

**H B**

**114**

# Alaska State Legislature



## House of Representatives House Judiciary Committee

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February 28, 1989

### MEMORANDUM

TO: Senator Jan Faiks, Chair  
Senate Judiciary Committee

FROM: Representatives Max Gruenberg *MG* and Peter Goll  
Co-Chairs, House Judiciary Committee

RE: HB 114, relating to the examination of regulations  
and opinions and decisions issued by courts and  
agencies on the law of the state

HB 114 submitted by the House Judiciary Committee would amend AS 24.20.065(a). That statute requires the legislative council to annually review judicial and administrative decisions and administrative regulations for their effect on state statutes. HB 114 amends AS 24.20.065(a) to include a review for the effects of court decisions on state common law (non-statutory) provisions.

We would appreciate your scheduling a hearing on this bill as soon as possible.

Thank you.

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
 Title: An Act relating to the examination  
of regulations and of opinions and decisions...  
 Sponsor: House Judiciary  
 Requestor: House State Affairs

Affect Agency Legislative Affairs Agency  
 BRU: Legislative Council BRU  
 Components Legal Services

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

| OPERATING         | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 | FY 94 |
|-------------------|-------|-------|-------|-------|-------|-------|
| Personal Services | 0     | 0     | 0     | 0     | 0     | 0     |
| Travel            | 0     | 0     | 0     | 0     | 0     | 0     |
| Contractual       | 0     | 0     | 0     | 0     | 0     | 0     |
| Supplies          | 0     | 0     | 0     | 0     | 0     | 0     |
| Equipment         | 0     | 0     | 0     | 0     | 0     | 0     |
| Land & Structures |       |       |       |       |       |       |
| Grants, Claims    |       |       |       |       |       |       |
| Miscellaneous     |       |       |       |       |       |       |
| TOTAL OPERATING   | 0     | 0     | 0     | 0     | 0     | 0     |

|         |   |   |   |   |   |   |
|---------|---|---|---|---|---|---|
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
|---------|---|---|---|---|---|---|

|         |   |   |   |   |   |   |
|---------|---|---|---|---|---|---|
| REVENUE | 0 | 0 | 0 | 0 | 0 | 0 |
|---------|---|---|---|---|---|---|

FUNDING: (THOUSANDS OF DOLLARS)

|              |   |   |   |   |   |   |
|--------------|---|---|---|---|---|---|
| General Fund | 0 | 0 | 0 | 0 | 0 | 0 |
| Federal Fund |   |   |   |   |   |   |
| Other        |   |   |   |   |   |   |
| TOTAL        | 0 | 0 | 0 | 0 | 0 | 0 |

POSITIONS:

|           |   |   |   |   |   |   |
|-----------|---|---|---|---|---|---|
| Full-Time | 0 | 0 | 0 | 0 | 0 | 0 |
| Part-Time | 0 | 0 | 0 | 0 | 0 | 0 |
| Temporary | 0 | 0 | 0 | 0 | 0 | 0 |

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

There would not be a fiscal impact for the Division of Legal Services under the Legislative Council BRU relating to adding examination of common law. However, it should be noted that the annual examination of administrative regulations and final decisions adopted under the Administrative

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 Division: Administrative Services

*Pamela Stoops*

Phone: 465-3850  
 Date: 2/6/89

Approved By: Warren Endicott, Executive Director  
 Agency: Legislative Affairs Agency

*Warren Endicott*

Date: 2/6/89

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REQUESTOR  
 OFFICE OF MANAGEMENT & BUDGET  
 AGENCY (IES)

CONTINUATION OF FISCAL NOTE

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ANALYSIS (continued)

Procedure Act is not currently being done by Legal Services for Legislative Council.

The Administrative Regulation Review Committee is in charge of administrative regulations.

There are insufficient funds at this time to support the attorney time needed to fully examine the administrative regulations and Administrative Procedures Act. A substantial fiscal impact would be realized to comply with these aspects of this statute.

Revisor's notes. — Formerly AS  
24.05.200. Renumbered in 1985.

