

ALASKA

EXEMPTIONS

ACT - HB 56



Official Business

# Alaska State Legislature

## House of Representatives

### Committee on Judiciary

Pouch V  
State Capitol  
Juneau, Alaska 99811

To: Charlie Parr, Chairman, and Members of the House  
Judiciary Committee

From: Margaret W. Berck, Staff

Date: September 13, 1979

Subject: The Alaska Exemptions Act, HB 56

During the 1979 legislative session the House Judiciary Committee was referred HB 56 relating to the rights of debtors and creditors. This bill was introduced by the Legislative Council at the request of the Code Revision Commission. HB 56 revises that body of Alaska statutes commonly designated the exemption laws. Exemption laws provide protection for certain property of an individual from seizure by creditors to enforce the payment of an unsecured debt. The bill to some extent follows the provisions of the Uniform Exemption Act prepared by the National Conference of Commissioners on Uniform State Laws.

The Code Revision Commission contends that HB 56 should be enacted for two reasons. First, the commission has found that Alaska exemption laws are out of date and do not provide adequate protection for property in the possession of an individual necessary to provide the basic necessities of life for the individual and his or her family. Second, state laws on this issue should be uniform. The need for uniformity resulted largely from congressional revisions

then being proposed to the bankruptcy laws. Recently certain revisions to the bankruptcy laws have occurred and such amendments will become effective on October 1, 1979. In order to assess the original plea for uniformity, consideration must be made of these revisions to the bankruptcy laws.

HB 56 involves a somewhat technical area of the law. To assist the committee in its consideration of this bill, the following materials are included herewith: memorandum comparing Alaska law and HB 56 provisions with the new bankruptcy laws; a sectional analysis of HB 56; a comparison of Alaska laws, Oregon laws, Washington laws, and the provisions of HB 56; and a memorandum comparing the treatment of judgment liens under existing state laws with that proposed by HB 56. All of these materials were prepared by Legislative Affairs. It should be noted that originally this sectional analysis had sections of the bill as drafted by the code commission interspersed between its commentary. For that reason the page numbers are not in series and commentary on the definitional section occurs at the beginning rather than at the end.

# STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

## LEGISLATIVE AFFAIRS AGENCY

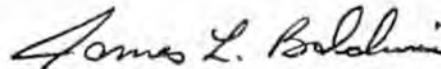
MEMORANDUM

August 15, 1979

SUBJECT: Comparison of exemption schedules  
(Work Order #7308)

TO: Charlie Parr, Chairman  
House Judiciary Committee

FROM: James L. Baldwin  
Legislative Counsel



Congress has enacted and codified a new bankruptcy law, Title 11 of the United States Code - Bankruptcy. The new law which becomes effective on October 1, 1979, repeals the Bankruptcy Act of 1898, and the Nelson Act, as revised generally 40 years later by the Chandler Act. The existing section 6 of the Bankruptcy Act provides that the bankrupt is entitled to those exemptions that he would be entitled to under the law of the state of his domicile and nonbankruptcy federal law. The Bankruptcy Reform Act of 1978 (Public Law 95-598) establishes a list of federal exemptions which are available to an individual debtor. The debtor may choose to be protected by the federal exemptions or he may choose the exemptions provided by his state law (as under the current bankruptcy act). It should be noted that the new federal act has a provision which permits states to "opt out" of the federal bankruptcy exemption alternative. If a state chooses to do this, a debtor domiciled there would only have available the exemptions authorized by state law. The choices between state and federal exemptions are mutually exclusive alternatives and may not be combined by a debtor; except that spouses who are joint debtors are not required to choose the same alternative. Under this system it is expected that debtors will compare the state and federal exemptions and choose the alternative more advantageous to him. Set out below in table format is a comparison of the current state exemptions with those proposed in HB 56 (proposed Alaska Exemptions Act) and the federal alternate exemptions which take effect on October 1, 1979:

JLB:slk

Enclosure

HOMESTEAD EXEMPTION

(residence,

realty .....	\$19,000.....	\$19,000.....	\$7,500
mobile home .....	\$12,000.....	\$19,000.....	\$7,500
burial plot <u>1/</u> .....	all exempt.....	all exempt.....	\$7,500

LIMITED VALUE EXEMPTIONS

animals .....	)	\$300 (pets).....	)	each item of this
household goods.....	)	\$1,200.....	)	type of property is
furniture.....	)	.....	)	exempt if the value
appliances.....	)	\$1,500.....	)	of the item does not
wearing apparel.....	)	\$200 (includes jewelry).....	)	exceed \$200
books.....	)	.....	)	
pictures.....	)	\$300.....	)	
musical instruments.....	)	.....	)	
professional books.....	)	.....	)	
tools of trade.....	)	\$2,500.....	)	\$750
automobile.....	)	<u>2/</u> .....	)	\$1,200
jewelry .....	)	(see wearing apparel)....	)	\$500
miscellaneous property.....	)	none.....	)	\$400 plus any unused portion of the home- stead exemption

1/ A burial plot is exempt only if it is part of a cemetery association.

