

**SENATE
JOURNAL SUPPLEMENT**

July 28, 1999

Wednesday

No. 5

**Sectional Analysis of CSSB 42(JUD)
1999 Revisor's Bill**

July 28, 1999

Juneau, Alaska

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The following memorandum, dated June 28 was received from James P. Crawford, Assistant Revisor of Statutes, Division of Legal and Research Services; Legislative Affairs Agency:

The following is a sectional analysis of CSSB 42(JUD), the 1999 revisor's bill. 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 correct, delete, or repeal, obsolete provisions:

Sections 2, 3, 5, 12, 13, 16, 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 deficiencies (errors, oversights, etc.):

Sections 1, 6, 7, 8, 9, 14, and 21 correct errors or oversights that cannot be corrected editorially.

Sections that improve the form or substance of the statute law:

Sections 4, 10, 11, 15, 19, and 20 propose amendments to improve the form or substance of the statute law of Alaska.

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SECTIONAL ANALYSIS

Section 1. AS 08.54.605(a) contains a deficiency that is the product of an apparent error. The phrase "a violation of" was not inserted at the beginning of sub-paragraph (a)(1)(A) when the section was added by sec. 3, ch. 33, SLA 1996, while other sections added by sec. 3 containing similar concepts did include the phrase. See, e.g., AS 08.54.710(a)(1), 08.54.720(a)(1), and 08.54.740(a) and (b). Section 1 adds the phrase.

Sections 2 and 3. AS 09.55.040 and 09.55.069 contain language that subsequent legislative action has made obsolete. Specifically, these sections contain a reference to "the 'Relief Fund' created by the laws dealing with lost persons." This is an apparent reference to AS 18.60.110, "Fund for the rescue and relief of lost persons," which at one time stated:

There is created a fund out of money in the state treasury, not otherwise appropriated, for the rescue and relief of any person who becomes lost. The fund shall be known as the Relief Fund.

However, this fund was repealed over thirty years ago by sec. 1, ch. 15, SLA 1968, and no replacement fund was created or designated in the repealing legislation. Consequently, sections 2 and 3 remove the references to this repealed fund.

Section 4. AS 10.50.995 is in need of improvement as to form. The chapter that it references was entitled "Chapter 50. Limited Liability Company Act" when enacted in ch. 99, SLA 1994 (Emphasis added). The sections in Chapter 50 relate to limited liability companies. Section 4 changes the reference in AS 10.50.995 to clarify that the concept of limited liability in Chapter 50 is related to companies.

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Section 5. AS 11.61.123(e) contains a deficiency that is the product of an apparent oversight. Paragraph (e)(2) refers to AS 47.10.990 for the meaning of the phrase "juvenile detention facility." However, sections 45 and 46, ch. 59, SLA 1996 moved the definition of "juvenile detention facility" from AS 47.10.990 to AS 47.12.990 in 1996. Section 5 corrects the reference.

Section 6. AS 13.05.060 suffers from a deficiency that is the product of an apparent oversight. This section, which is part of Alaska's version of the Uniform Probate Code ("UPC"), was redrafted in 1996 in ch. 75, SLA 1996. However, the UPC definition of "person" was not added to the redraft. According to Arthur H. Peterson, Uniform Law Commissioner for the State of Alaska who was involved in the redrafting effort, it was thought at the time that the general definition of "person" in AS 01.10.060 was considered adequate. The UPC definition was consequently omitted.

Subsequent discussions between Mr. Peterson and Legislative Counsel Terry Bannister have pointed out the fact that the UPC definition of "person" includes an "organization," which itself is defined to include "government or governmental subdivision or agency." These entities are not specifically listed in AS 01.10.060's definition of "person". Section 6 changes the definition so that AS 13.05.060 matches the UPC in this respect.

Section 7. AS 13.26.344(a)(9) contains a deficiency that is the product of an apparent error. In various paragraphs in the section, the phrase "other instrument that the agent considers useful" appears. (Emphasis added). These paragraphs include (b)(7), (c)(9), (e)(7), (f)(9), (g)(7), and (j)(11). However, in paragraph (a)(9), the language is ungrammatically phrased as "other instrument the agent useful." The word "considers" appears to have been omitted unintentionally. Section 7 adds it.

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Section 8. AS 15.13.074(h) contains an obsolete reference. Specifically, paragraph (h)(3) refers to a subparagraph in AS 15.13.116 that was renumbered last year. Section 8 adds the correct reference.

Section 9. AS 15.13.078(b) contains obsolete references. Specifically, paragraphs (b)(1) and (b)(2) refer to a subparagraph in AS 15.13.116 that was renumbered last year. Section 9 adds the correct reference.

Section 10. AS 15.45.250 is in need of improvement as to form; specifically, section 10 adds "an" before "appropriation".

