

## HOUSE BILL NO. 392

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE PARNELL

Introduced: 1/21/94

Referred: State Affairs, Judiciary, Finance

## A BILL

## FOR AN ACT ENTITLED

1 "An Act relating to the confidentiality of permanent fund dividend application  
2 information; relating to the permanent fund dividend program; and providing for  
3 an effective date."

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

5 \* Section 1. AS 14.43.120(i) is amended to read:

6 (i) If a loan is in default, the commission shall notify the borrower that  
7 repayment of the remaining balance is accelerated and due by sending the borrower  
8 a notice by registered or certified mail. The permanent fund dividend of a borrower  
9 may be taken under AS 43.23.065(b)(4) [AS 43.23.065(b)(3)] to satisfy the balance  
10 due on the defaulted loan.

11 \* Sec. 2. AS 43.23.005(a) is amended to read:

12 (a) An individual is eligible to receive one permanent fund dividend each year  
13 in an amount to be determined under AS 43.23.025 if the individual

14 (1) [THE INDIVIDUAL] applies to the department;

1 (2) [ON THE DATE OF APPLICATION THE INDIVIDUAL] is a  
2 state resident on the date of application;

3 (3) [THE INDIVIDUAL] was a state resident for at least the calendar  
4 year immediately preceding January 1 of the current dividend year;

5 (4) [THE INDIVIDUAL] has been physically present in the state at  
6 some time during the prior two calendar years before the current dividend year; [AND]

7 (5) [THE INDIVIDUAL] is

8 (A) a citizen of the United States;

9 (B) an alien lawfully admitted for permanent residence in the  
10 United States;

11 (C) an alien with refugee status under federal law; or

12 (D) an alien that has been granted asylum under federal law;

13 **and**

14 (6) was, during the entire period described in (3) of this subsection,  
15 present in the state or, if absent, was absent only as allowed in AS 43.23.008.

16 \* Sec. 3. AS 43.23.005(c) is amended to read:

17 (c) A parent, guardian, or other authorized representative who meets the  
18 requirements of (a)(2) - (6) of this section may claim a permanent fund dividend on  
19 behalf of an unemancipated minor or on behalf of a disabled or an incompetent  
20 individual who is eligible to receive a payment under this section. Notwithstanding  
21 (a)(2) - (4) of this section and AS 43.23.008(b), a minor who is otherwise eligible is  
22 eligible for a dividend if, during the two calendar years immediately preceding the  
23 current dividend year, the minor was born to or adopted by an individual who is  
24 eligible for a dividend for the current dividend year.

25 \* Sec. 4. AS 43.23.005(d) is amended to read:

26 (d) Notwithstanding the provisions of (a) - (c) of this section, an individual  
27 who has been convicted of a felony is not eligible for a permanent fund dividend for  
28 a year when, during all or part of the previous calendar year, as a result of the  
29 conviction, the individual is incarcerated. This subsection does not apply if the  
30 felony conviction is reversed. An action taken under AS 12.55.085 - 12.55.110  
31 does not constitute reversal of a conviction for purposes of this subsection.

1 \* Sec. 5. AS 43.23 is amended by adding a new section to read:

2 Sec. 43.23.008. ALLOWABLE ABSENCES. (a) Subject to (b) of this  
3 section, an otherwise eligible individual who is absent from the state during the  
4 calendar year immediately preceding the current dividend year remains eligible for the  
5 dividend if the individual was absent

6 (1) receiving full-time technical training as part of a career education  
7 program recognized by the Alaska Commission on Postsecondary Education if the  
8 commission informs the department that there is no comparable technical training  
9 reasonably available in the state;

10 (2) attending full-time an academic institution, seminar, or other  
11 program for continuing professional educational development, including a sabbatical,  
12 legal, or accounting program, recognized by the Alaska Commission on Postsecondary  
13 Education if the commission informs the department that there is no comparable  
14 program reasonably available in the state;