2/ To be exempt the auto must be used in the debtor's trade or profession.

3/ The total value of the auto may not exceed \$10,000.

PROPERTY EXEMPT WITHOUT LIMITATION

Social Security.....	all exempt.....	all exempt.....	all exempt.....
Unemployment Compensation.....	all exempt.....	none exempt <u>4/</u> .....	all exempt.....
Veterans' Benefits.....	all exempt.....	none exempt.....	all exempt.....
Disability or Illness Benefits.....	all exempt.....	none exempt.....	all exempt.....
Violent Crime Compensation.....	all exempt.....	all exempt.....	all exempt.....
General Relief Assistance.....	all exempt.....	none exempt <u>4/</u> .....	all exempt.....
Alaska Longevity Bonus.....	all exempt.....	all exempt.....	all exempt.....
PERS.....	all exempt.....	none exempt <u>4/</u> .....	all exempt.....
TRS.....	all exempt.....	none exempt <u>4/</u> .....	all exempt.....

LIFE INSURANCE

Loan Value.....	no provision.....	\$5,000.....	\$4,000
Proceeds.....	all exempt.....	all exempt.....	all exempt

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4/ This type of public assistance or pension benefit is treated as cash and other liquid assets after it is paid to the debtor and is exempt if the value of these benefits is less than \$500 per month or, if the increased exemption amount is claimed, \$800 per month.

Limited Value Exemption

	<u>Alaska</u>	<u>Oregon</u>	<u>Wash.</u>	<u>Alaska Exemptions Act</u>
Books .....	} \$300	} \$150	All Exempt .....	} \$1,500 (combined value including value of household goods, furniture, and heirlooms, below)
Pictures .....			All Exempt .....	
Musical Instruments .....			All Exempt .....	
Wearing Apparel .....	\$200	\$500	All Exempt	
Watches and Jewelry .....	\$200	none	\$500	\$500
Articles used in Trade or Profession .....	\$2,500 (incl. auto)	\$1,600 (only \$800 can be for an auto)	\$1,500 (Farmer - equip. stock, etc. Professional equip)	\$1,000
Household goods .....	} \$1,200	} \$800	} \$1,000	} \$1,500 (combined value including books, pictures, musical instruments, and heirlooms)
Furniture .....				
Pets .....		\$600 (incl. domestic animals & poultry)	none	\$3,000
Automobile .....	Exempt under Trade or Profession exemption	\$800		\$1,500 (to be exempt, the total value of the auto may not exceed \$10,000)
Heirlooms .....	none	none	"Keepsakes" - All exempt	\$1,500 (combined value including household goods, furniture, books, pictures, and musical instruments - above)
Provisions and Fuel .....	for 6 months	for 60 days	for 3 months	
Miscellaneous personal property .....	none	none	\$400 - not more than \$100 may be liquid assets	

Homestead Exemptions

Debtor's dwelling (realty) .....	\$19,000	\$12,000	\$10,000	\$19,000 <sup>1</sup> (multiple exemptions allowed)
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<sup>1</sup>Aggregate exemption allowed for multiple owners but totaled exemption may not exceed \$28,000.

Debtor's dwelling (Mobile home) ..... \$12,000 ..... \$12,000 ..... \$19,000<sup>1</sup>  
 (\$10,000 if mobile  
 home on rented space)

Tracing of proceeds ..... 1 year from time of ..... 1 year from date ..... 1 year from sale, destruction, or  
 removal or absence ..... of voluntary sale ..... compensation

Firearms ..... none ..... 1 rifle ..... none  
 1 pistol

Property Exempt Without Limitation

Burial Plots ..... exempt ..... exempt ..... exempt ..... exempt

Health Aids ..... no provision ..... no provision ..... no provision ..... exempt

Social Security Benefits ..... exempt ..... exempt ..... exempt ..... exempt

Unemployment Benefits ..... exempt\* ..... exempt ..... exempt\* ..... nonexempt\*\*

Medical, Surgical, Hospital Benefits ... exempt' ..... exempt ..... exempt ..... exempt\*\* (only to the extent  
 used to pay medical  
 services)

Unmatured Life Insurance ..... exempt ..... exempt ..... exempt ..... exempt\*\*\*

Workmen's Compensation ..... exempt ..... exempt ..... exempt\* ..... nonexempt\*\*

General Relief Assistance ..... exempt ..... N/A ..... N/A ..... nonexempt\*\*

PERS benefits ..... exempt\* ..... } exempt ..... } exempt ..... nonexempt\*\*

TRS benefits ..... exempt\* ..... } (all pensions) ..... } (all pensions) ..... nonexempt\*\*

\* Totally exempt until paid to beneficiary

\*\* Treated as income <sup>for</sup> which a separate exemption amount is provided

\*\*\* If cash surrender value does not exceed \$5,000

Exempt Income

Alaska

the lesser of: \$114/wk. or 75% of  
disposable earnings per week

Oregon

40 x Fed. minimum hourly  
wage or 75% of disposable  
earnings per week,

Wash.