Section 11. AS 18.26.030(b) is in need of improvement as to form. By letter dated November 26, 1997, Ms. Karen Boorman, Executive Director of the Alaska Public Offices Commission, requested that the title to AS 39.50 be changed from "Conflict of Interest" to "Public Official Financial Disclosure" for the following reason:

The Commission believes that the existing title of the statute is a misnomer and creates the impression that the law enables APOC to determine when a conflict of interest exists. The law does not specify what constitutes a conflict, or how a conflict may be resolved or sanctioned. Instead, the law requires the disclosure of income sources, business interests, real property interests and loans or debts so that the public may know of the financial and business interests of persons seeking or holding office.

Although changes to titles of chapters can usually be accomplished in letter instructions to the publisher, in this case, the old title reference is found mentioned in the text of AS 18.26.030(b). The reference also appears in AS 24.60.130(m), amended by sec. 15, and AS 44.85.030, amended by sec. 19. Sections 11, 15, and 19 make the necessary changes. The revisor will instruct the publisher to make necessary title changes if these sections remain in the revisor's bill and if the bill becomes law.

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Section 12. AS 19.10.300(f) contains an obsolete reference. Specifically, sub-subparagraph (f)(1)(C)(iii) contains a spanned reference, 49 U.S.C. 1801-1813 (Hazardous Materials Transportation Act), which no longer exists. The obsolete reference is also found in AS 19.10.399(1), amended by sec. 13; AS 28.33.140(d), amended by sec. 16; AS 28.33.190(8), amended by sec. 17; and AS 28.40.100(2), amended by sec. 18. The Table of Dispositions for the United States Code Service volume for Title 49 of the federal statutes indicates that the provisions encompassed by the obsolete spanned reference were recodified without substantive change and are now found in 49 U.S.C. 5101-5127. The Department of Transportation and Public Facilities has suggested this spanned reference as the appropriate correction. Sections 12, 13, 16, 17, and 18 make this change.

Section 13. See the explanation for sec. 12.

Section 14. AS 24.60.050(d) contains an deficiency that is the product of an apparent oversight. Last year, sec. 36, ch. 74, SLA 1998 added a new section to AS 24.60 -- AS 24.60.105 -- which relates to deadlines for filing certain disclosures. A default deadline in the section is March 15. In light of this new date, AS 24.60.050(c) was given a conforming amendment in sec. 24 of the same 1998 bill. As amended, subsection (c) reads "the date required under AS 24.60.105" instead of the former date reference, "February 15". However, at the time subsection (c) was changed, subsection (d), which had heretofore contained the same date reference as subsection (c), was not similarly changed. Section 12 corrects this.

Section 15. See the explanation for sec. 11.

Section 16. See the explanation for sec. 12.

Section 17. See the explanation for sec. 12.

Section 18. See the explanation for sec. 12.

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Section 19. See the explanation for sec. 11.

Section 20. AS 47.10.080(c)(3) is in need of improvement as to form. It now reads, in pertinent part, "the court shall ... by order ... the termination." It logically should read "the court shall ... order ... the termination." Section 20 makes this change, which has the additional effect conforming its sentence structure to that of paragraphs (c)(1) and (c)(2) of this section.

Section 21. Section 54, ch. 123, SLA 1996 (HCS 2d CSSB 136(FIN) am H(brf sup maj fld H)(efd fld S)("SB 136")) contains a deficiency that is the product of an apparent error. The section contains a reference to sec. 102, but review of ch. 123 reveals that sec. 102 does not exist. The last section in ch. 123 is sec. 101.

In light of the bill's history, the reference is corrected to read "sec. 100". SB 136 passed the House of Representatives on reconsideration. 1996 House Jour. 4579 (May 7, 1996). This version -- version "D" -- did have a sec. 102 (103 sections total), and sec. 54's reference to sec. 102 was correct at the time. It also had two alternate effective date sections, which were secs. 100 and 101. However, when SB 136 version "D" came before the Senate to determine whether the Senate would concur in House amendments, the Senate failed to adopt the effective date clauses. 1996 Senate Jour. 4178 (May 7, 1996). When the new version -- version "H" -- was reprinted as HCS 2d CSSB 136(FIN) am H (brf sup maj fld H)(efd fld S), the effective date clause sections that failed were removed, and the provision previously designated as sec. 102 became sec. 100, as can be seen by comparing the two versions. Unfortunately, sec. 54's reference to sec. 102 remained unchanged. Section 21 makes the change now.

Section 22. Section 22 makes the correction to sec. 54, ch. 123, SLA 1996 retroactive to July 1, 1996, the effective date of sec. 54, ch. 123, SLA 1996, in order to protect any reliance interest of those expending money under sec. 54, ch. 123, SLA 1996.

Section 23. Effective date.

#END