

**HOUSE JOURNAL
SUPPLEMENT**

July 10, 1997

Thursday

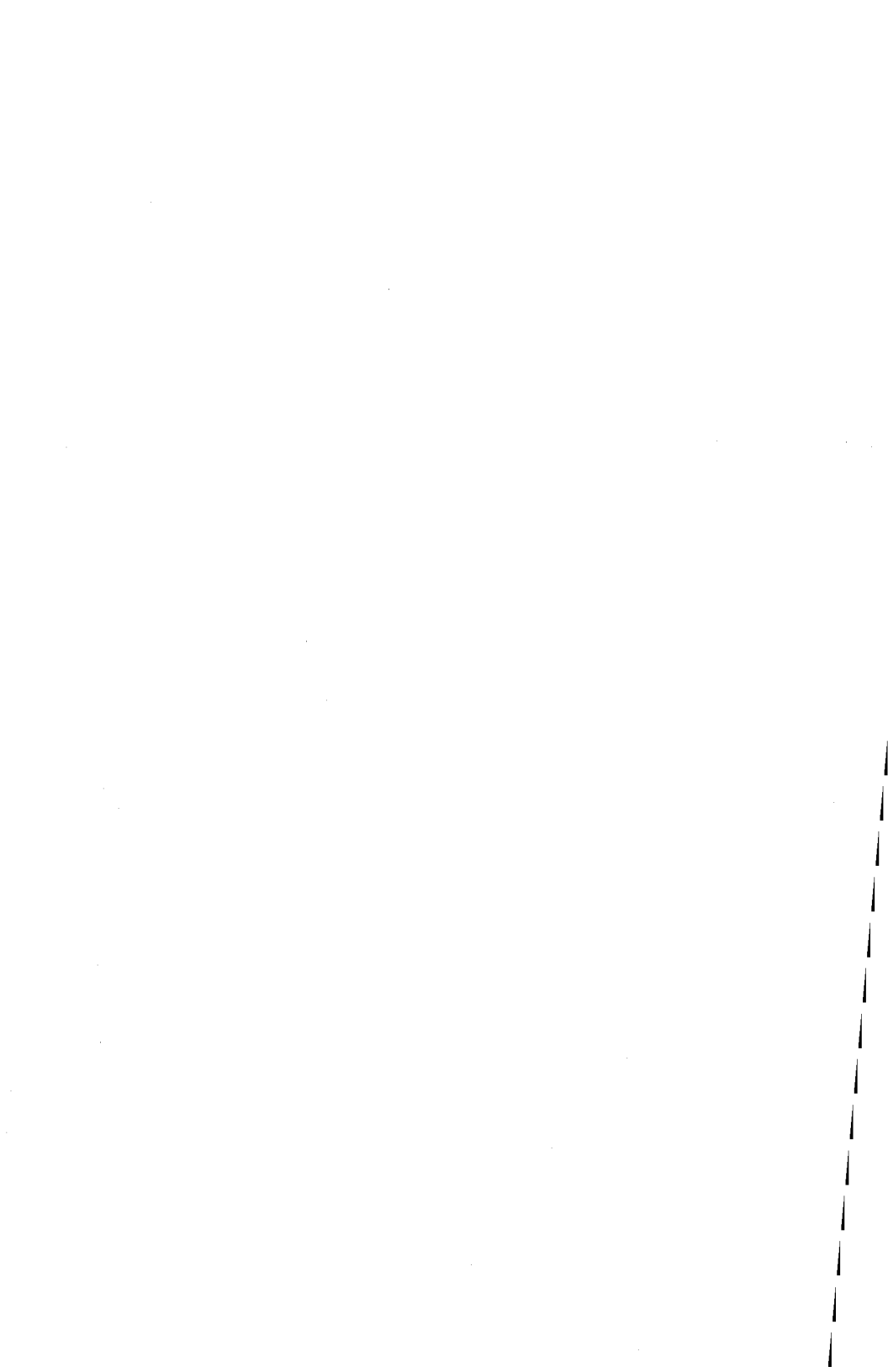
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SECTIONAL ANALYSIS

FOR

CSHB 115(JUD) AM

1997 REVISOR'S BILL



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

M E M O R A N D U M

April 25, 1997

SUBJECT: CSHB 115(JUD) am (1997 Revisor's Bill)

TO: Senator Robin Taylor, Chair
Senate Judiciary Committee

FROM: Pamela Finley
Revisor of Statutes

The following is a sectional analysis of CSHB 115(JUD) am, the 1997 revisor's bill, which was referred to the Senate Judiciary Committee on April 25, 1997. The 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 the reader 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, 18, 30, 37, 38 and 41 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 2, 3, 5 - 16, 19, 26, 27, 29, 31, 32, 36, 39, 40, 41, 42, 43 and 44 correct errors or oversights.