15 (3) attending a special education program to assist in the treatment of  
16 learning or physical disabilities or the treatment of mental disorders if attendance is  
17 recommended by a licensed physician, psychologist, physical therapist, or the  
18 commissioner of education, and if the commissioner of education informs the  
19 department that there is no comparable special education program reasonably available  
20 in the state;

21 (4) attending full-time at an educational institution in grades 7 through  
22 12;

23 (5) attending full-time at an accredited college, university, or junior or  
24 community college in a program leading to an associate, baccalaureate, or graduate  
25 degree;

26 (6) serving on active duty as a member of the armed forces of the  
27 United States;

28 (7) receiving continuous medical treatment recommended by a licensed  
29 physician or convalescing as recommended by the physician that treated the illness if  
30 the treatment or convalescence is not based on a need for climatic change;

31 (8) accompanying a minor who is absent under (7) of this subsection;

- 1 (9) serving as a member of the United States Congress;  
2 (10) serving on the staff of a member of the United States Congress  
3 from the state;  
4 (11) serving as a full-time volunteer in the Peace Corps;  
5 (12) serving as an employee of the state, including employment in a  
6 field office;  
7 (13) in the custody of the state;  
8 (14) actively participating on a United States national athletic team as  
9 an eligible athlete as defined by the International Federation and National Governing  
10 Body for each nonprofessional sport;  
11 (15) accompanying an eligible individual as the spouse, minor  
12 dependent, or disabled dependent of the eligible individual;  
13 (16) for a reason consistent with the individual's intent to remain a  
14 resident, provided the absence or cumulative absences do not exceed  
15 (A) 180 days if the individual is not claiming an absence under  
16 (1) - (15) of this subsection and provided that the individual  
17 (i) established the individual's principal home in this  
18 state before leaving this state;  
19 (ii) has not taken an action inconsistent with an intent  
20 to maintain the individual's principal home in this state;  
21 (iii) has not taken an action to establish or maintain a  
22 principal home outside of this state;  
23 (iv) returned to the individual's principal home in this  
24 state at the conclusion of the absence;  
25 (B) the greater of 90 days, one school semester during which  
26 the individual was enrolled, or one school quarter during which the individual  
27 was enrolled, in addition to any absence or cumulative absences claimed under  
28 (1) or (5) of this subsection if the individual is not claiming any absence under  
29 (2) - (4) or (6) - (15) of this subsection; or  
30 (C) 45 days in addition to any absence or cumulative absences  
31 claimed under (1) - (15) of this subsection.

1 (b) An individual who is otherwise eligible and who is absent for more than  
2 180 days during the calendar year immediately preceding January 1 of the current  
3 dividend year remains eligible for the dividend only if the individual was a resident  
4 of the state for at least six consecutive months immediately before leaving the state.

5 \* Sec. 6. AS 43.23.015(b) is amended to read:

6 (b) The department shall prescribe and furnish an application form for claiming  
7 a permanent fund dividend. The application must include

8 (1) notice of the penalties provided for under AS 43.23.035; [AND  
9 CONTAIN]

10 (2) a statement of eligibility and a certification of residency to be  
11 signed by the applicant or appropriate representative if the application is filed  
12 under AS 43.23.005(c) or 43.23.015(e); and

13 (3) a statement to be signed by

14 (A) two other people who can attest to the eligibility of the  
15 applicant; or

16 (B) one other person who can attest to the eligibility of the  
17 applicant if the application is filed under AS 43.23.005(c) or 43.23.015(e).

18 \* Sec. 7. AS 43.23.035(a) is amended to read:

19 (a) In addition to any criminal penalties imposed by state law, if an individual  
20 is convicted of a crime in connection with a false statement made in a certification  
21 required under AS 43.23.015, and the conviction is not reversed, that individual forfeits  
22 all permanent fund dividends paid and is not eligible for a future permanent fund  
23 dividend. An action taken under AS 12.55.085 - 12.55.110 does not constitute  
24 reversal of a conviction for purposes of this subsection.

