dual agency transaction done in Alaska in recent years was not properly documented. They contend AS 08.88.396 requires signed acknowledgements from both buyer and seller every time a prospective buyer wants to see a house listed with the same brokerage; not just blanket consents, but signed acknowledgments every single time a new buyer wants to see a listed home.

Alaskan Legislators  
May 13, 2003  
Page 2

3. What if the agent made oral disclosures? It doesn't matter. Unless the agent got signed acknowledgments from both sides before doing any work, these lawyers contend the commission was unlawfully earned and should be forfeited. This is not about whether clients actually got the disclosures they need.

4. What if no one was harmed? That doesn't matter either. This is not about paying consumers for harm they have suffered. It is about making agents forfeit commissions.

5. How does our bill work? The only purpose is to say that failure to document disclosures and obtain signatures in the right form and at the right time will not, by itself, support a lawsuit.

6. What if an agent lied or misled someone? They can and should be sued. This bill is not intended to excuse anyone for misconduct. If a client can prove that an agent did something wrong, they should recover in full for their actual harm. This bill does not change the duties which an agent owes to his/her clients. This bill is only intended to prevent forfeitures where no one did anything wrong and no one was harmed.

7. Is this just a Vista problem? Absolutely not. A prominent local broker has been quoted several times saying this is an industry problem. He is right. Every broker and agent can be sued. If these lawyers are right, almost everyone is potentially vulnerable to a lawsuit. Only brokerages that do not engage in dual agency transactions (like buyers brokers) should feel safe.

8. Is this just an Anchorage problem? No. Dual agency is more common in rural areas than in Anchorage.

9. Will this stop with Vista? If we win our lawsuit, it might. If we lose, there is no way. If our bill doesn't pass and we lose our case, every brokerage should assume it will be fighting a class action.

10. What about insurance? I think every Alaska brokerage applying for insurance should disclose the possibility it will be sued if this bill does not pass. It is aware of circumstances (dual agency transactions) which may result in a lawsuit. That is the test for disclosure on an application. I will let others speak to availability of insurance in the present hard market, but it would not surprise me if insurance for Alaska brokerages becomes unavailable.

Alaskan Legislators  
May 13, 2003  
Page 3

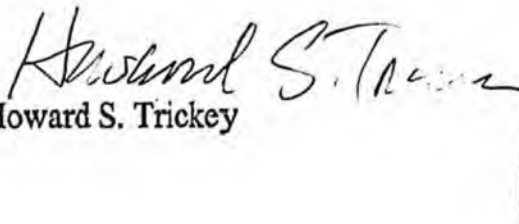
11. Is this about Bonnie Mehner? No. The judge found Bonnie committed intentional misconduct, made representations and/or hid facts from her client. Nothing in this bill would have prevented him from suing her and winning. The civil case against her is over. It settled months ago. Nothing in this bill will provide her a defense in her licensure proceedings.

12. Why is it retroactive? Because what is at issue is forfeiture of commissions earned over the last three years. Changing the law prospectively will not protect Alaska agents and brokers from these class action lawsuits.

The real estate industry has struggled with a law that has not worked for years. Some examples of the practical problems with the law are attached.

Sincerely,

JERMAIN, DUNNAGAN & OWENS, P.C.

  
Howard S. Trickey

HST/ss  
Enclosure

## EXAMPLES

### Example I

You are a realtor in rural Alaska and you are the only brokerage in town. You have a listing and your seller is out of state and is difficult to reach. A buyer who is in town for a short time wants to see that seller's property. You can't show it without risking being sued because you can't get a Consensual Dual Agency form signed by both parties (can't reach the seller). Even though both parties understand dual agency because you've explained it to them and you've even had the seller sign a "blanket" consent form to dual agency before leaving town -- still no good according to Wagstaff. Do you show the property knowing that's what the buyer and seller want? Or do you not show it because if you do Wagstaff will sue you?

### Example II

Put another way, ask the legislators this: If you listed your house for sale with me, and then went on a much deserved two-week vacation cruise, would you want me to fax you approximately two times a day on the cruise ship to have you sign a Consensual Dual Agency form for every buyer that wanted to see your house? How would you feel knowing we wouldn't show your house if we weren't able to reach you to get those signatures?

### Example III

Or, let's say you're a buyer who's in Anchorage for the weekend to house-hunt. You've got two days to find the home you and your family are going to live in for the next four years while you're stationed at Elmendorf. Would you want to wait in the office for the half of the first day while I, your realtor, ran around town getting Consensual Dual Agency forms signed so I could finally get around to showing you properties? Wouldn't the time lost result in seeing fewer homes? Is that really in your best interest as a buyer?

LEXSTAT Alaska Stat. 08.88.396

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\*\*\* CURRENT THRU FEBRUARY 13, 2003 \*\*\*

TITLE 8. BUSINESS AND PROFESSIONS

CHAPTER 88. REAL ESTATE BROKERS AND OTHER LICENSEES

ARTICLE 3. MISCELLANEOUS PROVISIONS

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

Alaska Stat. § 08.88.396 (2003)

Sec. 08.88.396. Disclosure of agency to prospective buyers and sellers

(a) A person licensed under this chapter shall, when acting as an agent for a prospective seller of real estate,

(1) disclose in writing the licensee's agency relationship with the seller to each prospective buyer at the time that the licensee begins to provide specific assistance to locate or acquire real estate for the buyer, and obtain from each prospective buyer a signed acknowledgement that the buyer is aware of the agency relationship between the licensee and the seller; and

(2) include in the purchase agreement a statement of the agency relationship between the licensee and the seller.