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Sections that improve the form or substance of the law: Sections 1, 4, 20 - 25, 28, 31, and 33 - 35, propose amendments to improve the form or substance of the statute law of Alaska.

SECTIONAL ANALYSIS

Section 1. This section corrects the sentence structure of a statute requiring publication of a book containing brands and marks on record and changes "post office address" to the more inclusive term "mailing address". The latter change was made in House Judiciary Committee.

Section 2. This bill section substitutes "employees of one of the municipalities" for "employers of one of the municipalities" in AS 05.15.112(b), relating to charitable gaming. It corrects a typographical error in ch. 70, SLA 1993.

Section 3. This bill section amends the definition of "qualified organization" in the charitable gaming statutes by substituting "license or permit" for "license." Qualified organizations apply for permits primarily, although they also can apply for operator's licenses. This corrects an error in ch. 27, SLA 1960.

Section 4. While most occupational regulation is performed by various boards, the Department of Commerce and Economic Development has direct responsibility for certain occupations. See AS 08.01.010. The occupations regulated directly by the department have also been listed at AS 08.01.050(a)(4) and (9), which means that whenever the department is given responsibility for directly regulating an occupation, these two paragraphs must be amended. This is unnecessary since a general reference to occupations or activities that are regulated directly by the department would suffice. This section substitutes that general reference for the existing list.

Section 5. AS 08.02.010(a) requires members of certain occupations to use certain designations. Some of the occupations covered by subsection (a) are regulated directly by the Department of Commerce and Economic Development rather than by a board, *i.e.*, acupuncturists, audiologists, and naturopaths. However, subsection

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(b), which sets penalties for a violation of subsection (a), refers only to the "appropriate licensing board." This bill section adds a reference to the department so that the department can enforce subsection (a) for those occupations regulated directly by the department.

Sections 6 and 7. These bill sections substitute "commission" for "board" in two statutes relating to the Real Estate Commission. Although real estate brokers were licensed by a board in 1959, a commission was substituted for the board in ch 95, SLA 1964. The amendment to AS 08.88.041(a) corrects an error in ch. 258, SLA 1976. The amendment to AS 08.88.281 corrects an error in ch. 95, SLA 1964.

Section 8. This bill section, added on the floor of the House, attempts to clarify the language of a floor amendment made to sec. 4, SCS CSSSHB 58(RLS) am S, which recently passed the Legislature. Both the representative who moved the original floor amendment and the representative who moved an amendment to the original floor amendment (and who was also prime sponsor of HB 58), approved the change made in bill section 8. See bill sections 45 and 46 for the conditional effectiveness, severability, applicability, and effective date of bill section 8.

Section 9. In ch. 119, SLA 1992, AS 09.50.250 (relating to claims against the state) was amended by deleting "superior court" at the end of the first sentence. The purpose was to give the state district court, as well as the state superior court, jurisdiction over claims against the state, except for small claims. The title of ch. 119, SLA 1992 was "Relating to the jurisdiction of the district court and to the district court's ability to hear actions as small claims." The Attorney General's Office has informed me that the deletion of the phrase "in the superior court" has been claimed to authorize claims against the state to be brought in federal court. To return the statute to what was intended in ch. 119, SLA 1992, "in a state court that has jurisdiction over the claim" is added at the end of the first sentence. This amendment was requested by the Attorney General's office.

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Section 10. This bill section amends the definition of "serious offense" in AS 12.62.900 by substituting "AS 11.51.130(a)(1) - (3)" for "AS 11.51.130(a)(1),(3), and (5)." AS 12.62.900 was added by ch. 118, SLA 1994. At the time it was drafted, AS 11.51.130(a)(1),(3),and (5) were the only paragraphs in AS 11.51.130(a), paragraphs (2) and (4) having been previously repealed. However, ch. 33, SLA 1994 redesignated paragraphs (3) and (5) as (2) and (3), respectively, and added new paragraph (4). Therefore the references to former AS 11.51.130(a)(1), (3), and (5) are equivalent to current AS 11.51.130(a)(1) - (3), and that change is made here. (AS 11.51.130(a)(4), added by ch. 33, SLA 1994 is not included because the legislature has not made the policy choice that (a) (4) should be included in the definition of "serious offense". If the legislature wishes to include (a)(4), that should be done in a different bill.)