25 \* Sec. 8. AS 43.23.035(d) is amended to read:

26 (d) If notice is not sent within the time required under (b) of this section,  
27 administrative or judicial proceedings may not be commenced for recovery of an  
28 improperly paid dividend. The time limitations of (b) of this section do not apply

29 (1) to a duplicate payment of a dividend;

30 (2) if a dividend is forfeited under (a) of this section; or

31 (3) if it is more probable than not that an individual has committed a

1 crime in connection with a false statement made in an application.

2 \* Sec. 9. AS 43.23.035 is amended by adding new subsections to read:

3 (e) Except as provided in (f) of this section, the department may not, during  
4 the time in which an appeal may be filed or while an appeal is pending, pay a  
5 dividend to an individual who, as a result of a proceeding under this section, owes  
6 money to the state.

7 (f) The department shall pay to an individual who is not the subject of a  
8 criminal investigation under this section any prior year dividend for which the  
9 individual is eligible if, by September 30 of the year following the year for which the  
10 dividend is declared, the

11 (1) individual has not exhausted the individual's appeal rights related  
12 to the money owed to the state as a result of a proceeding under this section; and

13 (2) department has not issued a formal hearing decision affirming that  
14 the individual owes money to the state as a result of a proceeding under this section.

15 \* Sec. 10. AS 43.23.055 is amended to read:

16 Sec. 43.23.055. DUTIES OF THE DEPARTMENT. The department shall

17 (1) annually pay permanent fund dividends from the dividend fund;

18 (2) subject to AS 43.23.011 and paragraph (8) of this section, adopt  
19 regulations under AS 44.62 (Administrative Procedure Act) that establish procedures  
20 and time limits for claiming a permanent fund dividend and for providing missing  
21 or additional information; the department shall determine the number of eligible  
22 applicants by October 1 of the year for which the dividend is declared and pay the  
23 dividends by December 31 of that year;

24 (3) adopt regulations under AS 44.62 (Administrative Procedure Act)  
25 that establish procedures and time limits for an individual upon emancipation or upon  
26 reaching majority to apply for permanent fund dividends not received during minority  
27 because the parent, guardian, or other authorized representative did not apply on behalf  
28 of the individual;

29 (4) assist residents of the state, particularly in rural areas, who because  
30 of language, disability, or inaccessibility to public transportation need assistance to  
31 establish eligibility and to apply for permanent fund dividends;

1 (5) annually determine, in cooperation with the Department of  
2 Corrections, the number and identity of individuals ineligible for a permanent fund  
3 dividend under AS 43.23.005(d);

4 (6) adopt regulations that are necessary to implement AS 43.23.005(d);

5 (7) adopt regulations that establish procedures for the parent, guardian,  
6 or other authorized representative of a disabled individual to apply for prior year  
7 permanent fund dividends not received by the disabled individual because no  
8 application was submitted on behalf of the individual;

9 (8) adopt regulations that establish procedures for an individual to apply  
10 to have a dividend warrant reissued if it is returned to the department as undeliverable  
11 or it is not paid within two years of the date of its issuance; however, the department  
12 may not establish a time limit within which an application to have a warrant reissued  
13 must be filed;

14 (9) adopt regulations establishing an optional longevity bonus program  
15 to provide for the direct payment by the department of an individual's permanent fund  
16 dividend to an annuity program selected by the individual.

17 \* Sec. 11. AS 43.23.065(a) is amended to read:

18 (a) Except as provided in (b) of this section, 45 percent of an individual's  
19 [THE ANNUAL] permanent fund dividend [PAYABLE TO AN INDIVIDUAL] is  
20 exempt from levy, execution, garnishment, attachment, or any other remedy for the  
21 collection of debt. This exemption applies to an eligible individual's permanent fund  
22 dividend both before and after payment is made to the individual. No other exemption  
23 applies to a dividend. Notwithstanding other laws, a writ of execution upon a dividend  
24 that has not been delivered to the debtor may be served on the commissioner by  
25 certified mail, return receipt requested. Upon receipt of a writ by certified mail, return  
26 receipt requested, the commissioner shall deliver that portion of the dividend executed  
27 upon to the court along with the case name and number.

