

HOUSE JOURNAL SUPPLEMENT

February 22, 1994

Tuesday

No. 12

REVISOR OF STATUTES
SECTIONAL ANALYSIS FOR
CSHB 415(JUD)

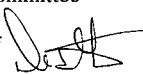
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MEMORANDUM

February 17, 1994

SUBJECT: CSHB 415(Judiciary) (1994 Revisor's Bill)
TO: Representative Brian Porter, Chair
House Judiciary Committee
FROM: David R. Dierdorff 
Revisor of Statutes

On February 17, 1994, your committee adopted a committee substitute for HB 415. This sectional analysis has been prepared to describe the changes made by your committee and provide a guide to the bill for other legislators and the public.

The changes made by your committee were: the addition of bill section 4; the deletion of former bill section 16; and the addition of AS 08.80.030(5) to the provisions proposed for repeal.

The revisor's bill is prepared under AS 01.05.036, which provides, in part, that the revisor of statutes

* * * shall prepare for submission to the legislature legislation for the correction or removal of the deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of * * * the statute law of this state.

To assist in understanding the bill, I have summarized the contents by listing sections that have similar purposes or effects.

Sections that delete, repeal, or update obsolete provisions: Sections 17 and 18 delete, update, or repeal provisions that have become obsolete either through other legislative action or the passage of time.

Sections that correct errors or oversights: Sections 3, 4, and 7 - 16 correct errors or oversights that can not be corrected editorially.

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Sections that improve the form or substance of the law: Sections 1, 2, 5, and 6 propose amendments to improve the form or substance of the statute law of Alaska.

SECTIONAL ANALYSIS

Section 1. This section proposes a clarifying amendment to AS 09.38.015(a)(10), which includes an individual's permanent fund dividend in the items exempt from execution. Under current language there is some ambiguity, because it exempts "that portion" of a dividend exempted under AS 43.23.065(a). The exemption granted by (a), however, is subject to certain restrictions set out in subsection (b). The proposed language restates the AS 09.38.015(a)(10) exemption to make it clear that the AS 09.38 exemption for dividends is the same as that granted under AS 43.23.065.

Sec. 2. In a recent decision, the Alaska Court of Appeals held that the definition of "property of another" found in AS 11.46.990 articulates the common law as expressed in a 1970 decision and applied that definition to the phrase as used in AS 11.41.520, establishing the crime of extortion. *Woodward v. State*, 855 P.2d 423 (Alaska App. 1993). The court noted that in the original draft revision of the criminal code, extortion was placed in the chapter dealing with crimes against property (AS 11.46). When, in a subsequent version, the crime was relocated to the chapter dealing with crimes against persons (AS 11.41), the legislature neither provided a new definition nor expressly made the definition in AS 11.46.990 applicable. The court suggested that this was an oversight rather than a deliberate legislative decision. This section of the revisor's bill codifies the court's decision by duplicating the definition in AS 11.46.990 in the extortion statute, AS 11.41.520.

Sec. 3. This amendment conforms the provisions for resident king salmon tags to the changes made by §§ 44 and 45, ch. 63, SLA 1993 (HCS CSSB 99(FIN) am H). The amendment was requested by the Department of Law.

Sec. 4. This section amends AS 16.05.940(10), the definition of "domestic mammal" for the fish and game laws. Section 19 would make the amendment retroactive to May 16, 1992. In sec. 30 of the 1992 revisor's bill, which became ch. 30, SLA 1992, effective May 16, 1992, the definition of "domestic mammal" was amended to include elk. It was believed that this was a technical change required by the fact that elk could now be farmed under AS 16.40.050, enacted in 1987. Our legal opinion in 1992 was that the phrase "lawfully owned" meant that in order for an elk to be considered a domestic mammal, it had to be owned under an elk farming license. There is now some question about whether that is the case. Because revisor's bills should only change substantive law when that change is required to conform provisions and when the legislature is fully informed about the change, I believe that it is incumbent upon me to propose "undoing" the 1992 amendment and make that change retroactive to

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its effective date. This action was requested by the Department of Fish and Game and is supported by the Department of Law.

Secs. 5 and 6. The two amendments simply change commissioner [of natural resources] to department to conform these two provisions to all others in AS 41.23.

Secs. 7 - 16. This series of amendments, made retroactive to August 11, 1993 by sec. 20, corrects drafting oversights in ch. 18, SLA 1993 (HCS CSSB 106(FIN)), that could not be corrected editorially. The need for the amendments was discovered immediately after adjournment of the first session. The amendments have been reviewed by the affected state agencies and the law has been administered as though the amendments were in place.

Sec. 17. This amendment replaces an obsolete reference to a former division with a reference to the department.

Sec. 18. The repealers. The first provision proposed for repeal, AS 08.80.030(5), duplicates paragraph (4) of the same statute. The redundancy was brought to our attention by the regulations attorney in the Department of Law. The next two provisions proposed for repeal, AS 37.05.140(b) and (c), are obsolete and probably should not have been codified in 1962. The fourth provision, AS 46.03.825(g)(13), defines a term that is not used in the section. The text of all repealed provisions is set out in an appendix attached to this memo.

Sec. 19. Makes the amendment of AS 16.05.940(10) in sec. 4 retroactive to May 16, 1992, the effective date of ch. 30, SLA 1992.

Sec. 20. Makes secs. 7 - 16 retroactive to the effective date of ch. 18, SLA 1993.

Sec. 21. Provides an immediate effective date for the bill.

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APPENDIX - TEXT OF PROVISIONS TO BE REPEALED

AS 08.80.030(5):

(5) adopt regulations to carry out the purposes of this chapter;

AS 37.05.140(b) and (c):

(b) Accounting machines not otherwise needed by the agencies as determined by the Department of Administration that can be utilized by the Department of Administration shall be transferred to it on written direction after consultation with the head of the agency concerned, instead of the purchase of new machines.

(c) The calculable savings to the agencies resulting from the transfer of accounting functions to the Department of Administration shall be impounded and deposited in the general fund as part of the unappropriated balance. The calculable savings shall be used to offset those general fund appropriations made to the Department of Administration for purposes of performing centralized accounting, purchasing, and related functions. The calculable savings shall be determined by the department after consultation with the head of the agency concerned and shall be impounded from both general fund appropriations and from money from other funds available to the agencies involved in the transfer.

AS 46.03.825(g)(3):

(3) "registered" means registered under AS 46.04.035;

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