**Sec. 24.20.062. Legislative internship program.** A legislative internship program established by the legislative council under AS 24.20.060(8) shall provide that

(1) the University of Alaska provide academic support and credit to the program;

(2) students enrolled and in good standing at any accredited postsecondary educational institution who have successfully completed at least two years of study are eligible to participate in the program;

(3) interns will be selected by a committee composed of members of the legislature appointed by the legislative council and representatives of the university appointed by the university;

(4) interns will be selected on the basis of their experience and interest in subjects which the legislative council feels are likely to be considered during a legislative session;

(5) legislative interns are entitled to receive academic credit and payment of \$30 for each day of participation in the program during the legislative session. (§ 11 ch 87 SLA 1979)

\*  
**Sec. 24.20.065. Examination of regulations and opinions.** (a) The legislative council shall annually examine administrative regulations, published opinions of state and federal courts and of the Department of Law that rely on state statutes, and final decisions adopted under the Administrative Procedure Act (AS 44.62) to determine whether or not

(1) the courts and agencies are properly implementing legislative purposes;

(2) there are court or agency expressions of dissatisfaction with state statutes;

(3) the opinions or regulations indicate unclear or ambiguous statutes.

(b) The legislative council shall submit a comprehensive report of the annual examination with recommendations to the members of the legislature at the start of each regular session. (§ 1 ch 72 SLA 1963)

**Sec. 01.05.036. Improvement of statutes.** The Legislative Affairs Agency, working in cooperation with the revisor shall make recommendations to the legislative council concerning deficiencies, conflicts, or obsolete provisions in and the need for reorganization or revision of the statutes, and, at the direction of the legislative council, 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 any portion of the statute law of this state. Each title of the Alaska Statutes shall be systematically reviewed at least once each two years for deficiencies, conflicts, or obsolete provisions. (§ 1 ch 1 SLA 1963; am § 1 ch 106 SLA 1974)

**Cross references.** — For the responsibility of the Alaska Legislative Council for statute revision, see AS 24.20.070.

## Chapter 10. Laws and Statutes.

### Article

1. Common Law (§ 01.10.010)
2. General Rules of Statutory Construction (§§ 01.10.020—01.10.065)
3. Effect of Statutes (§§ 01.10.070—01.10.100)
4. The Statehood Act (§ 01.10.110)

### Article 1. Common Law.

#### Section

10. Applicability of common law

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**Collateral references.** — 73 Am. Jur. 2d, Statutes, § 1 et seq.  
82 C.J.S., Statutes, § 1 et seq.

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\* **Sec. 01.10.010. Applicability of common law.** So much of the common law not inconsistent with the Constitution of the State of Alaska or the Constitution of the United States or with any law passed by the legislature of the State of Alaska is the rule of decision in this state. (§ 2-12 ACLA 1949; § 65-1-3 ACLA 1949)

**Opinions of attorney general.** — trust investment. 1963 Op. Att'y Gen., No. 13.  
There is considerable authority at common law which defines the scope of permissible

## NOTES TO DECISIONS

**Applicability of common law.** — This section, which makes the common law applicable in Alaska, refers to the common law of England. It should be noted here that Alaska has the common law of the United States now, some of which is over 300 years old. The ancient common law of England is not controlling over the developing common law of this country. *Howarth v. Pfeifer*, Sup. Ct. Op. No. 488 (File No. 890), 443 P.2d 39 (1968).

**Meaning of common-law.** — See *Valentine v. Roberts*, 1 Alaska 536 (1902).

The common law is but the accumulated expressions of the various judicial tribunals in their efforts to ascertain what is right and just between individuals with respect to private disputes. *Howarth v. Pfeifer*, Sup. Ct. Op. No. 488 (File No. 890), 443 P.2d 39 (1968).

**And scope.** — The common law includes those principles, usages, and rules of action applicable to the government and security of person and property which do not rest for their authority on any express and positive declaration of the will of the legislature; a system of elementary principles and of general judicial truths which are continually expanding with the progress of society, and adapting themselves to the gradual changes of trade and commerce and the mechanic arts and the exigencies and usages of the country. In *re Burkell*, 2 Alaska 108 (1903).