28 \* Sec. 12. AS 43.23.065(b) is amended to read:

29 (b) An exemption is not available under this section for permanent fund  
30 dividends taken to satisfy

31 (1) amounts owed to the state under AS 43.23.035(a) or (b);

1                   (2) child support obligations required by court order or decision of the  
2 child support enforcement agency under AS 25.27.140 - 25.27.220;

3                   (3) [(2)] court ordered restitution under AS 12.55.045 - 12.55.051 or  
4 12.55.100;

5                   (4) [(3)] claims on defaulted scholarship loans under AS 43.23.067;

6                   (5) [(4)] court ordered fines; or

7                   (6) [(5)] a debt, other than a debt under (1) - (5) of this subsection,  
8 owed by an eligible individual to an agency of the state, unless the debt is contested  
9 and an appeal is pending, or the time limit for filing an appeal has not expired.

10 \* Sec. 13. AS 43.23.065(d) is amended to read:

11                   (d) The department may not accept an [AN] assignment of a current year  
12 dividend or a levy, execution, garnishment, attachment, or other remedy for the  
13 collection of debt applied to a current year dividend [FOR A YEAR MAY NOT BE  
14 ACCEPTED BY THE DEPARTMENT] before April 1 of the current dividend  
15 [THAT SAME] year. AS 09.38.080(c) and 09.38.085 do not apply to a levy on a  
16 permanent fund dividend. The department shall include the case number with a  
17 dividend or portion of a dividend transmitted to the court in response to a writ of  
18 execution or other court order. At the time payment is made to the court, the  
19 department shall send to the individual at the address provided in the individual's  
20 dividend application and to the court that issued the writ or order a notice that contains

21                   (1) notification that all or part of the individual's dividend has been  
22 seized under a writ of execution or court order;

23                   (2) the name and address of the court that issued the writ or order;

24                   (3) the case number for which the writ or order was issued;

25                   (4) the amount seized under the writ or order; and

26                   (5) notification that the individual has 30 days from the date the notice  
27 is mailed in which to file with the court an objection to the seizure if a mistake has  
28 been made.

29 \* Sec. 14. AS 43.23.069(b) is amended to read:

30                   (b) A person may assign the right to receive a permanent fund dividend to a  
31 federal, state, or municipal government agency for a debt owed to or administered

1 by the agency or to a court for a debt owed to the court.

2 \* **Sec. 15.** AS 43.23 is amended by adding a new section to read:

3 **Sec. 43.23.089. RELEASE OF INFORMATION.** (a) Except to the extent  
4 required under AS 24.20.271 and AS 24.55.160 - 24.55.170 and as provided in this  
5 section, information related to an individual's application or dividend, including a  
6 dividend eligibility determination made by the department, is confidential. Except as  
7 provided in (e) of this section, the department shall provide information related to an  
8 individual's application or dividend to that individual upon the request of that  
9 individual.

10 (b) The following information is subject to release by the department under the  
11 following conditions:

12 (1) to any person who makes a written request and pays a fee set by  
13 the department that does not exceed the actual cost of preparing and copying the  
14 information, the names and mailing addresses of applicants;

15 (2) to the court system for use in developing a jury list under  
16 AS 09.20.050, the names, mailing addresses, and birth dates of applicants who are 18  
17 years old or older;

18 (3) to the division of elections at the discretion of the department for  
19 use in voter registration drives, the names, mailing addresses, and birth dates of  
20 applicants who are 18 years old or older;

21 (4) to a municipality, the state, or the federal government at the  
22 discretion of the department, information for use in the collection of money owed to  
23 the requesting government or for use in an investigation by the requesting government;

24 (5) to a process server at the discretion of the department, information  
25 related to payments made by the department to the process server;

26 (6) to a person who has filed an application on behalf of another  
27 individual, information regarding the eligibility status of that individual;

28 (7) to the office of a legislator or the governor, information regarding  
29 an application filed by an individual if the individual has requested assistance from the  
30 legislator or the governor in a matter concerning the application.

