

LEGAL SERVICES

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MEMORANDUM

March 15, 2012

SUBJECT: Residency requirement for title insurance limited producers
(CSSB 122(L&C), Work Order No. 27-LS0789\I)

TO: Senator John Coghill
Attn: Rynnieva Moss

FROM: Dennis C. Bailey *DCB*
Legislative Counsel

You asked whether the provision of CSSB 122(L&C), sec. 2, which requires a title insurance limited producer to be a resident before the person may obtain a license under AS 21.66.270, raises constitutional issues. The residency requirement raises the question of whether a residency requirement violates the privileges and immunities clause of the U.S. Constitution.

The citizens of each state shall be entitled to all the privileges and immunities of the citizens of the several states. (Article IV, section 2, Constitution of the United States). A state violates the federal privileges and immunities clause by denying a nonresident equal treatment with respect to a fundamental right or privilege that is essential "to the promotion of interstate harmony." *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 279, 84 L.Ed.2d 205, 210 (1985). The courts will require that a state justify residency-based discrimination under the privileges and immunities clause if the court finds that the activity that is the subject of the discrimination enjoys privileges and immunities clause protection. Pursuit of an occupation outside one's home state is an activity that has been protected by the privileges and immunities clause. The United States Supreme Court has determined that state discrimination against nonresidents seeking to pursue employment within the state violates the privileges and immunities clause. *Hicklin v. Orbeck*, 437 U.S. 518, 52 L.Ed.2d 304 (1977).

In my opinion, it seems likely that a court construing the proposed residency requirement would find the provision unconstitutional as a violation of the privileges and immunities clause of the U.S. Constitution.

If I may be of further assistance, please advise.

DCB:plm
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