

**CS FOR HOUSE BILL NO. 8(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered: 2/18/11**

**Referred: Finance**

**Sponsor(s): REPRESENTATIVES KELLER, Peggy Wilson**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to certain federal regulations and presidential executive orders;**  
2 **relating to the duties of the attorney general; and providing for an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
5 to read:

6 LEGISLATIVE FINDINGS. The legislature finds that

7 (1) the Supremacy Clause of art. VI, clause 2, Constitution of the United  
8 States, provides that the Constitution of the United States and the laws of the United States  
9 made under and in conformity with the Constitution of the United States are the supreme law  
10 of the land;

11 (2) the United States Supreme Court, in *City of New York v. Federal*  
12 *Communications Commission*, 486 U.S. 57 (1988), stated that "[t]he phrase, 'Laws of the  
13 United States' encompasses both federal statutes themselves and federal regulations that are  
14 properly adopted in accordance with statutory authorization";

1 (3) federal regulations and presidential executive orders that are  
 2 unconstitutional and not properly adopted in accordance with statutory authority are not laws  
 3 of the United States for the purposes of the Supremacy Clause; and

4 (4) federal regulations and presidential executive orders that are not properly  
 5 adopted in accordance with statutory authority may not preempt state laws that are not in  
 6 conflict with federal statutory authority and regulations properly adopted in accordance with  
 7 that statutory authority.

8 \* **Sec. 2.** AS 01.10 is amended by adding a new section to read:

9 **Article 5. Laws of the United States.**

10 **Sec. 01.10.200. Federal preemption; effect of certain federal regulations**  
 11 **and presidential executive orders.** A federal regulation or presidential executive  
 12 order that is unconstitutional or was not properly adopted in accordance with federal  
 13 statutory authority may not be considered to preempt a state law.

14 \* **Sec. 3.** AS 24.05 is amended by adding a new section to article 4 to read:

15 **Sec. 24.05.188. Federal regulations and executive orders.** After receiving a  
 16 report from the attorney general under AS 44.23.020(h) that a state law is in conflict  
 17 with a federal regulation or presidential executive order that is unconstitutional or was  
 18 not properly adopted in accordance with federal statutory authority, the house and  
 19 senate committees having jurisdiction over judicial matters may each consider whether  
 20 legislative action is necessary in response to the findings by the attorney general.

21 \* **Sec. 4.** AS 44.23.020 is amended by adding a new subsection to read:

22 (h) If the attorney general finds that a federal regulation or presidential  
 23 executive order would preempt a state law if constitutional and properly adopted in  
 24 accordance with federal statutory authority but also finds that the federal regulation or  
 25 presidential executive order is unconstitutional or was not properly adopted in  
 26 accordance with federal statutory authority, the attorney general shall report the  
 27 findings to the chairs of the house and senate committees having jurisdiction over  
 28 judicial matters. The report must include

29 (1) a copy of the federal regulation or presidential executive order that  
 30 the attorney general finds was not properly adopted in accordance with federal  
 31 statutory authority;

1                   (2) a citation to the state law that is in conflict with the federal  
2 regulation or presidential executive order identified in (1) of this subsection;

3                   (3) a written opinion explaining

4                   (A) the basis for finding that the federal regulation or  
5 presidential executive order is unconstitutional or was not properly adopted in  
6 accordance with federal statutory authority;

7                   (B) the conflict between the federal regulation or presidential  
8 executive order identified in (1) of this subsection and the state law identified  
9 in (2) of this subsection and why, if properly adopted, the federal regulation or  
10 presidential executive order would preempt the state law; and

11                   (C) the effect on the state if the state law identified in (2) of this  
12 subsection is found by a court to be preempted by the federal regulation or  
13 presidential executive order identified in (1) of this subsection; and

14                   (4) other information relevant to the findings by the attorney general.

15 \* **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).