Section 11. This bill section amends AS 13.12.603(a)(1), relating to construction of wills, by adding a "not" that was inadvertently omitted in ch.75, SLA 1996, which enacted a revised version of the Uniform Probate Code. This amendment was requested by Mr. Arthur Peterson, Uniform Law Commissioner for Alaska. The uniform law on which this law is based does contain the "not" and nothing in our files indicates that the omission was intentional. It appears to have been a typographical error. At the request of the House Judiciary Committee, this amendment is made retroactive to January 1, 1997 (the effective date of AS 13.12.603) under bill section 42.

Sections 12 and 13. Ch. 2, FSSLA 1996 rewrote AS 14.17.021, so that the definition of "basic need" that had previously appeared in subsection (b) now appears in subsection (c). The definition in current subsection (c) is the same as the definition in former subsection (b). However, a reference to "basic need as determined under AS 14.17.021(b)" still appears in AS 14.17.025(a)(2) and (b)(2). Bill sections 12 and 13 make the conforming changes to AS 14.17.025 that should have been made when AS 14.17.021 was amended in ch. 2, FSSLA 1996. Because § 6, ch. 2, FSSLA 1996 made the amendment to AS 14.17.021 retroactive to July 1, 1995, the conforming changes in bill sections 11 and 12 are also made retroactive to that date under bill sec. 43.

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Section 14. This bill section amends AS 14.20.020(a), governing teachers certificates. In ch. 105, SLA 1992, an additional requirement for a certificate was added as subsection (h). However, a cross-reference to this requirement was omitted from subsection (a). That oversight is corrected in this bill section.

Section 15. This bill section amends AS 14.20.177(a) (relating to reductions in force) by substituting "AS 14.17.021(c)" for "AS 14.17.021(b)." See explanation for sections 12 and 13. This change is needed because ch. 31, SLA 1996, which added AS 14.20.177, passed the legislature before ch. 2, FSSLA 1996 amended AS 14.17.021. Because § 6, ch. 2, FSSLA 1996 made the amendment to AS 14.17.021 retroactive to July 1, 1995, the conforming change in bill section 15 is also made retroactive to August 16, 1996 (the effective date of AS 14.20.177) under bill sec. 44.

Section 16. AS 14.03.160, requiring suspension or expulsion of students for certain weapons violations, was enacted by ch. 33, SLA 1995. At that time, AS 14.30.010(b), which lists exceptions to required attendance at school, should have been amended to include a reference to children suspended or expelled under AS 14.03.160. This section makes that amendment. This section also substitutes "paragraph" for "subsection" in AS 14.30.010(b)(7) and improves the sentence structure in (b)(11).

Section 17. This bill section removes a dated reference from AS 14.36.030(b), which relates to community school program grants.

Section 18. This bill section amends AS 14.43.120(b)(2)(B) to give the current name of the Council of Recognition of Postsecondary Accreditation. It was requested by the Attorney General's Office.

Section 19. This bill section amends AS 14.43.140, relating to the enforceability of student loan obligations agreed to by minors 16 years of age or older. The reference to "19" years of age (as the age of majority) is changed to "18" years of age. This change should have been made in 1977 when the age of majority was reduced from 19 years of age to 18 years of age.

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Sections 20 - 25. These bill sections substitute "division of state libraries, archives, and museums" for "division of state libraries" in several statutes. Although this division has not been established by statute, it is referred to in quite a few statutes and should at least have its current name.

Section 26. AS 21.18.100(h) contains a definition of "plan type" ---a term used in AS 21.18.100(f)--- but subsection (h) indicates that the definition in that subsection applies to "this subsection" when it should apply to "this section". This bill section makes that change.

Section 27. This bill section amends AS 23.30.195(a), relating to workers' compensation, by deleting a reference to AS 23.30.190(a)(20). AS 23.30.190(a)(20) ceased to exist when AS 23.30.190 was amended in ch. 79, SLA 1988.

Section 28. This bill section amends AS 24.05.135(c), relating to tapes of legislative proceedings, by substituting "division of state libraries, archives, and museums" for "division of libraries". See explanation for sections 20 - 25.

Section 29. This bill section amends AS 28.10.431(b) by substituting "registration fee" for "license fee." The referenced fees are for registration, not licensure.