40 X state min. hourly  
wage or 75% of disposable  
earnings per week

Alaska Exemptions Act

\$125/week or \$500/month

STATE OF ALASKA  
THE LEGISLATURE

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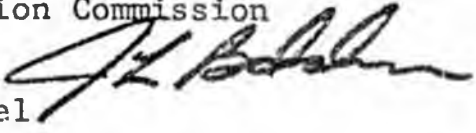
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

September 14, 1978

SUBJECT: Judgment liens under the proposed Alaska  
Exemptions Act

TO: John Abbott, Chairman  
Alaska Code Revision Commission

FROM: James L. Baldwin   
Legislative Counsel

You have requested me to provide you with a memorandum which compares the treatment of judgment liens under the proposed Alaska Exemptions Act (AEA) with the status of that type of encumbrance under existing state law. The judgment liens are established by statute in Alaska under AS 09.30.010. That section provides:

A certified copy of the judgment or decree of a court of this state or a court of record of the United States upon which execution may issue, the enforcement of which has not been stayed, may be recorded with the recorder of a recording district. From the recording, the judgment or decree becomes a lien upon the real property of the defendant which is in the recording district, which is not exempt from execution, and which is owned by him at the time or acquired by him afterward but before the lien expires. The lien continues during the time execution may issue on the judgment or decree but for not more than 10 years from date of entry of the judgment or decree. After expiration of the lien, the court may grant leave for issuance of execution upon the judgment or decree. From the date of recording the judgment or decree, together with the order allowing issuance of execution, the judgment or decree becomes a lien in the manner provided in this section. (emphasis added)

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Real property of a judgment debtor is exempt from execution if it meets the requirements contained in AS 09.35.090(a) (Residence Exemption) which provides in part:

The homestead of any family is, or the proceeds of the homestead are exempt from judicial sale for the satisfaction of any liability contracted or judgment on debt except as provided in this section. The homestead consists of the actual abode of and owned by the family or some member of the family. It shall not exceed \$19,000 in value, in excess of mortgages, deeds of trust and liens of record, and not 160 acres in extent if located outside a town or city laid off into blocks or lots, or not exceed one-fourth of one acre if located in a town or city. This section does not apply to decrees for the foreclosure of a mortgage, deed of trust or conditional sales contract properly executed. (emphasis added)

Under the AEA, the homestead exemption is contained in proposed AS 09.38.030(a) which provides:

An individual is entitled to an exemption as a homestead of his interest in property in this state used as the principal residence of that individual or his dependents, but the value of the homestead exemption may not exceed \$19,000.

In addition, AS 09.38.020 (Definitions) of the AEA contains the definition of terms contained in the homestead provisions. These terms are "exemption", contained in AS 09.38.020(5) and "value" contained in AS 09.38.020(14). The term "exemption" is defined as follows:

"exempt" means protected, and "exemption" means protection, from subjection to a judicial lien, process, or proceeding to collect an unsecured debt;

and the term "value" is defined as follows:

"value" means fair market value of an individual's interest in property, exclusive of liens of record.

To understand the meaning of the foregoing terms, further reference must be made to the definitions of the terms

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"judicial lien", "lien" and "statutory lien" contained in AS 09.38.020(7), (9) and (13) respectively. The definitions of those terms follow:

(a) "judicial lien" means a lien on property obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding instituted for the purpose of collecting an unsecured debt;

(b) "lien" means a security interest, or a judicial, statutory, or common-law lien, or any other interest in property securing payment of a debt or performance of an obligation; and

(c) "statutory lien" means a lien arising by force of a statute under specified circumstances or conditions, but does not include a security interest or judicial lien.

The AEA also provides at AS 09.38.140(2) that claims for money used to purchase property and for labor or materials used to improve property may be asserted against the property purchased or improved even though it is exempt.

After consideration of the above-referenced provisions, I have concluded that the proposed AEA treats the enforceability of judicial liens the same as that afforded under existing state law.

In summary, existing state law provides that a homestead is exempt to the extent of \$19,000 in value, in excess of mortgages, deeds of trust, and liens of record (presumably this includes judicial liens) while the AEA states that the homestead is exempt to a value of \$19,000 with "value" defined as fair market value less liens of record and with claims for purchase money encumbrances being enforceable against exempt property. Also, existing state law provides that judicial liens encumber only non-exempt property of a debtor while the AEA defines "exemption" as protection against subjection to a judicial lien.