(b) A person licensed under this chapter shall, when acting as an agent for a prospective buyer of real estate,

(1) disclose the licensee's relationship with the buyer to a prospective seller of real estate, or to the seller's agent, at the time of the initial contact between the licensee and the prospective seller or the seller's agent, and confirm the relationship in writing as soon as possible after the initial contact;

(2) include in the purchase agreement a statement of the agency relationship between the licensee and the buyer;

(3) if the prospective seller has an unexpired exclusive listing contract for a property, present all offers to purchase that property through the seller's agent; and

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

(c) A person licensed under this chapter may act as an agent for both a prospective seller and a prospective buyer of real estate only after the licensee informs both the seller and the buyer of the dual agency and obtains written consent to the dual agency from both principals.

(d) When a change occurs during a transaction that makes a prior written disclosure required by this section incomplete, misleading, or inaccurate, the licensee shall make a revised disclosure, in writing, to all parties to the transaction as soon as possible. The revised disclosure must include the date of the revision and shall be acknowledged in writing by all the parties.

HISTORY: (§ 1 ch 113 SLA 1990; am § 31 ch 45 SLA 1998)

NOTES:

EFFECT OF AMENDMENTS. --The 1998 amendment, effective May 23, 1998, rewrote this section.

NOTES TO DECISIONS

*QUOTED IN Yoon v. State Real Estate Comm'n, 17 P.3d 779 (Alaska 2001).*

USER NOTE: For more generally applicable notes, see notes under the first section of this article, chapter or title.



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SERVING ALASKANS SINCE 1876

May 12, 2003

VIA FAX AND U.S. MAIL

Fax No.: 907-465-2040

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

Re: **Constitutionality of CSHB 257(JUD)**

Dear Representative Rokeberg:

You have requested our opinion concerning issues raised by legislative counsel. Counsel's May 8, 2003 letter raised some issues regarding the constitutionality of CSHB 257. This letter responds to those constitutional issues. As you will see, this form of retroactive legislation is fully endorsed by the Alaska Supreme Court and the Ninth Circuit.

- (1) CSHB 257 (JUD) does not infringe upon a vested property interest in contradiction of procedural due process.

The Federal and State Constitutions each provide that "[n]o person shall be deprived of life, liberty, or property, without due process of law."<sup>1</sup> Under State and Federal law the basic prerequisites for a procedural due process violation are state action and deprivation of an individual interest of sufficient importance to warrant constitutional protection.<sup>2</sup> CSHB 257 (JUD) does not deprive any citizen of a vested property right without due process of law because a cause of action is not a vested property right.<sup>3</sup>

<sup>1</sup> AK Const. Art. 1, §7; U.S. Const. Amend 5.

<sup>2</sup> *Miner's Estate v. Commercial Fisheries Entry Commission*, 635 P.2d 827, 829 (Alaska 1981); *Chitide v. Manillaq Ass'n of Kotzebue, Alaska*, 972 P.2d 167, 171 (Alaska 1999).

<sup>3</sup> *See Evans v. Kutch*, 56 P.3d 1046 (Alaska 2002)(upholding Alaska's Tort Reform legislation as constitutional); *Austin v. City of Bisbee, Arizona*, 855 F.2d 1429 (9<sup>th</sup> Cir. 1988); *In re Consolidated United States Atmospheric Testing Litigation v. Livermore Labs*, 820 F.2d 982 (9<sup>th</sup> Cir. 1987) cert. den. *Kontzeski v. Livermore Labs*, 485 U.S. 905 (1988); *Grimesy v. Huff*, 876 F.2d 738 (9<sup>th</sup> Cir. 1989) cert.

Representative Norman Rokeberg  
May 12, 2003  
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The Alaska constitution contains no prohibition against retroactive legislation. See *Arco Alaska, Inc. v. State*, 824 P.2d 708, 710 (Alaska 1992) ("our review of the proceedings of the constitutional convention leads us to conclude that the framers ... did not intend to provide substantive protection of individual rights against retroactive legislation").

It has long been settled that private rights of action become vested upon entry of a final judgment and cannot be taken away by legislation. See, e.g., *Hodges v. Snyder*, 261 U.S. 600, 603 (1922). It is equally settled that there is no vested right in the outcome of litigation until the case is finally resolved on appeal and a final judgment entered. See, e.g., *Johnson v. Continental West*, 99 Wash.2d 555, 562, 663 P.2d 482 (1983); *Bradley v. Richmond School Board*, 416 U.S. 696 (1974) (application of statute providing for attorney's fees in school desegregation cases to pending case not unconstitutional); *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1 (1970) (law retroactively imposing liability for acts for which no liability attached when done is constitutional). A party has no vested right in a judicial remedy. *Bidwell v. Scheele*, 355 P.2d 584, 586 (Alaska 1968) ("a party cannot have any vested right in a remedy conferred by [a statute] ....").