Section 30. This bill section amends a definition of "department" in AS 30.30.170, relating to abandoned and derelict vessels, to remove a reference to the "division of waters and harbors." This division does not exist in statute or in the state directory.

Section 31. This bill section reorganizes AS 37.05.146, the definition of "program receipts" into two subsections and moves the receipts of certain employee programs from the paragraph listing funds to paragraphs of their own. (The employee programs are not, properly speaking, "funds".) It also substitutes "public school trust fund" for "public school fund" to correct an omission in ch. 141, SLA 1988, which changed the name of the fund.

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Section 32. This bill section substitutes "public school trust fund" for "public school fund" in AS 37.05.530(g)(2). This amendment should have been made in ch. 141, SLA 1988, when the name of the public school fund was changed.

Section 33. This bill section substitutes "under or subject to AS 14.25.180" for "under AS 14.25.180" in a definition relating to the Alaska State Pension Investment Board. AS 14.25.180 sets out management duties of the Board and is referred to in regard to other funds managed by the Board, e.g., AS 39.35.080. While "under AS 14.25.180" probably would be interpreted as including funds managed by the Board that are not in AS 14.25 but are to be managed in accordance with AS 14.25.180, adding the phrase "subject to" makes that result clearer. Note that the phrase "subject to AS 14.25.180" also appears later in the same definition.

Sections 34 - 35. These bill sections amend two sections in the Pipeline Act. Bill section 33 corrects a grammatical error and breaks a long sentence into shorter ones. Bill section 34 rewrites another section for clarity.

Section 36. This bill section deletes a reference in the tax code to AS 43.58. The tax under AS 43.58 terminated on December 31, 1977 and AS 43.58 was repealed in 1984.

Section 37. This bill section substitutes a cross-reference to a section for a cross-reference to a paragraph within that section. The paragraph number has been changed and a reference to the specific paragraph is not necessary.

Section 38. This bill section corrects the name of the Council on Recognition of Postsecondary Accreditation. It was requested by the Attorney General's Office.

Sections 39 and 40. These bill sections amend the Alaska temporary assistance program, which was established by legislation passed last session. The paragraph amended by bill section 39 (AS 47.27.015(a)(1)) contains subparagraphs that establish exceptions to the 5 year maximum period of assistance. Subparagraph (D)

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contains a general "hardship" exception and also limits the maximum number of families for which an exemption may be in effect under that "paragraph" to 10 percent or the maximum allowed under federal law, whichever is greater. It is my understanding that the limitation was indeed intended to apply to all of the subparagraphs in paragraph (1) so that the reference to "this paragraph" is correct. However, under the drafting style used in the Alaska Statutes, a provision that applies to an entire paragraph should not appear in an indented subparagraph. Accordingly, the limiting language is removed from subparagraph (D) and moved to a new subsection (f), added by section 40. If the legislature will be considering other amendments to the Alaska temporary assistance program, these bill sections could be removed from the revisor's bill and included in the other bill.

Section 41. This bill section repeals the definition of "department" in AS 30.15 because the term does not appear in AS 30.15, except in a reference to a different, specified department. The text of the statute being repealed is attached.

Section 42. This bill section makes the amendment in bill section 11 to AS 13.12.603 retroactive to January 1, 1997, the effective date of AS 13.12.603. See explanation for bill section 11.

Section 43. This bill section makes the amendments in bill sections 12 and 13 to AS 14.17.025(a) and (b) retroactive to July 1, 1995, the date to which the 1996 amendment to AS 14.17.021 was made retroactive. See explanation for bill sections 12 and 13.

Section 44. For the same reason given for section 43, this bill section makes the amendment to AS 14.20.177(a) made by bill section 15 retroactive to August 16, 1996. August 16, 1996 was used rather than July 1, 1995 because AS 14.20.177 did not exist until August 16, 1996. See explanation for bill section 15.

Section 45. This bill section provides that bill section 8 (which amends SCS CSSSHB 58(RLS) am S) takes effect only if SCS CSSSHB 58(RLS) am S becomes law. This bill section also provides that the applicability and severability provision of SCS CSSSHB 58(RLS) am S apply to the amendment made by bill section 8.

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Section 46. This bill section makes bill section 8 effective on the effective date of SCS CSSSHB 58(RLS) am S, Twentieth Alaska State Legislature.

Section 47. This bill section gives the bill, exception for section 8, an immediate effective date.

Please let me know if you have any questions about the above.

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TEXT OF STATUTES BEING REPEALED

AS 30.15.070(2):

(2) "department" means Department of Transportation and Public Facilities;