I hope this answers the questions raised by Commissioner Kurtz at the August meeting; if not, I am prepared to further research the matter to his satisfaction.

JLB:jdn

SECTIONAL ANALYSIS OF HB 56

Prepared by  
Legislative Affairs Agency

## PREFATORY NOTE

The Alaska Code Revision Commission (commission) was created in 1976 under the provisions of AS 24.20.075. Under AS 24.20.075(c)(2), one of the duties of the commission is to review uniform and model acts proposed by the National Conference of Commissioners on Uniform State Laws (NCCUSL) for enactment by the states. The commission may recommend that the Alaska Legislative Council introduce legislation to revise the law to eliminate antiquated and inadequate rules of law and to bring the law into harmony with current needs and conditions.

The preparation and deliberation which resulted in the present proposed bill began in November 1976 when the commission first took up consideration of the Uniform Exemptions Act (Uniform Act), by the NCCUSL after the preparation and consideration of five tentative drafts over a period of two years. The initial analysis of the Uniform Act by the commission resulted in a decision to use the Uniform Act as a model in shaping exemptions provisions suited to the needs of debtors and creditors residing in Alaska.

In November 1977, the commission, after the preparation and revision of three tentative drafts, published and distributed a tentative draft of the major provisions of the Alaska Exemptions Act (AEA) for the purpose of obtaining public review and soliciting comments from interested persons in the state. Several comments were received including a detailed analysis by the Alaska Legal Services Corporation.

After reviewing all comments received, and in the course of several more meetings, the commission significantly revised the AEA draft.

The ultimate purpose of the AEA is to modernize and simplify the exemptions laws of Alaska. The commission sought to recognize the interests of debtors by defining the basic needs of individuals and protecting assets which supply those needs from seizure to satisfy the non-payment of a debt. The interests of creditors in having fair, inexpensive, and effective remedies available to permit the satisfaction of an unsecured debt from the property of an individual was also recognized by the commission. The proposed AEA is intended to balance these often competing interests so that each debtor and creditor is treated fairly according to current needs and conditions.

The purpose of the Uniform Act is to promote uniform state exemptions laws. Congress has been considering revisions to the Bankruptcy Act and bills to accomplish those revisions were introduced in the 93rd and 94th Congresses. The Uniform Act was initiated by the NCCUSL to avoid the pre-emption of state exemptions law by the proposed federal legislation. It is generally agreed among legal scholars that Congress could prescribe a schedule of exemptions allowable to an individual debtor whose estate is being administered under the Bankruptcy Act. The Bankruptcy Act now in effect provides for the allowance of exemptions to a bankrupt individual in accordance with the laws of his domicile.

The commission adopted substantial portions of the Uniform Act in the AEA but felt that departures from the Uniform Act were necessary to provide for the higher cost of living in Alaska and, particularly in rural areas of the state, to protect the economic life style of state residents. Historically, the law in Alaska has provided greater protection against the garnishment of wages of individual debtors than that afforded under the federal anti-garnishment provisions (15 USC 1673). The Uniform Act does not provide for exemptions against garnishment because its drafters felt that the federal anti-garnishment protections were adequate. The AEA, in AS 09.38.070, increases the amount of earnings protected from garnishment. The commission has recommended the addition of provisions which allow creditors to assert a continuing lien on wages payable to avoid the present practice that requires a creditor to obtain a separate writ of garnishment for each pay period of the debtor. The intent of the commission in recommending the continuing lien approach is to avoid the requirement for unnecessary legal fees and services incurred by creditors by permitting a writ of garnishment that continues, in effect, through successive pay periods until the face amount of the writ has been garnished from the wages of the debtor. The AEA treats certain public assistance benefits as liquid assets of an individual debtor and, therefore, subject to seizure by a creditor if those benefits have a value which exceeds the exemption limit set for liquid assets in general. Under the Uniform Act, these same benefits are totally exempt. These and other departures from the text of the Uniform Act will be set out in the comments to each section of the proposed Alaska Exemptions Act. The appendix contains a table for the exemption provisions of existing state law, the law of Washington and Oregon, and the proposed Alaska Exemption Act.

## COMMENT

### Sec. 09.38.01". DEFINITIONS.

The definitions in the Alaska Exemptions Act were adopted from the Uniform Exemptions Act, and most of the comments appearing below are based on the official comments of the Uniform Act.

(1) The definition of "burial plot" was added by the Commission and is included to prevent the possibility that a debtor may attempt to use the burial plot exemption to increase his protection from execution on a debt by designating his property as a burial place.

