

LEGAL SERVICES

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

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


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

MEMORANDUM

May 8, 2019

SUBJECT: Drafting issues
(SCS HB 78(RLS); Work Order No. 31-GH1953\M)

TO: Senator John Coghill
Attn: Rynniva Moss

FROM: Marie Marx 
Legislative Counsel

The committee substitute you requested is attached. As you know, HB 78 is a governor's bill that was not reviewed by this office prior to introduction. Due to time constraints for preparing the committee substitute, I have not been able to conduct a thorough analysis of legal issues. Below are some drafting issues that were discovered in our expedited review.

1. Title change. The committee substitute changes the title to satisfy the descriptive title requirement in the second house, which is not permitted under the Uniform Rules. Therefore, a concurrent resolution will be required to suspend the rules against a title change in the second house if the committee substitute is adopted. Per your request, we are in the process of drafting a title change resolution.

2. Court rule changes. The addition of AS 21.22.117 and AS 21.22.120 in the committee substitute arguably change discovery and evidence rules and create a testimonial privilege. While it is a close question, in my judgment, these sections of the committee substitute have the effect of changing a court rule of practice and procedure. Therefore, I have added a provision requiring a two-thirds vote and changed the title to reflect the court rule changes, as required by Uniform Rule 39(a).

3. Most recent version language. The committee substitute requires an insurer to submit a corporate governance annual disclosure in accordance "with the procedures set out in the most recent Financial Analysis Handbook adopted by the National Association of Insurance Commissioners" and allows the director to adopt regulations that include regulations of the association. In general, citing to material enacted or adopted by other groups may result in an improper delegation of law-making powers. In *Northern Lights Motel v. Sweaney*,¹ the Alaska Supreme Court rejected the purported adoption of the

¹ 561 P.2d 1176 (Alaska 1977), *reh. den.* 563 P.2d 256.

Senator John Coghill

May 8, 2019

Page 2

Uniform Building Code and "all future amendments thereto" as the delegation of the future law-making power to a private organization. The court said:

One reason for the prohibition against delegation to private groups is that when amendments are adopted by these groups the public does not necessarily receive notice of, or have an opportunity to comment on or criticize the amendments, as it does when they are adopted by the legislature or promulgated under the Alaska Administrative Procedure Act.²

While *Northern Lights* only dealt with a delegation to a private group, the opinion does not appear to be limited to just those delegations.

Because the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners may be amended and would be incorporated into law without legislative approval, it raises an issue of improper delegation. One way to reduce this problem would be to refer to a specific version of the Financial Analysis Handbook, instead of the "most recent" version.

Please let me know if I may be of further assistance.

MYM:boo

19-209.boo

Attachment

² *Id.* at 1181.