31 (c) Notwithstanding (b) of this section, the department may release information

1 regarding a bank, credit union, savings and loan, or other financial account of an  
2 individual only if the department

3 (1) receives authorization from the individual to release the information;

4 (2) receives a court order directing that the information be released;

5 (3) receives a request from a municipality, the state, or the federal  
6 government and the information is sought in connection with a criminal investigation  
7 by the requesting government; or

8 (4) makes use of the information to recover an improperly paid  
9 dividend or a penalty under AS 43.23.035.

10 (d) The department shall release on request of an adult or emancipated minor  
11 information pertaining to all applications filed with the application of the requestor.

12 (e) Notwithstanding other provisions of law and except as required by court  
13 order, if an individual who provides the department with information that might  
14 disqualify another individual from receiving a dividend requests nondisclosure, the  
15 department may not disclose the identity of the individual who provides the  
16 information.

17 \* Sec. 16. AS 43.23.095 is amended to read:

18 Sec. 43.23.095. DEFINITIONS. In this chapter,

19 (1) "Alaska permanent fund" means the fund established by art. IX, sec.  
20 15 of the state constitution;

21 (2) [REPEALED

22 (3) REPEALED

23 (4)] "disabled" means physically or mentally unable to complete and  
24 sign an application due to a serious emotional disturbance, visual, orthopedic, or other  
25 health impairment, or developmental disability that is attributable to mental retardation,  
26 cerebral palsy, epilepsy, autism or other cause; "disabled" does not mean  
27 "incompetent";

28 (3) [(5)] "dividend fund" means the fund established by AS 43.23.045;

29 (4) [(6)] "individual" means a natural person;

30 (5) [(7)] "permanent fund dividend" means a right to receive a payment  
31 from the dividend fund;

1                    ~~(6)~~ [(8)] "state resident" means an individual who is physically present  
2 in the state with the intent to remain permanently in the state under the requirements  
3 of AS 01.10.055 or, if the individual is not physically present in the state, maintains  
4 and demonstrates at all times an intent [INTENDS] to return to the state to [AND]  
5 remain permanently in the state under the requirements of AS 01.10.055 [, AND IS  
6 ABSENT ONLY FOR ANY OF THE FOLLOWING REASONS:

7                    (A) VOCATIONAL, PROFESSIONAL, OR OTHER SPECIFIC  
8 EDUCATION FOR WHICH A COMPARABLE PROGRAM WAS NOT  
9 REASONABLY AVAILABLE IN THE STATE;

10                   (B) SECONDARY OR POSTSECONDARY EDUCATION;

11                   (C) MILITARY SERVICE;

12                   (D) MEDICAL TREATMENT;

13                   (E) SERVICE IN CONGRESS;

14                   (F) OTHER REASONS WHICH THE COMMISSIONER MAY  
15 ESTABLISH BY REGULATION; OR

16                   (G) SERVICE IN THE PEACE CORPS;

17                   (9) "YEAR" MEANS A CALENDAR YEAR].

18       \* Sec. 17. PERMANENT FUND DIVIDENDS FOR CERTAIN SPOUSES AND  
19 DEPENDENTS. Notwithstanding the provision in AS 43.23.015(a) that the residency of an  
20 individual's spouse may not be the principal factor relied upon in determining the residency  
21 of the individual, an otherwise eligible individual who applied for a 1992 or 1993 permanent  
22 fund dividend within the time prescribed by law is eligible for the dividend even if the  
23 individual was absent from the state while accompanying as the spouse, minor dependent, or  
24 disabled dependent another person who was absent for a reason permitted under former  
25 AS 43.23.095(8) and was eligible for that dividend.

26       \* Sec. 18. Sections 1 - 3, 5, 6, 10 - 14, and 16 of this Act are retroactive to January 1,  
27 1994.

28       \* Sec. 19. Sections 1 - 3, 5, 6, and 8 - 18 of this Act take effect immediately under  
29 AS 01.10.070(c).

30       \* Sec. 20. Sections 4 and 7 of this Act take effect January 1, 1995.