The common law is not a rigid and arbitrary code, crystallized and immutable. Rather it is flexible and adapts itself to changing conditions. *Howarth v. Pfeifer*, Sup. Ct. Op. No. 488 (File No. 890), 443 P.2d 39 (1968).

**Duty to explicate common law.** — It is the task of the supreme court of Alaska to explicate the common law which will apply in situations not dealing with a constitutional question or statutory interpretations unless and until the Alaska legislature acts to modify it. *Surina v. Buckalew*, Sup. Ct. Op. No. 2255 (File Nos. 5205, 5462), 629 P.2d 969 (1981).

**Common-law trusts.** — There are no statutes upon the subject of common-law trusts. *Powell v. Hammon Consol. Gold Fields*, 8 Alaska 153 (1929).

There is no inhibition against common-law trusts. *Powell v. Hammon Consol. Gold Fields*, 8 Alaska 153 (1929).

**Negligent misrepresentation.** — One may now maintain an action for negligent misrepresentation, even though that may

not have been the case under the common law in years gone by. *Howarth v. Pfeifer*, Sup. Ct. Op. No. 488 (File No. 890), 443 P.2d 39 (1968).

**Imputation of unchastity.** — Common-law rule that a statement imputing unchastity to a woman, or even professional unchastity, is not considered slanderous per se, is clearly outmoded. *Hollman v. Brady*, 16 Alaska 308, 233 F.2d 877 (9th Cir. 1956).

**Separate maintenance.** — Alaska has no law on separate maintenance, but the common law, by this section, has been declared to be in force in Alaska. And a suit for separate maintenance was well known at common law. *Moller v. Moller*, 11 Alaska 33, 66 F. Supp. 507 (D. Alas. 1946).

**Common law as to loss of consortium.** — See *Schreiner v. Fruit*, Sup. Ct. Op. No. 1003 (File No. 1949), 519 P.2d 462 (1974).

**Actions against tortfeasor's liability insurer.** — The common-law rule allowing no direct cause of action against a tortfeasor's liability insurer prevails in this state. *Severson v. Severson*, Sup. Ct. Op. No. 2344 (File No. 5461), 627 P.2d 649 (1981).

**Sequestration.** — Given the harsh nature of the remedy of sequestration and the fact that the Alaska legislature has spelled out in some detail the procedure for obtaining other similar remedies while it has not enacted a sequestration statute, the implication is clear that Alaska has decided that sequestration of the nature sought in an action to require a regional corporation organized under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 et seq., to place certain funds in secure and liquid investments pending litigation is not available and has preempted the common law with a complex statutory scheme. *Aleut Corp. v. Arctic Slope Regional Corp.*, 424 F. Supp. 397 (D. Alas. 1976).

**Title by accretion.** — At common law the riparian owner acquires title to additions thereto by accretion. *Nordale v. Waxberg*, 12 Alaska 399, 84 F. Supp. 1004 (D. Alas. 1949), aff'd, 12 Alaska 695, 182 F.2d 1022 (9th Cir. 1950).

Applied in *United States v. Pacific & A. Ry. & Nav. Co.*, 5 Alaska 43 (1914); *Van Dyke v. Midnight Sun Mining & Ditch Co.*, 177 F. 85 (9th Cir. 1910); *Northwestern S.S. Co. v. Cochran*, 191 F. 146 (9th Cir.

1911); *Bosel v. State*, Sup. Ct. Op. No. 280 (File No. 32), 398 P.2d 651 (1965).

Quoted in *Turnbull v. Bonkowski*, 419 F.2d 104 (9th Cir. 1969); *Smiloff v. State*, Sup. Ct. Op. No. 1637 (File No. 3006), 579 P.2d 28 (1978); *Carter v. Brodrick*, Sup. Ct. Op. No. 2500 (File No. 5511), 644 P.2d 850 (1982).