It is well settled in the Ninth Circuit and elsewhere that while a cause of action is a property interest, it is not a vested property interest protected under the federal Due Process clause. I refer you to *Austin v. City of Bisbee*, in which the Ninth Circuit definitively ruled on this very issue. In that case, the plaintiff had a pending cause of action against the City of Bisbee for overtime wages under the Fair Labor Standards Act (FLSA). One week after plaintiff filed his Complaint, Congress retroactively amended the FLSA to preclude these types of lawsuits against local governments. The Ninth Circuit upheld this Congressional amendment because a cause of action is not a vested property interest. A cause of action is inchoate and "affords no definite or enforceable property right until reduced to final judgment."<sup>4</sup> This is true even for pending litigation. Congress has authority to moot a pending controversy by enacting new legislation.<sup>5</sup>

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den. *McMahon v. Grimesy*, 499 U.S. 975 (1991); *National Railroad Passenger Corp. v. State of Nevada, Dept. of Conservation and Natural Resources*, 776 F.Supp. 528 (D. Nevada 1991).

<sup>4</sup> *Austin*, 855 F.2d at 1436 quoting *In re Consolidated United States Atmospheric Testing Litigation*, 820 F.2d at 989 (Nor did the plaintiff have a vested property interest in the underlying benefit, overtime compensation. When the statute authorizing a benefit is amended, "the property right disappears.")

<sup>5</sup> *Stop H-3 Ass'n v. Dole*, 870 F.2d 1419, 1432 (9<sup>th</sup> Cir. 1989) citing *Friends of the Earth v. Weinberger*, 562 F.Supp. 265 (9<sup>th</sup> Cir. 1983) ("There is thus, by itself, nothing illegitimate about a decision to enact legislation exempting a particular project, the subject of pending litigation, from the requirements of existing statutes.")

Representative Norman Rokeberg  
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- (2) CSHB 257 (JUD) does not violate the State Constitution prohibition of *ex post facto* laws.

A statute is not illegal or unconstitutional merely because it is retroactive. A retroactive statute is an unconstitutional *ex post facto* law only if it imposes a more onerous punishment for a criminal act.<sup>6</sup> The State Constitutional prohibition of *ex post facto* laws is wholly inapplicable to CSHB 257 (JUD). While this Bill is retroactive in scope, it is not a criminal statute nor does it impose a more onerous punishment. In fact the Bill does just the opposite, it clarifies the fact that real estate brokers cannot be sued for an alleged violation of A.S. §08.88.396.

The Federal and State Constitutions' *ex post facto* clauses prohibit the retrospective application of laws that "alter the definition of crimes or increase the punishment for criminal acts."<sup>7</sup>

[A] statute violates the *ex post facto* prohibition if, and only if: (1) it makes conduct criminal which would have been innocent when undertaken; (2) it aggravates a crime or makes it greater than it was when committed; (3) it permits imposition of a different and more severe punishment than was permissible when the crime was committed; and, (4) it changes the legal rules of evidence to permit less or different testimony to convict the offender than was required when the crime was committed.<sup>8</sup>

CSHB 257 does not make conduct criminal which would have otherwise been innocent when undertaken. The current statute prohibits a real estate broker from acting as a dual agent unless this fact is disclosed in writing. A.S. §08.88.396. The proposed Bill does not alter the restrictions placed upon brokers.

Assuming *arguendo* that the *ex post facto* clause is applicable, there is no prohibition against retroactive amendments that are curative in nature.<sup>9</sup> According to the

<sup>6</sup> See *State v. Creekpau*, 753 P.2d 1139 (Alaska 1988).

<sup>7</sup> *Amin v. State*, 939 P.2d 413, 416 (Alaska App. 1997) quoting *Collins v. Youngblood*, 497 U.S. 37, 41(1990); see *Hertz v. State*, 22 P.3d 895, 902 (Alaska App. 2001); see also *Stoneking v. State*, 39 P.3d 522, 524 (Alaska App. 2002).

<sup>8</sup> *Creekpau*, 753 P.2d at 1143 quoting *State v. Creekpau*, 732 P.2d 557, 569 (Singleton, J., dissenting) (Alaska App. 1987)(emphasis added).

<sup>9</sup> *Ziafluh v. State*, 620 P.2d 690 (Alaska 1980).

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Alaska Supreme Court, curative legislation will readily be construed as retroactive.<sup>10</sup> Of course, in the case of CSHB 257 (JUD) there is no doubt that the amendment is intended to apply retroactively. The Bill does not introduce a new public policy or purpose, rather it merely clarifies that violations of AS § 08.88.396 do not support a private cause of action.<sup>11</sup>

The Alaska Supreme Court applies two tests in determining whether a statute affecting pre-enactment conduct is unconstitutionally retrospective. One inquiry is whether the statute affects a vested right.<sup>12</sup> This certainly is not the case with CSHB 257. The next inquiry is one of fairness.<sup>13</sup> So long as the amendment does not "unfairly or unreasonably impinge upon any property rights or settled expectations" it will be upheld as a constitutional, retroactive statute.<sup>14</sup> Citizens can have no settled expectation in their continuing right to bring a cause of action.<sup>15</sup>

(3) CSHB 275 (JUD) is rationally related to a legitimate objective and is not unconstitutional under the Federal or State Equal Protection provisions.

