

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

March 7, 2022

SUBJECT: Bill relating to fire dampers, smoke dampers, combination fire and smoke dampers, and smoke control systems (CSSSHB 218()); Work Order No. 32-LS0931\W)

TO: Representative Jonathan Kreiss-Tomkins
Chair of the House State Affairs Committee
Attn: Jeff Stepp


FROM: Theresa Bannister
Legislative Counsel

This memo accompanies the bill described above.

1. Constitutional issues: privacy and search and seizure. Please be aware that giving the state the right to enter and inspect private property, particularly homes, raises constitutional issues.

There are two constitutional provisions that are intended to protect an individual's privacy rights. First, under art. I, sec. 22, of the Alaska Constitution, the "right of the people to privacy is recognized and shall not be infringed." This right is not absolute however, and can be abridged when the government has a legitimate and compelling governmental interest.¹ Second, under art. I, sec. 14, of the Alaska Constitution, there is an explicit provision prohibiting "unreasonable searches and seizures . . ." of a person, house or other property. These two principles limit the authority of the government to intrude on the privacy of a property owner.

The Alaska Supreme Court has found privacy in the home to be of the highest importance and most deserving of constitutional protection.²

¹ *Messerli v. State*, 626 P.2d 81, 86 (Alaska 1980) (citing *Falcon v. Alaska Public Offices Commission*, 570 P.2d 469 (Alaska 1977)).

² *See Ravin v. State*, 537 P.2d 494, 504 (Alaska 1975) ("The home, then, carries with it associations and meanings which make it particularly important as the situs of privacy. Privacy in the home is a fundamental right, under both the federal and Alaska constitutions."). The Court explained in *Ravin* that this does not mean "that a person may do anything at anytime as long as the activity takes place within a person's home" and

Representative Jonathan Kreiss-Tomkins

March 7, 2022

Page 2

These constitutional issues may be cured by the regulations that are adopted to implement the new provisions. For example, the regulations might require the consent of the property owner or a warrant to enter a home or other private property.

2. Constitutional issue: free exercise of religion. Please be aware that the application of the new regulations to buildings where individuals assemble for worship raises an issue under the free exercise of religion clauses of the state and federal constitutions³ because it places a burden on buildings that are churches to allow the testing and inspection of fire dampers, smoke dampers, combined fire and smoke dampers, and smoke control systems. The only way to remove this issue would be to exclude those buildings used for worship.

However, this may not be a serious issue for the bill because the burden of inspection and testing does not seem heavy, the testing and inspection do not appear to impinge on a religious belief, and the state has a strong interest in promoting the fire safety of its citizens and their buildings.

If you need further assistance, please contact me.

TLB:lme

22-112.lme

Attachment

that this right must yield "when it interferes in a serious manner with the health, safety, rights and privileges of others or with the public welfare." *Id.*

³ First Amendment of the United States Constitution; and art. I, sec. 4 of the Constitution of the State of Alaska.