Stated in *In re Burkell*, 2 Alaska 108 (1903); *McFarland v. Alaska Perseverance Mining Co.*, 3 Alaska 308 (1907); *Jansen v.*

*Pollastrine*, 10 Alaska 316 (1942); *Territory of Alaska v. 188 Cases of Mixed Intoxicating Liquors*, 10 Alaska 414 (1944); *Bickel v. Polaris Inv. Co.*, 17 Alaska 389, 155 F. Supp. 411 (D. Alas. 1957).

Cited in *Ketchikan Co. v. Citizens' Co.*, 2 Alaska 120 (1903); *First Nat. Bank v. Stout*, 9 Alaska 400 (1938); *Northwest Airlines, Inc. v. Alaska Airlines, Inc.*, 351 F.2d 253 (9th Cir. 1965).

**Article 2. General Rules of Statutory Construction.**

| Section                                       | — | Section                       |
|---|---|-------------------------------|
| 20. Applicability of AS 01.10.040 — 01.10.090 |   | 50. Tense, number, and gender |
| 30. Constitutionality and severability        |   | 60. Definitions               |
| 40. Words and phrases                         |   | 65. Certified mail            |

Collateral references. — 73 Am. Jur. 2d, Statutes, §§ 142-341.  
82 C.J.S., Statutes, §§ 311-398.

**Sec. 01.10.020. Applicability of AS 01.10.040 — 01.10.090.** The provisions of AS 01.10.040 — 01.10.090 shall be observed in the construction of the laws of the state unless the construction would be inconsistent with the manifest intent of the legislature. (§ 1 ch 62 SLA 1962)

**NOTES TO DECISIONS**

The supreme court is enjoined by the legislature to observe the provisions of this section, in resolving any issue relating to AS 01.10.080 and its applicability to the five-day recount provision of AS 15.20.430. *Wade v. Dworkin*, Sup. Ct. Op. No. 306 (File No. 603), 407 P.2d 587 (1965).

**Sec. 01.10.030. Constitutionality and severability.** Any law heretofore or hereafter enacted by the Alaska legislature which lacks a severability clause shall be construed as though it contained the clause in the following language, "If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application to other persons or circumstances shall not be effected thereby." (§ 1 ch 98 SLA 1949)

facts. A judge may comment "on the weight of the evidence and indicate his own opinion concerning the credibility of witnesses and the relative strength of competing permissible inferences, provided always that he makes it clear to the jury that it is their province to decide such questions of weight and credibility." James, Civil Procedure §7.14 (1965). However, a prosecutor may not "comment" on the refusal of a defendant in a criminal proceeding to testify, and the court may not instruct a jury that such silence is evidence of guilt. See 380 U.S. 609.

**COMMERCIAL BRIBERY** see bribery.

**COMMERCIAL FRUSTRATION** see frustration.

**COMMERCIAL PAPER** a negotiable instrument, i.e., a writing indorsed by the maker or drawee, containing an unconditional promise or order to pay a certain sum on demand or at a specified time, made payable to order or to bearer. U.C.C. §3-104(1). The term comprehends bills of exchange, checks, notes, and certificates of deposit. U.C.C. §3-104(2).

**COMMERCIAL PREFERENCE** see preference.

**COMMODITY** any tangible good; commercially, commodities refer to products that are the subject of sale or barter. See also futures.

\* **COMMON LAW** the system of jurisprudence, which originated in England and was later applied in the United States, which is based on judicial precedent rather than legislative enactments; it is to be contrasted with civil law (the descendant of Roman Law prevalent in other western countries). Originally based on the unwritten laws of England, the common law is "generally derived from principles rather than rules; it does not consist of absolute, fixed, and inflexible rules, but rather of broad and comprehensive principles based on justice, reason, and common sense. It is of judicial origin and promulgation. Its principles have been determined by the social needs of the community and have changed with changes in such needs. These principles are susceptible of adap-

tation to new conditions, interests, relations, and usages as the progress of society may require." 37 N.W. 2d 543, 547.