The Alaska Supreme Court applies a three-part, sliding scale test to address equal protection claims. "[T]he relevant factors to be balanced are the significance of the individual right purportedly infringed, the importance of the regulatory interest asserted by the state, and the closeness of the fit between the challenged statute and the state's asserted regulatory interest."<sup>16</sup> Stricter scrutiny is applied if the alleged violations affect fundamental rights or implicate a suspect class based on race, national origin or gender.

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<sup>10</sup> *Zurfluh v. State*, 620 P.2d 690, 693 (Alaska 1980).

<sup>11</sup> *ABKCO Music Inc. v. Laver*, 217 F.3d 684 (9<sup>th</sup> Cir.) (retroactively applying amendment to copyright law because although it would literally result in a change in the law the policy was not changed because it implemented the longstanding policy of the Copyright Office).

<sup>12</sup> *Underwood v. State*, 881 P.2d 322, 327 (Alaska 1994).

<sup>13</sup> *Id.* citing 2 Norman J. Singer, *Sutherland Statutory Construction* § 41.05, at 369-71 (5th ed. 1993) (fairness considerations represent a more meaningful standard of evaluating retroactive laws than a vested rights analysis).

<sup>14</sup> *Underwood*, 881 P.2d at 327.

<sup>15</sup> *Consolidated U.S. Atmospheric Testing*, 820 F.2d at 989 quoting *Hammond v. United States*, 786 F.2d 8, 12 (1<sup>st</sup> Cir. 1986).

<sup>16</sup> *Brown v. State*, 926 P.2d 1195, 1198 (Alaska App. 1996)

Representative Norman Rokeberg  
May 12, 2003  
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On the other hand, minimal scrutiny is given to alleged violations of non-fundamental rights or do not affect a suspect class.<sup>17</sup>

Distinguishing between persons who have obtained final judgments and persons who have not simply does not implicate a fundamental right. As previously discussed, a cause of action is not a vested property interest. As to economic interests, the Alaska Supreme Court applies minimal scrutiny.<sup>18</sup> There is no reason to suspect that this statute would invoke anything other than minimal scrutiny, and the statute therefore need only be fair and substantially related to legitimate objectives.<sup>19</sup>

The purpose of CSHB 257 is to clarify existing law. The Bill<sup>1</sup> is designed to promote the administrative resolution of dual-agency violations. Restricting private causes of actions is fair and substantially related to this legitimate objective. Distinguishing between citizens with final judgments from those without judgments is an essential element of the amendment. Under Federal and State Due Process, causes of action are not vested property rights because they are contingent in nature. The same is not true of a final, unreviewable judgment. Thus, this distinction is constitutionally required.

In conclusion, CSHB 257 is not an unconstitutional law under the federal or state *ex post facto*, procedural due process or equal protection clauses. As explained by the Ninth Circuit:

[n]o person has a vested interest in any rule of law entitling him to insist that it shall remain unchanged for his benefit. This is true after suit has been filed and continues to be true until a final unreviewable judgment is obtained.<sup>20</sup>

This curative Bill simply clarifies the law on the issue of whether a citizen can bring a cause of action based solely on a technical violation of the statute – the failure to

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<sup>17</sup> *State, Dept. of Revenue, Permanent Fund Dividend Div. V. Cosio*, 858 P.2d 621, 629 (Alaska 1993).

<sup>18</sup> *Cosio*, 858 P.2d at 629.

<sup>19</sup> See *Consolidated U.S. Atmospheric Testing*, 820 F.2d 982 (in upholding the constitutionality of a law depriving citizens of causes of action against private contractors, the Ninth Circuit applied the rational basis test).

<sup>20</sup> *Consolidated U.S. Atmospheric Testing*, 820 F.2d at 989 quoting *Hammond v. United States*, 786 F.2d 8, 12 (1<sup>st</sup> Cir. 1986).

Representative Norman Rokeberg  
May 12, 2003  
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document in writing the disclosures required by the statute to allege a violation of the dual-agency statute. If challenged, the Alaska Supreme Court would uphold this amendment as constitutional.

Please feel free to distribute this letter to all your colleagues who received copies of the letter from legislative counsel.

Sincerely,

JERMAIN, DUNNAGAN & OWENS, P.C.

  
Howard S. Trickey

HST/jmh

23-LS0893X  
Bannister  
5/13/03

SENATE CS FOR CS FOR HOUSE BILL NO. 257( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES ROKEBERG, Foster

A BILL

FOR AN ACT ENTITLED

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

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

6 \* Section 1. AS 08.88.071(a)(3) is amended to read:

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

10 (A) with respect to a real estate transaction

11 (i) made a substantial misrepresentation;

12 (ii) made a false promise likely to influence, persuade,  
13 or induce;

14 (iii) in the case of a real estate broker, pursued a

1                   flagrant course of misrepresentation or made a false promise through  
2                   another real estate licensee;

3                               (iv) has engaged in conduct that is fraudulent or  
4                   dishonest;

5                               (v) violates AS 08.88.391;

6                               (vi) violates AS 08.88.396;

7                               (B) procures a license by deceiving the commission. or aids  
8                   another to do so;

9                               (C) has engaged in conduct of which the commission did not  
10                   have [HAD NO] knowledge at the time the licensee was licensed  
11                   demonstrating the licensee's unfitness to engage in the business for which the  
12                   licensee is licensed;