(2) The definition of "debt" is contained in Section 1(1) of the Uniform Act which was drawn from the Bankruptcy Act proposed by the Commission on the Bankruptcy Laws of the United States in 1973. The text of the proposed Bankruptcy Act is set out in House Document No. 93-137, Part II, 93rd Cong., 1st Session (1973) and will be referred to herein as the proposed Bankruptcy Act. A monetary obligation or liability need not be reduced to judgment in order to constitute a debt for the purpose of this Act. The definition of "debt" makes clear that the limitations imposed by this Act on collection processes apply as much to tort claims as to contractual obligations. Exemptions have sometimes but not always been disallowed when asserted against tort claimants.

(3) The definition of "dependent" is contained in Section 1(2) of the Uniform Act and is comparable to that used in the administration of the Internal Revenue Code.

(4) The definition of "earnings" was added by the Commission and is derived from 15 U. S. C. 1673 (restraint on garnishment) and is used in this Act to promote uniformity between state and federal law.

(5) The definition of "exempt" and "exemption" is contained in Section 1(3) of the Uniform Act and makes it clear that the exemptions provided by this Act operate not only to bar a levy but also to bar the imposition of a lien by judgment or other legal or equitable process or proceeding. The definition thus eliminates any basis for argument that a purchaser of exempt property nevertheless takes it subject to a judgment lien that was unenforceable against the judgment debtor-vendor. Exempt property is not, however, absolutely protected against creditor process by this Act. Section 20(5) of the Act recognizes that exempt property may be

subjected to levy for the purpose of enforcing collection of certain claims. Moreover, this Act does not restrict the collection of federal tax claims or the leviability of property made subject to the enforcement of any other claim by federal law.

The purpose of the definition of "exempt" and "exemption" to extend protection against any form of appropriation of an individual debtor's property through judicial proceedings by an unsecured creditor is consistent with the uniform construction of exemption laws. Thus exemption from levy by final process has been construed to leave the property exempted, neither leviable on mesne process nor subject to appropriation by order of a court in an equitable proceeding commenced by creditor's bill or in a statutory proceeding supplementary to an execution.

(6) The definition of "household goods" was added by the Commission so that the individual debtor has sufficient flexibility to claim exemption for items that make his residence habitable according to the times. The Commission wished to avoid specificity in designating "necessary" household items because tastes, styles and people change with the times and so should the exemption laws.

(7) The definition of "judicial lien" is contained in Sec. 1(4) of the Uniform Act and is similar to the definition used in §1201(3) of the proposed Bankruptcy Act. In addition, to achieve consistency with existing Alaskan law, a reference was made to AS 09.30.010, the statutory provision which requires recordation of a lien as a prerequisite to enforceability.

(8) The definition of "levy" is contained in Sec. 1(5) of the Uniform Act and excludes any seizure effected for the purpose of enforcing a security interest or statutory lien or of asserting rights of ownership in property. The term thus does not include replevin. The steps requisite to the making of a valid levy are generally prescribed by other state law, but this Act imposes particular procedural requirements when the debtor is an individual.

(9) The definition of "lien" is contained in Sec. 1(6) of the Uniform Act and is similar to that contained in §1201(31) of the proposed Bankruptcy Act.

(10) The definition of "principal residence" was added by the Commission to extend the application of the homestead exemption to any residence in which an individual is dwelling whether it be classed as real or personal property.

(11) The definition of "security interest" is contained in the Uniform Act and was adopted from the first sentence of the definition of "security interest" contained in sec. 1-201(37) of the Uniform Commercial Code. It differs from the definition in being exclusively applicable to consensual liens in this Act but extending to security interests in real property as well as personal property.

(12) The definition of "serve notice" is contained in Sec. 1(8) of the Uniform Act. When in the Act it is required that a notice be served, the definition of "serve notice" authorizes three alternative modes of service. All of the three modes are consistent with the requirements of due process respecting fair notice. When service is made by mail, it is the intent of the definition that the notice be sent both by regular first-class mail and by certified or registered mail. Requirement of a signed receipt is intended to facilitate proof of service. The failure to obtain a signed receipt does not affect the validity of the service, e.g., when an addressee refuses to accept delivery of the mail. cf. Federal Rule of Civil Procedure 4(g); Rule of Bankruptcy Procedures 704(g); Note, 74 Mich. L.Rev. 381 (1975).

(13) The definition of "statutory lien" is contained in Sec. 1(9) of the Uniform Act which is an adaptation of §1-102(45) of the proposed Bankruptcy Act.

