

# LEGAL SERVICES

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

(907) 465-2450  
LAA.Legal@akleg.gov  
120 4th Street, Room 3


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

### MEMORANDUM

April 17, 2025

**SUBJECT:** Firearm financial privacy (SB 136; Work Order No. 34-LS0715\A)

**TO:** Senator Mike Cronk  
Attn: Paul Menke

**FROM:** Conran H. Gunther  
Legislative Counsel 

You requested a memorandum on whether sec. 06.90.020 of SB 136 (Work Order No. 34-LS0715\A) raises any concerns under the dormant commerce clause or the right to contract of financial institutions.

Dormant commerce clause. The Commerce Clause of the United States Constitution contains a negative implication, referred to as the dormant commerce clause, that prohibits certain state regulation of interstate commerce.<sup>1</sup> Under the dormant commerce clause,

[w]hen a state statute directly regulates or discriminates against interstate commerce, or when its effect is to favor in-state economic interests over out-of-state interests, we have generally struck down the statute without further inquiry. When, however, a statute has only indirect effects on interstate commerce and regulates evenhandedly, we have examined whether the State's interest is legitimate and whether the burden on interstate commerce clearly exceeds the local benefits.<sup>2</sup>

Sections 06.90.020(a) and (b) contain prohibitions on the conduct of financial institutions and payment networks in certain transactional scenarios with firearm retailers, merchants, and customers. Section 06.90.020(c) generally prohibits a financial institution or payment network from disclosing a financial record collected in violation of sec. 06.90.020. Because these sections do not treat out-of-state financial institutions and payment networks differently than in-state financial institutions and payment networks, it is unlikely that these sections will be construed as having a discriminatory effect on or an effect in favor of in-state economic interest.

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<sup>1</sup> *Assn. des Eleveurs de Canards et d'Oies du Quebec v. Harris*, 729 F.3d 937, 947 (9th Cir. 2013).

<sup>2</sup> *Id.* (internal citation omitted).

At issue, instead, is whether the prohibitions in these subsections burden interstate commerce in excess of the local benefit they provide. This bill draft makes clear that the local benefit intended to be provided by these subsections is protecting the federal and state right to keep and bear arms.<sup>3</sup> Sections 06.90.020(a) - (c) seem likely to be interpreted as providing that local benefit. The crux of whether these subsections violate the dormant commerce clause is likely the extent to which they burden interstate commerce. Each subsection is more likely to violate the dormant commerce clause the less it provides a local benefit and the more it burdens interstate commerce. I do not, however, have the information necessary to determine the extent of the burden imposed on interstate commerce by secs. 06.90.020(a) - (c).

Right to contract. Article I, sec. 15, of the Alaska Constitution provides that "[n]o law impairing the obligation of contracts . . . shall be passed." The United States Constitution contains a nearly identical clause.<sup>4</sup> The state possesses "broad power to adopt general regulatory measures without being concerned that private contracts will be impaired, or even destroyed, as a result."<sup>5</sup> A law that adjusts "the rights and responsibilities of contracting parties must be upon reasonable conditions and of a character appropriate to the public purpose justifying its adoption."<sup>6</sup> However, "courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure."<sup>7</sup>

The same two-part test is applied when analyzing potential violations of the state and federal contract clauses.<sup>8</sup> First, the court determines whether the change in state law operates as a substantial impairment of a contractual relationship.<sup>9</sup> An impairment is substantial if the contracting parties actually relied on the abridged contractual terms.<sup>10</sup> Second, the court determines if the impairment is reasonable and necessary to serve an important public purpose.<sup>11</sup>

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<sup>3</sup> See sec. 06.90.020(h).

<sup>4</sup> Art. I, sec. 10, of the United States Constitution.

<sup>5</sup> *U.S. Tr. Co. of New York v. New Jersey*, 431 U.S. 1, 22 (1977).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 22 - 23.

<sup>8</sup> *Hageland Aviation Services, Inc. v. Harms*, 210 P.3d 444, 451 (Alaska 2009).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 452.

<sup>11</sup> *Id.* at 451.



In *Hageland Aviation Services, Inc. v. Harms*, the Alaska Supreme Court analyzed whether the state violated the contract clause by passing a law that retroactively exempted pilots from overtime compensation that a superior court had previously held the pilots were entitled to under their employment contracts.<sup>12</sup> The court held there was a substantial impairment of a contractual relationship by the law, even though that contractual right derived from state statute, because the pilots had a reasonable belief that they would be compensated in accordance with the law.<sup>13</sup> The court also held that the law was not reasonable and necessary to serve an important public purpose because it retroactively removed existing contract rights from one party in favor of another who clearly violated existing law.<sup>14</sup> The court noted, however, that the law did serve an important public purpose when not applied in that manner.<sup>15</sup>

I do not have the information necessary to analyze whether secs. 06.90.020(a) - (c) substantially impair a contractual relationship because I do not know whether contracts between financial institutions and merchants generally have provisions contrary to those sections or whether those hypothetical contract provisions were actually relied on by the contracting parties. Even if there is a substantial impairment of an existing contractual relationship, a court is unlikely to hold that secs. 06.90.020(a) - (c) violate the contract clauses. Unlike in *Hageland*, these sections do not prevent claims that accrued under previously existing law from being exercised and, instead, appear to serve an important public purpose — preserving the right to keep and bear arms.<sup>16</sup> As such, a court is more likely to defer to legislative judgment on the necessity and reasonableness of secs. 06.90.020(a) - (c). In order to minimize the risk of contract clause violations, I recommend building a legislative record of how these sections are reasonable and necessary to preserve the right to keep and bear arms. Additionally, you could add an applicability provision that restricts the application of SB 136 to contracts entered into on or after its effective date.

Please let me know if you have any questions.

CHG:mis  
25-144.mis

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<sup>12</sup> *Id.* at 447.

<sup>13</sup> *Id.* at 452 - 53.

<sup>14</sup> *Id.* at 453 - 54.

<sup>15</sup> *Id.*

<sup>16</sup> *See* sec. 06.90.020(h).