13                              (D) knowingly authorizes, directs, connives at, or aids in  
14                   publishing, distributing, or circulating a material false statement or  
15                   misrepresentation concerning the licensee's business or concerning real estate  
16                   offered for sale, rent, or lease, or managed in the course of the licensee's  
17                   business in this or any other state or concerning the management of an  
18                   association in the course of a licensee's business in this or another state;

19                              (E) if a real estate broker, wilfully violates AS 08.88.171(d) or  
20                   08.88.291;

21                              (F) if an associate real estate broker, claims to be a real estate  
22                   broker, or, if a real estate salesperson, claims to be a real estate broker or an  
23                   associate real estate broker;

24                              (G) if a real estate broker, employs an unlicensed person to  
25                   perform activities for which a real estate license is required;

26                              (H) if an employed real estate licensee of a real estate broker,  
27                   fails immediately to turn money or other property collected in a real estate  
28                   transaction over to the employing real estate broker;

29       \* Sec. 2. AS 08.88.181(a) is amended to read:

30                              (a) The real estate examinations may include questions on real estate business  
31                   ethics and standards; arithmetic and accounting; elementary principles of land

1 economics and appraisal; the general principles in state statutes relating to deeds,  
2 mortgages, real estate contracts, subdivisions, common interest communities, legal  
3 descriptions, building restrictions, real estate licensee relationships, agency law,  
4 brokerage, disclosure requirements, trust accounting requirements, and landlord and  
5 tenant law; property management ethics and standards; community association  
6 management operations, ethics, and standards; and the general provisions of this  
7 chapter and of the regulations of the commission.

8 \* Sec. 3. AS 08.88.396 is amended to read:

9 **Sec. 08.88.396. Licensee relationships, disclosures, and activity**  
10 **[DISCLOSURE OF AGENCY TO PROSPECTIVE BUYERS AND SELLERS].**

11 (a) A person licensed under this chapter shall, when acting as a real estate licensee  
12 [AN AGENT] for a prospective seller or lessor of real estate,

13 (1) disclose in writing the licensee's agency relationship with the seller  
14 or lessor to each prospective buyer or lessee at the time that the licensee begins to  
15 provide specific assistance to locate or acquire real estate for the buyer or lessee, and  
16 obtain from each prospective buyer or lessee a signed acknowledgment  
17 [ACKNOWLEDGEMENT] that the buyer or lessee is aware of the agency  
18 relationship between the licensee and the seller or lessor; and

19 (2) include in the purchase agreement a statement of the agency  
20 relationship between the licensee and the seller or lessor.

21 (b) A person licensed under this chapter shall, when acting as a real estate  
22 licensee [AN AGENT] for a prospective buyer or lessee of real estate,

23 (1) disclose the licensee's relationship with the buyer or lessee to a  
24 prospective seller or lessor of real estate, or to the seller's or lessor's real estate  
25 licensee [AGENT], at the time of the initial contact between the licensee and the  
26 prospective seller or lessor, or the seller's or lessor's real estate licensee [AGENT],  
27 and confirm the relationship in writing as soon as possible after the initial contact;

28 (2) include in the purchase agreement a statement of the agency  
29 relationship between the licensee and the buyer or lessee;

30 (3) if the prospective seller or lessor has an unexpired exclusive listing  
31 contract for a property, present all offers to purchase that property through the seller's

1 or lessor's real estate licensee [AGENT]; and

2 (4) disclose in writing to all parties to a transaction when the licensee's  
3 compensation as real estate licensee [AGENT] for the buyer or lessee is to be paid by  
4 anyone other than the buyer or lessee being represented by the licensee.

5 (c) A person licensed under this chapter may act as a real estate licensee [AN  
6 AGENT] for both a prospective seller or lessor and a prospective buyer or lessee of  
7 real estate only after the licensee informs both the seller or lessor and the buyer or  
8 lessee of the dual agency representation [AGENCY] and obtains written consent to  
9 the dual agency representation [AGENCY] from both principals.

10 (d) When a change occurs during a transaction that makes a prior written  
11 disclosure required by this section incomplete, misleading, or inaccurate, the licensee  
12 shall make a revised disclosure, in writing, to all parties to the transaction as soon as  
13 possible. The revised disclosure must include the date of the revision and shall be  
14 acknowledged in writing by all the parties. However, until the nature of the  
15 licensee's relationship with a party is completely established, a revised disclosure  
16 is not required under this subsection if the licensee obtains from the party a  
17 written preauthorized consent to changes before the changes occur.

18 \* Sec. 4. AS 08.88.396 is amended by adding a new subsection to read:

19 (e) In a civil action for the failure of a licensee to comply with the provisions  
20 of this section, the plaintiff's remedy is limited to the recovery of actual damages.  
21 This subsection does not limit a person's ability to take any other action or pursue any  
22 other remedy to which the person may be entitled under other law.

23 \* Sec. 5. The uncodified law of the State of Alaska is amended by adding a new section to  
24 read:

25 APPLICABILITY AND RETROSPECTIVITY. (a) The provisions of this Act apply  
26 to a real estate transaction that occurs before, on, or after the effective date of this Act, and to  
27 that extent, are retrospective under AS 01.10.090. In this subsection, "real estate transaction"  
28 has the meaning given in AS 08.88.990.

