

**HOUSE BILL NO. 83**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

**BY REPRESENTATIVES KELLER, Stoltze, Saddler, Millett, Lynn, Johnson, Higgins, Thompson, Gattis, Isaacson, Tammie Wilson, Olson, Chenault, Austerman, Gruenberg**

**Introduced: 1/22/13**

**Referred: Judiciary**

**A BILL**

**FOR AN ACT ENTITLED**

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

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

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

7 LEGISLATIVE FINDINGS. The legislature finds that

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

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

1 properly adopted in accordance with statutory authorization";

2 (3) federal statutes, regulations, presidential executive orders, and secretarial  
3 orders that are unconstitutional or not properly adopted in accordance with constitutional and  
4 statutory authority are not laws of the United States for the purposes of the Supremacy  
5 Clause; and

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

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

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

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

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

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

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

26 (h) The attorney general shall continue to review federal statutes, regulations,  
27 presidential executive orders, and secretarial orders that may be in conflict with and  
28 that may preempt state law. If the attorney general finds that a federal statute,  
29 regulation, presidential executive order, or secretarial order would preempt a state law  
30 if constitutional and properly adopted in accordance with federal statutory authority  
31 but also finds that the federal statute, regulation, presidential executive order, or

1 secretarial order is unconstitutional or was not properly adopted in accordance with  
2 federal statutory authority, the attorney general shall report the findings to the chairs  
3 of the house and senate committees having jurisdiction over judicial matters. The  
4 report must include

5 (1) a copy of the federal statute, regulation, presidential executive  
6 order, or secretarial order that the attorney general finds was not properly adopted in  
7 accordance with federal statutory authority or is unconstitutional;

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

11 (3) a written opinion explaining

12 (A) the basis for finding that the federal statute, regulation,  
13 presidential executive order, or secretarial order is unconstitutional or was not  
14 properly adopted in accordance with federal statutory authority;

15 (B) the conflict between the federal statute, regulation,  
16 presidential executive order, or secretarial order identified in (1) of this  
17 subsection and the state law identified in (2) of this subsection and why, if  
18 properly adopted, the federal statute, regulation, presidential executive order,  
19 or secretarial order would preempt the state law; and

20 (C) the effect on the state if the state law identified in (2) of this  
21 subsection is found by a court to be preempted by the federal statute,  
22 regulation, presidential executive order, or secretarial order identified in (1) of  
23 this subsection; and

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

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