(14) The definition of "value" is contained in the Uniform Act and is similar to that used in the proposed Bankruptcy Act. Since exemption of property does not limit the enforceability of a valid lien against the property, and since the interest of an individual in the property that is leviable by his unsecured creditors is limited to the value exceeding the amount required to satisfy the holder of any lien against the property, the amount of debt secured by valid liens is deducted for the purpose of determining the value of the individual's interest under this Act. Exemption statutes with value limitations typically exclude valid liens. See, e.g., Cal. Civ. Code §1260 (homestead); Cal. Code Civ. Pro. 690.2 (Motor Vehicle); Id. §690.3 (House Trailer or Mobile Home).

(15) The definition of "wearing apparel" was added by the Commission and includes apparel worn for ornamentation and is not strictly limited to "necessary" wearing apparel as now required under AS 09.35.080(a)(3).

## COMMENT

### Sec. 09.38.030. HOMESTEAD EXEMPTION.

(1) This section is an adaptation of section 4 of the Uniform Act and contains a higher exemption amount (\$10,000 under the Uniform Act compared to \$19,000 under the AEA) and a longer period during which a debtor may object to an execution sale (30 days under the Uniform Act compared to 60 days under the AEA). The \$19,000 value set in (a) for the Homestead Exemption is that currently in effect under existing state law. The amount of exemption that has been set is higher than that prescribed by most state statutes (see appendix), and it should be noted that the exemption amount applies to the residence and may be increased due to joint ownership of the homestead by persons entitled to claim a homestead exemption. A number of states allow the aggregation of exemption amounts up to a top limit permitted for any one living unit. The exemption amount is to be applied to the value of the individual's equity in the property used as a home, since "value" is defined in section 20(14) to exclude the portion allocable to the payment of valid liens.

(2) Subsection (b) makes clear the availability of the homestead exemption to an individual owner of an undivided interest in property used as a home but limits the aggregate value of multiple homestead exemptions allowable to a value of \$28,000 with respect to any single living unit. If the value of the individual's interest in property owned by him and his spouse as tenants by the entirety exceeds the amount allowable as the homestead exemption, section 210 of this Act would make the interest severable at the instance of a creditor of either of the spouses.

(3) Although requiring confirmation of a sale of property that includes a homestead before the sale becomes effective, (c) does not authorize the making of any objection to the validity of the sale not previously recognized by the law of this state. It does provide a minimum period of 60 days during which any objection available under the law can be made. If such an objection is made before confirmation is ordered, the court may postpone the confirmation pending disposition of the issues raised by the objection or enter the order of confirmation at the end of the 60-day period in the event the option to repurchase is not exercised. As mentioned above, the Uniform Act proposed a 30-day period during which objections to the validity of a sale may be made.

(4) The right of repurchase prior to confirmation of the execution sale authorized by (c) is to be distinguished from the statutory right of redemption from a foreclosure or execution sale after it has become final. The statutory right of redemption is not intended to be affected by this subsection.

(5) The Act further provides for the distribution of proceeds from the sale when the debtor fails to exercise his right of repurchase. The Commission was concerned with providing absolute protection for the amount of proceeds which represents the exemption amount. Therefore, (c) specifically provides for the distribution of the proceeds and sets forth the procedures to be followed by the clerk of court in effectuating the intent of this section.

(6) A homestead exemption may be claimed for the "principal residence" of an individual. That term is defined in §20(10) and includes both real and personal property. The intent of that definition is to make it clear that a mobile home or other similar dwelling qualifies for this exemption.

COMMENT

Sec. 09.38.040. PROPERTY EXEMPT WITHOUT LIMITATION.

(1) Subsection (a)(1) provides for an exemption of a burial plot; but, by definition in sec. 020(1), the area in which the burial plot is located must be designated for burial purposes by the state or a general law or home rule municipality. Nearly half the states provide for an exemption of a burial plot, typically without prescribing any area or value limitation. The risk that an unlimited exemption of a burial plot for an individual and his family may be exploited by a debtor to the detriment of his creditors was the major reason for the inclusion of the definition at sec. 020(1).

(2) The exemptions contained in sec. 040(a)(2) and (3) are derived from section 5 of the Uniform Act and the official comment to that section follows:

'The exemption of health aids is not a feature of most exemption statutes which were enacted before the development of medical technology that has made ownership of valuable health aids a relatively common occurrence. The requirement that the aids be "reasonably necessary to enable the individual or a dependent to work or to sustain health" eliminates any basis for claiming an exemption in a swimming pool, sauna, bicycle, golf clubs, or gymnastic equipment merely because their use is conducive to maintaining good health. Sec. 040(2) contemplates an exemption of such items as a wheel chair for an individual unable to walk to work, an airconditioning unit for an individual afflicted with asthma, or an elevator for an individual unable to climb stairs.

The exemption of benefits for medical, surgical, or hospital care is subject to no specific value limitation but is available only to the extent that the benefits are used or will be used to pay for the care. If the cost of the care is otherwise defrayed, there is no justification for exempting the benefits provided for this purpose from creditor's claims."