29 (b) In addition to the application of AS 08.88.396(e), enacted by sec. 4 of this Act,  
30 under (a) of this section, AS 08.88.396(e) applies to an action pending in a court in the state in  
31 which a final judgment has not been rendered before the effective date of this Act and, to that

- 1 extent, is retrospective under AS 01.10.090.
- 2 \* **Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).



**ALASKA STATE  
HOMEBUILDERS ASSOCIATION**

**Alaska State Home Building Association  
Position Statement  
HB269, Safety Code Task Force**

It is the position of the Alaska State Home Building Association that HB269 should include a Fire Protection Official and Building Inspection Official to the voting membership of the Task Force.

In addition, the Task Force should be expanded to also include three general contractors. As currently written, the bill provides Task Force seats to the building trade industries that comprise the various sub contractors on construction projects. However, the general contractors have a broader overview of the construction industry and should have greater representation.

If this legislation is passed, a Safety Code Task Force should be charged with reviewing a multitude of issues. Membership on the Task Force should be based upon more factors than determining one family of codes over another set of codes. For example, code discussions must include coordination with municipal exemptions, product and material markets, and cost impacts.

Unless all the issues surrounding safety code issues are available for discussion by the Task Force, this will amount to a waste of time and public funds. Based on the statements of legislators during discussions on this bill, there is clearly a frustration at the lack of consensus on the code issue. Unless all sectors of the construction industries can build a consensus regarding all concerns and aspects of the codes, this issue will likely remain difficult to resolve when the Legislature convenes next session.

Thomas W. Antonovich, President  
Alaska Home Builders Association



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**Subject:** HB 269

**Date:** Thu, 15 May 2003 13:02:47 -0800

**From:** "Mathers, Doug" <dmathers@city.kodiak.ak.us>

**To:** <Senator\_Gary\_Stevens@legis.state.ak.us>

Senator Gary Stevens,

I would like a few moments of your time to explain my opinions about CS HB 269(FIN). I think a task force to recommend public safety codes and to group them into one state agency is past due. I would like to suggest that the make up of this task force is flawed. It is the responsibility of local Building Departments and the State Fire Marshals Office to enforce these codes but we are not represented on the task force! We all work hard to see safe and economical buildings built and are an instrumental part of developing the current codes. The decision of which codes are adopted in The State of Alaska needs to be a cooperative agreement between all parties involved therefore all parties need to be represented on the task force. I strongly feel that we (Building Departments and Fire Marshal's Office) should be represented as part of the voting members.

Thanks for Your Time

Doug Mathers

City of Kodiak

Building Official

Introduced by:  
Date:

Mayor Thompson  
May 5, 2003

RESOLUTION NO. 4069

**A RESOLUTION OF OBJECTION TO THE CURRENT LANGUAGE OF SENATE BILL 180 AND HOUSE BILL 269 REGARDING THE COMPOSITION OF THE SAFETY CODE TASK FORCE.**

WHEREAS, the purpose of Senate Bill 180 and House Bill 269 is to establish a task force for the purpose of evaluating model construction codes for adoption by the State of Alaska, and

WHEREAS, such recommendation will affect all home rule jurisdictions, and

WHEREAS, Senate Bill 180 and House Bill 269 excludes municipal participation of building and fire officials on the task force, and

WHEREAS, the exclusion of these municipal officials creates an unbalanced task force, and

WHEREAS, the City believes it is in the best interest of the State and its municipalities to include the expertise of municipal code officials so that all aspects of code enforcement can be equitably evaluated; and

WHEREAS, the City of Fairbanks recognizes that constructions codes must be established to benefit and protect all citizens and consumers and not special interest groups; and


WHEREAS, the City of Fairbanks urges reconsideration of the present Senate and House bills to include voting participation on the task force by municipal building and fire officials.

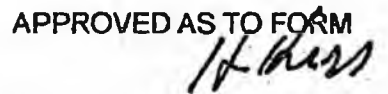
NOW, THEREFORE BE IT RESOLVED that the City of Fairbanks objects to the current language of Senate Bill 180 and House Bill 269 and requests wording be included which ensures voting representation of municipal building and fire officials on the safety task force.

Passed and Approved this 5 day of May, 2003.

  
STEVE M. THOMPSON, MAYOR

AYES   
NAYS   
ABSTAIN   
ABSENT   
ADOPTED: May 5, 2003

ATTEST:  
  
Carol L. Corp, City Clerk

APPROVED AS TO FORM  
  
Herbert P. Kuss, City Attorney

# Public Opinion Message

Send	Edit Personal Information	Has Logged To Send Message to	Copy Message	Verify Message and Final Submit	Printed
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Bill Root

HB 269

Short Title :

SAFETY CODE TASK FORCE

MsgText

I strongly urge the members of the Senate Labor & Commerce Committee to pass HB269 unamended. Implementation of this bill before the end of this session will provide a quick solution stream lining Alaskas Safety codes. HB269 will facilitate a quick method to address the complexity of the current system avoiding future conflicts.

Support type

Support

Members to Send to :

Rep. Anderson, Sen. Bunde, Rep. Crawford, Sen. Davis, Rep. Dahlstrom, Sen. French, Rep. Gatto, Rep. Guttenberg, Rep. Lynn, Rep. Rokeberg, Sen. Seekins, Sen. Stevens G

If this is NOT correct...Please change below

Final Submit

Robert W Sandstrom  
Your POM is 06061

Please click Final Submit to finish processing Or make changes below.