**COMMON LAW COPYRIGHT** see copyright.

**COMMON NUISANCE** see nuisance.

**COMMON PROPERTY** see property.

**COMMONS** land set aside for public use, e.g., public parks; also, the untitled class of Great Britain, represented in Parliament by the House of Commons.

**COMMUTATION** substitution, change; the substitution of a lesser penalty or punishment for a greater one, such as from death to life imprisonment, or from a longer term to a shorter one. The chief executive officer (President, governor) has the constitutional power of executive clemency which includes the broad power in his discretion to commute a sentence. Compare with pardon and reprieve.

**COMPANY** broadly, any group of people voluntarily united for performing jointly any activity, business, or commercial enterprise. See 23 Tax. 295, 303.

In reference to trades, "company" applies to the combination of individuals' capital, skill and labor for the purpose of business carried on for such individuals' common benefits. 6 So. 362, 364.

The term also applies to a wide range of activities, and under statutory construction has been held to include private corporations, joint stock companies (see below), all partnerships, etc. See 222 S.W. 736, 739. "Company" has also been considered synonymous with "firm".

**HOLDING COMPANY** see holding company.

**JOINT STOCK COMPANY** a company or association, usually unincorporated, which has the capital of its members pooled in a common fund; the capital stock is divided into shares and distributed to represent ownership interest in the company, see Henn, Law of Corporations §50 (1961); a form of partnership, but one which

CSHB 58(Jud)

Representative Navarre moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the court rule change. There being no objection, it was so ordered.

Representative Navarre moved and asked unanimous consent that the roll call on the passage of the bill be considered the roll call on the effective date clause. There being no objection, it was so ordered.

CSHB 58(Jud) was referred to the Chief Clerk for engrossment.

\*  
HB 114

The following was read the second time:

## HOUSE BILL NO. 114

"An Act relating to the examination of regulations and of opinions and decisions issued by courts and agencies on the law of the state."

with the:

|  |          |
|--|----------|
| State Affairs Committee report                               | page 347 |
| Zero fiscal note with analysis<br>(LAA) published 2/15/89    | page 347 |
| Judiciary Committee report with<br>previous zero fiscal note | page 399 |

Representative Navarre moved and asked unanimous consent that HB 114 be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered.

HB 114 was read the third time.

The question being: "Shall HB 114 pass the House?" The roll was taken with the following result:

HB 114

|       |    |   |
|-------|----|---|
| Yeas: | 37 | Barnes, Boucher, Boyer, Brown,<br>Cato, Collins, Cotten, Davidson,<br>Davis, C., Davis, M., Donley,<br>Ellis, Foster, Goli, Gruenberg,<br>Grussendorf, Hanley, Hoffman,<br>Hudson, Jacko, Koponen, Larson,<br>Leman, MacLean, Martin, Miller,<br>Navarre, Phillips, Rieger, Sharp,<br>Shultz, Spohnholz, Swackhammer,<br>Taylor, Ulmer, Wallis, Zawacki |
|-------|----|---|

HB 114

Nays: 0  
Excused: 1 Pettyjohn  
Absent: 2 Furnace, Menard

And so, HB 114 passed the House and was referred to the Chief Clerk for engrossment.

LEGISLATIVE CITATIONS

Representative Navarre moved and asked unanimous consent that the House approve the citation on the calendar. There being no objection, the House approved the following citation:

Honoring - Senator Bettye M. Fahrenkamp

The citation was referred to the Chief Clerk for transmittal to the Senate.

Representative Navarre moved and asked unanimous consent that the House revert to Messages from the Senate. There being no objection, the House reverted to:

MESSAGES FROM THE SENATE

A message dated February 23, 1989, was read stating the Senate has passed the following and it is transmitted for consideration:

FIRST READING AND REFERENCE OF SENATE RESOLUTIONSSJR 32am

SENATE JOINT RESOLUTION NO. 32 amended, by the Senate Special Committee on International Trade and Tourism:

Relating to a celebration of the 250th anniversary of the Russian discovery of Alaska.

was read the first time and referred to the Rules Committee for consideration.