

HOUSE BILL NO. 8

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES KELLER, Peggy Wilson

Introduced: 1/18/11

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to certain federal regulations and presidential executive orders;**
2 **relating to the duties of the attorney general; and providing for an effective date."**

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

4 *** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 LEGISLATIVE FINDINGS. The legislature finds that

7 (1) the Supremacy Clause of art. VI, clause 2, Constitution of the United
8 States, provides that the Constitution of the United States and the laws of the United States
9 made under and in conformity with the Constitution of the United States are the supreme law
10 of the land;

11 (2) the United States Supreme Court, in *City of New York v. Federal*
12 *Communications Commission*, 486 U.S. 57 (1988), stated that "[t]he phrase, 'Laws of the
13 United States' encompasses both federal statutes themselves and federal regulations that are
14 properly adopted in accordance with statutory authorization";

(3) federal regulations and presidential executive orders that are unconstitutional and not properly adopted in accordance with statutory authority are not laws of the United States for the purposes of the Supremacy Clause; and

(4) federal regulations and presidential executive orders that are not properly adopted in accordance with statutory authority may not preempt state laws that are not in conflict with federal statutory authority and regulations properly adopted in accordance with that statutory authority.

* **Sec. 2.** AS 01.10 is amended by adding a new section to read:

Article 5. Laws of the United States.

Sec. 01.10.200. Federal preemption; effect of certain federal regulations and presidential executive orders. A federal regulation or presidential executive order that is unconstitutional or was not properly adopted in accordance with federal statutory authority may not be considered to preempt a state law.

* **Sec. 3.** AS 24.05 is amended by adding a new section to article 4 to read:

Sec. 24.05.188. Federal regulations and executive orders. After receiving a report from the attorney general under AS 44.23.020(h) that a state law is in conflict with a federal regulation or presidential executive order that is unconstitutional or was not properly adopted in accordance with federal statutory authority, the house and senate committees having jurisdiction over judicial matters may each consider whether legislative action is necessary in response to the findings by the attorney general.

* **Sec. 4.** AS 44.23.020 is amended by adding a new subsection to read:

(h) The attorney general shall review federal regulations and presidential executive orders that may be in conflict with and may preempt state law. If the attorney general finds that a federal regulation or presidential executive order is unconstitutional or was not properly adopted in accordance with federal statutory authority and that the federal regulation or presidential executive order would preempt a state law if constitutional and properly adopted, the attorney general shall report the findings to the chairs of the house and senate committees having jurisdiction over judicial matters. The report must include

(1) a copy of the federal regulation or presidential executive order that the attorney general finds was not properly adopted in accordance with federal

1 statutory authority;

2 (2) a citation to the state law that is in conflict with the federal
3 regulation or presidential executive order identified in (1) of this subsection;

4 (3) a written opinion explaining

5 (A) the basis for finding that the federal regulation or
6 presidential executive order is unconstitutional or was not properly adopted in
7 accordance with federal statutory authority;

8 (B) the conflict between the federal regulation or presidential
9 executive order identified in (1) of this subsection and the state law identified
10 in (2) of this subsection and why, if properly adopted, the federal regulation or
11 presidential executive order would preempt the state law; and

12 (C) the effect on the state if the state law identified in (2) of this
13 subsection is found by a court to be preempted by the federal regulation or
14 presidential executive order identified in (1) of this subsection; and

15 (4) other information relevant to the findings by the attorney general.

16 * **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).