Members to Send POM

Rep. Anderson, Sen. Bunde, Rep. Crawford, Sen. Davis, Rep. Dahlstrom, Sen. French, Rep. Gatto, Rep. Guttenberg, Rep. Lynn, Rep. Rokeberg, Sen. Seekins, Sen. Stevens G

Billroots have the form chamber abrev. then number for example:  
*HB 1 or SJR 233* [Go here for more information on bills](#)

Select Subject OR Bill:

Bill

BillRoot:

Subject



**MECHANICAL CONTRACTORS**  
of Alaska, Inc.



May 15, 2003

SENATE LABOR AND COMMERCE COMMITTEE

RE: CS FOR HB 269 (FIN)

Chairman Con Bunde and Senate Labor and Commerce Committee Members:

The Mechanical Contractors of Alaska is an association of nearly 50 construction contracting firms that perform a construction projects of many types and size across the state of Alaska. We believe the current process in this state, code adoption by regulation, is flawed and needs reformation.

Our Association supports the adoption of CS for HB 269 (FIN).

We urge you to pass this bill thru your committee with no amendments. This taskforce, with the makeup as called for in this bill, will find solutions for existing safety code issues that will have the broad support of the construction community. These people, who use these codes daily are familiar with what does and does not work in Alaska. Their recommendations about which codes to adopt and how to adopt them will allow the affected stakeholders to have an equal and effective voice. Building and Fire Code enforcement officials should remain in an advisory position since their job is to implement public policy, not create public policy.

Thank You

Eugene R. Rutland  
Executive Director


**CITY OF FAIRBANKS**
*Steve M. Thompson, Mayor*

 800 CUSHMAN STREET  
 FAIRBANKS, ALASKA 99701-4615

OFFICE: 907-459-6793

FAX: 907-459-6787

smthompson@ci.fairbanks.ak.us

May 15, 2003

**VIA FACSIMILE: (907-465-3871)**

 Senator Con Bunde  
 Chairman Senate Labor and Commerce Committee  
 Senate Capital Room 506  
 Juneau, Alaska 99801-1182

Re: SB 180 / HB 269 Safety Task Force

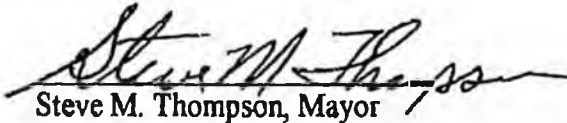
Dear Senator Bunde:

It is our understanding that the referenced bill has been referred to your committee. With this in mind we are respectfully requesting reconsideration of the bill. It has been our stated position that the composition of the voting task force is not balanced. We have had recent conversations with Senator Therriault's office and Senator Wilken's office and while no guarantee was requested or offered we were left with the impression that compromise language would be introduced. However my office was notified Monday May 12th that the compromise language has been entirely removed from the bill. Exclusion of professional municipal building and fire officials as a voting member of the task force is questionable. Since we have not asked for a predetermined outcome and have only asked for a balanced task force we remain frustrated that the City of Fairbanks' concerns have been ignored in the legislative process.

We look forward to hearing from you and the committee.

Sincerely,

CITY OF FAIRBANKS


 Steve M. Thompson, Mayor

 CC: City Council  
 Interior Delegation  
 Code Review Commission  
 Steve Shuttleworth

Post-It* Fax Note	7671	Date	05/15/03	# of pages	2
To	Senator Con Bunde		From	City of Fairbanks	
Co./Dept.		Co.			
Phone #		Phone #			
Fax #	(907) 465-3871		Fax #		



**Martha Hanlon Architects, Inc.**  
 Architecture and Project Management

May 15, 2003

Senator Gene Therrault  
 Alaska State Senate  
 State Capitol Building  
 Juneau, Alaska 99801

Re: **SB 180, An Act establishing the Safety Code Task Force;...**

Dear Senator Therrault,

I am the Chair of the Northern Section of the Alaska Chapter of the American Institute of Architects and a local practitioner in Fairbanks. Having recently read the text of the proposed SB 180 regarding the establishment of a "Safety Code Task Force". I have to question whether you really care about the health, safety and welfare of the Alaska public.

Ostensibly, the task force is supposed to review the available published safety codes and recommend a family of codes to be adopted by the State. I am aghast that the nine-member commission does not have a named place for a public building official or a State Fire Marshal, yet has 4 members from the building and contracting industry. I have to assume by "construction design community" and "construction engineering community" you intend for these members to be selected from the registered (hence, licensed) architects and engineers in our state, but that too is unclear. It is disingenuous to argue that one of the three general members appointed by the administration could be a building official, for instance, as these people could just as likely be members of the construction industry, further tipping the Task Force composition more heavily toward builders.

I question your sincerity about public safety, as the role of the construction industry is not to ensure that buildings or structures meet building codes as their paramount task. Typically, contractors build what is drawn by licensed design professionals for whom the ethical standard, by 12 ACC 36.200, is "to safeguard the life, health, property and welfare of the public."