(3) The exemption provided sec. 40(c)(4) was added by the Commission and covers an award under the Violent Crimes Compensation Act (AS 18.67) or similar legislation in effect in other jurisdictions.

(4) The exemption contained in 40(c)(6) was added by the Commission and protects a longevity bonus from execution. This provision does not amend existing law but is included here for purposes of clarity and organization.

(5) The exemption contained in sec. 40(a)(6) applies to compensation and benefits paid or payable under federal law. These items include social security benefits and compensation for longshore and harbor workers.

(6) Section 40(b) makes exempt liquor licenses and limited entry permits granted by the state under the exercise of its regulatory jurisdiction. These intangibles are generally viewed as a grant of the privilege of doing business and are generally considered a valuable property right and business asset. The state, through its regulatory agencies, closely regulates the recipients of these property rights and the Commission determined that it would be a bad public policy to allow creditors to effect transfer of a license under an execution and without consideration of needs of the public for the services offered under the license. The exemptions provided in this section may be claimed by an individual, corporation, or other business entity. The Commission did not intend to prohibit the taking of a valid security interest in a liquor license. The Alaska Supreme Court has upheld the enforceability of a security arrangement which involved an agreement to transfer a liquor license if the holder failed to perform. See Queen of the North v. Legrue, 581 P. 2d \_\_\_\_\_, Opinion No. 1670 (Alaska; July 21, 1978). The exemption of other transferable business rights such as air commerce certificates and certificates of public convenience and necessity was not provided for by the Commission since existing law provides adequate provisions for the transfer of those rights.

(7) Section 40(c) incorporates exemptions for amounts held by the state on behalf of individuals which may become payable in the future. It should be noted that this exemption does not apply once the amounts are paid to the individual. The type of benefits covered by this subsection are exempt under existing law, see AS 23.20.405 (unemployment), AS 14.25.200 (teachers' retirement), AS 39.35.500 (public employees), and AS 47.23.095 (child support).

(8) Section 40(d) provides an exemption for property of the state and its political subdivisions. These exemptions appear in existing law and are included here to simplify the location of the various exemptions by interested persons. These exemptions currently appear in AS 09.35.080(a)(6) (property of a public or municipal corporation), AS 44.58.340 (Municipal Bond Bank Authority), and AS 18.55.620 (Alaska State Housing Authority).

(9) Section 40(e) restates the exemption provided under AS 10.30.060 for cemetery associations.

State Housing Authority

## COMMENT

### Sec. 09.38.050. EXEMPTIONS OF PERSONAL PROPERTY SUBJECT TO VALUE LIMITATIONS.

(1) The specific personal property exemptions listed in (a)(1) and (2) and (c) are fairly typical of those found in most state exemption laws and in the Internal Revenue Code §6334(a). The Commission adopted an approach which allows the individual debtor to choose from a list of three categories the property he desires to have declared exempt under the Act. These categories were made extremely broad in order to provide the protection that an individual should enjoy over his personal property. It should be noted that "household goods" is defined in sec. 020(6) of the Act and includes those items that "make a residence habitable according to modern standards". the inclusion of family portraits and heirlooms of sentimental value in (a)(3) recognizes that the debt-paying value obtainable by levy and sale of such property by a creditor is unlikely to be proportionate to the deprivation suffered by the individual and his family, and the \$1,500 value limitation set for the exemption for any category of property is a safeguard against abuse of this provision.

(2) While jewelry held for personal use is not often specified as exempt under state statutes, courts have frequently held that items of jewelry are included in the exemption of "wearing apparel" which has been designated a separate type of property for the purposes of this section; see also the definitions contained in secs. 20(6) and (15) which are intended to clearly separate the jewelry exemption from the wearing apparel exemption.

(3) Property of the kind listed in (a) and (b) is customarily held in the individual owner's home, and most property so held is of insufficient value to exceed the prescribed exemption limitations. To protect the individual against harassment and ill-advised levies on such property, under section 160 special procedures are required to be pursued by a creditor who would levy on property of the kinds described in these two subsections.

(4) While motor vehicles are frequently held to be exempt under various state laws, it is also necessary for the debtor to establish that the motor vehicle is a tool of a trade or is used in the debtor's trade or occupation. 31 Am. Jur. 2d Exemptions §62, 65-68 (1967)(see also the appendix). While most of these statutes prescribe a value limitation, they vary as to whether a motor vehicle having a greater value than the maximum is exempt to the extent of the maximum or is entirely non-exempt. 31 Am. Jur. 2d, supra at §69. It is clear in (c) that a debtor may claim an exemption to the extent of \$1,500 in the equity of an automobile if the full value of that vehicle does not exceed \$10,000 but does not enable him to claim an exemption in more than

one vehicle. The intent of this provision is to prevent exemption claims for vehicles which are clearly luxury items or purchased with the intent to accumulate exempt assets.

