

Alaska State Legislature

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Representative Carl Gatto

CSHB 88 (HSTA) Use of Foreign Law

America has unique values of liberty which do not exist in foreign legal systems. Yet foreign laws are increasingly finding their way into U.S. court cases, particularly in the area of family law, involving divorce and child custody.

CSHB 88 (STA) aims at preventing "a court or other enforcement authority" from enforcing foreign law in Alaska. The bill preempts violations of an individual's constitutional rights resulting from the application of foreign law. CSHB 88 (STA) exempts corporations, partnerships, or other forms of business association. The CS also states that foreign law shall not mean, nor shall it include, any laws of the Alaska Native or American Native tribes in the state of Alaska, in the limited circumstances when tribal members may be subject to the concurrent jurisdiction of the tribal courts and the state courts.

CS for HB88 (STA) offers a baseline law that provides a statutory framework for precluding constitutionally objectionable foreign laws and legal systems from finding their way into the state judicial system. To the question of whether this bill would affect conventions or treaties, such as, the Law of the Sea, Pacific Salmon Treaty, etc., the Attorney General replied in a legal opinion, dated March 21, 2011, "*...it is the United States who is a party to some of these conventions and/or treaties... These federal laws, to the extent they apply to Alaska, will preempt inconsistent state law, including HB88.*"

There are 16 other states with similar legislation regarding foreign law being considered in state courts. Alaska, like other states, recognizes the growing need to emphasize the fact that our state and U.S. constitutions are the fundamental basis for civil law for everyone in our country.

This bill is not about religion or First Amendment rights. Nothing in this bill prevents any person from freely exercising his or her right to freedom of religion and worship. CSHB88 (STA) only applies to legal doctrines in our court systems. The bill is not even principally focused on religious law, but any foreign law that violates constitutionally protected liberties. But to those who are accustomed to their religion and their civil laws being inextricably connected, we must clarify that all individual rights are guaranteed and protected under the Constitution of the State of Alaska and the United States Constitution.

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