Our state statutes require that the design for structures over a four-ply to be stamped by licensed design professionals and then reviewed by the State Fire Marshal or a Municipal Building Official. *This design and review process is where the public safety is assured* and these professionals, architects, engineers, fire professionals and building officials, should be a majority composition on any kind of Safety Task Force, as it is our job to know and enforce the code before a shovelful of dirt has been moved on a project.

I and other design professionals work with the building codes daily and this bill will effectively remove our input from what family of codes are adopted in our state and give that selection to professionals who do not have the safety of the public as their first task of licensure and are not responsible to ensure that projects are designed to meet code.

I urge you to reconsider this poorly conceived bill and the great harm and turmoil you will bring to our state in this matter. I would appreciate an update on the progress of this bill from your office.

Very truly yours,  
**MARTHA HANLON ARCHITECTS, INC.**

Martha L. Hanlon, AIA  
 President

Cc: Senator Gary Wilken  
 Representative Dahlstrom (HB 269)

**FAXED** By: MLH  
 Date: 5.15.03

5/14/03

Dear Chairman Bunde,

*As a practicing structural engineer (licensed Civil) and as a member of the Anchorage Building Board and member organizations of the Alaska Professional Design Council, I would like to put in my two cents regarding HB269 which is about to be heard in your committee.*

*There seems to be a disconnect between the proposed members of the task force and the people who implement and enforce building codes. Once a building design is started, the onus of ensuring that a project meets the code requirements falls on the shoulders of the architects and engineers. They meld the requirements of the owner and the requirements of the code to design and coordinate the various building systems and then to prepare documents that present that design in a way that shows the contractor and subcontractors what to build. These documents are submitted to the state fire marshal or to municipal building and fire officials for review for compliance with the codes. Once they approve the documents, construction starts. During construction, the contractor does not review for compliance with the codes, just constructs in accordance with the approved plans. Code compliance during construction is provided through the work of the designers (architects and engineers), special inspectors, and/or municipal or state inspectors.*

*Thus, having four contractors and two designers on the panel is skewed. I don't have a problem with contractor representation but the membership should have more architects, engineers, building officials and/or fire officials. This bill does not provide that. Assuming that the representative of the "design community" is an architect, then one engineer is supposed to represent structural, mechanical, plumbing and electrical designers while the contractors get one seat each? There is no engineer I know of that can do that.*

*It has also been mentioned that the President of the Senate and the Speaker of the House may appoint members of the affected groups to the advisory panel. I note that no design oriented organizations are listed as possible members of the advisory panel while the construction community not only gets four seats on the task force but may also get membership on the advisory panel. I have seen from my experience with the Anchorage Assembly and the Anchorage Building Board (their advisory panel) that*

*being an advisor is not the same as being involved in the debate. Even testifying at the various Committee Hearings on this bill, once testimony was over the only people who spoke were on the committee or represented the sponsor. Being able to speak during the debate to correct misconceptions or offer compromises was not possible. Nor do I see that likely for members of the panel. I do not see this panel has having any more abilities to enter or influence the debate than the public who comes to testify. And there is no guarantee that the design community or the code officials will even have representation on that panel.*

*It has also been alleged that it would be bad to have a building or fire official on the task force because they oversee construction (possibly by the contractors on the task force) and thus may have undue influence over them (or, by implication, enact retribution). It was my understanding that the change in the language regarding mechanical, electrical, and plumbing "contractor" to representatives of those "construction industries" was to allow the appointment of an administrator (i.e., inspector). Do these people have less ability in this regard?*

*I urge you to add either another engineering position or a building official or a fire official to the task force. They are the ones who enforce codes and have an obligation to protect public safety. This could be done without enlarging the task force by combining the plumbing and mechanical construction industry seats into one seat. It has been mentioned in testimony by many mechanical contractors that they have both administrator certifications, so having two seats would be redundant.*

*Please let me know if you have any questions. i will do my best to get you answers.*

--  
*Colin Maynard, PE  
BBFM Engineers Inc.  
510 L Street, Suite 200  
Anchorage, AK 99501  
907-274-2236  
907-274-2520 (fax)*

**HB 257**  
**Real Estate Disclosure**

As of May 14, Senator Bunde's office had 158 emails on HB 257, almost all of which are in support.



# FIRST AMERICAN TITLE *of Alaska*

11823 OLD GLENN HIGHWAY, SUITE 117 EAGLE RIVER, ALASKA 99577 PHONE (907) 694-1456  
FAX (907) 694-1474

May 14, 2003

Open Letter to the Alaska Legislature:

I am writing to ask for your support of Senate Committee Substitute for HB 257 relating to the Real Estate industry. The residential real estate industry is threatened with loss of insurance because the current law may allow a class action law suit for technical violations of dual agency disclosure statute, even when neither the buyer nor the seller suffer any actual damage.

This bill, as amended, would not remove the requirement of disclosure of dual agency, nor eliminate the ability for persons to sue for actual damages.

I am an escrow officer and branch manager and have been in the Title and Escrow Industry for 14 years. I work closely with Realtors on a daily basis and it is my experience that real estate agents make every effort to follow the intent of current State statute. However, it is obvious that the law is in need of clarification regarding the dual agency disclosure process. The Senate Committee Substitute for HB 257 addresses this law in a manner that protects both buyers and sellers.

Thank you for your support.

Sincerely,

Clark Sanders  
Escrow Officer/Branch Manager  
Eagle River  
First American Title of Alaska