(5) The exemption of pets in (c) was added by the Commission to prevent the ill-advised and vexatious seizure of household animals. The top value limit of \$3,000 for this category of property was added by the Commission to prevent the accumulation of exempt pets to frustrate the collection efforts of creditors.

## COMMENT

### Sec. 09.38.060. EXEMPTION OF UNMATURED LIFE INSURANCE AND ANNUITY CONTRACTS.

Section 60(a) is identical to section 7 of the Uniform Act and the official comment to that section follows:

(1) This section is similar to §4-503(d) of the Proposed Bankruptcy Act. See also Int. Rev. Code §§6323(c)(9), 6332(b); National Commission on Consumer Finance, Consumer Credit in the United States 38 (1973). Compare Vukowich, Debtors' Exemption Rights, 62 Geo. L.J. 779, 874-75 (1974). Like the second proviso of §70a(5) of the present Bankruptcy Act, the provision of subsection (a) of this section, applicable to policies having a loan value and accrued dividends of more than \$5,000 is intended to enable an insured debtor "to retain insurance which, because of advancing years or declining health, it might be impossible for him to replace." Burlingham v. Crouse, 228 U.S. 459, 473 (1913).

(2) An unexpired life insurance contract without any loan value or accrued dividends payable to an individual owner is exempt in its entirety under this section. If an individual owns several contracts having loan values and accrued dividends, it may be appropriate for the debtor, the creditor, or one or more of the insurers to obtain a determination by a proceeding pursuant to §14(e) [170 of the AEA] as to which loan values and dividends are being claimed as exempt and which are being subjected to the creditor's claim. Although the determination in such a proceeding would not be binding on a creditor not a party thereto, the individual debtor would be entitled to claim his exemption as against all other creditors after the nonexempt values and dividends had been appropriated by judicial proceedings at the instance of one or more creditors.

(3) The second sentence of the section contemplates that the creditor may obtain an order in proceedings supplementary to judgment directed against the individual to execute a written assignment of the policy or a written surrender that would satisfy the terms of the policy. See Blinn v. Dame, 207 Mass. 159, 93 N.E. 601 (1911), where an assignee for the benefit of creditors was permitted to sue an insurer in his own name to recover the cash surrender value of a nonexempt endowment policy owned by the assignor; V. Countryman, Cases and Materials on Debtor and Creditor, 124 n. 1 (2d ed. 1974).

Under existing law, insurance contracts are exempt under AS 21.42.320-350 and, except for life insurance contracts on the life of the debtor, are exempt without limitation.

COMMENT

Sec. 09.38.070. EXEMPTION OF EARNINGS AND LIQUID ASSETS.

(1) Under §70(a) the weekly net earnings of an individual are exempt from execution to the extent of \$125 per week. It is also provided in (b) that an individual who does not receive earnings regularly, i.e., either weekly, semi-monthly or monthly, shall also receive an exemption for his liquid assets which are his substitute for earnings. This section recognizes the fact that, in Alaska, there is a large proportion of the work force which does receive compensation regularly but there is also an equally large percentage of the work force that is seasonally employed and therefore does not receive compensation on a regular basis. The Commission felt that the earnings exemption should, in some way, be adapted to afford protection to those individuals who receive compensation which must serve to support the individual throughout the year. The "seasonal wage earner" enjoys an exemption to the extent of \$500 for liquid assets in his possession during a 30-day period.

(2) The Commission in §70(e) has rejected the approach taken in many states that certain types of public benefits or property should be given totally exempt or partially exempt status by adopting a definition of "liquid assets" which includes these previously exempt benefits or property. The Commission determined that once these benefits are paid over to an individual debtor and in his possession they should become part of the liquid assets of that individual and are adequately protected by the aggregate value exemption for liquid assets under (a) and (b) of this section. The effect of §70(e) is to expose these assets to levy once they are in the possession of an individual if their total value would exceed the weekly or monthly exemption amount provided under §70(a) and (b).

COMMENT

Sec. 09.38.080. CONTINUING LIEN ON WAGES.

Section 80 of the Act is designed to reduce the amount of legal services and litigation necessary to garnish the earnings of an individual debtor, thereby alleviating a burden on both the debtor and creditor as well as the court dockets. The section provides for a continuing lien on wages which remains in effect until the amount of the lien is satisfied or the employment relationship is terminated or the writ is dismissed. Under existing law, a creditor must file his writ of garnishment each time the debtor is to receive earnings. Adoption of the procedures proposed in sec. 80 would require only one filing which would remain in effect as a lien until the amount stated on the writ is satisfied through payments of nonexempt earnings. The approach taken in sec. 080 is similar to that used in Washington, see RCW 7.33.350 - 390 (Continuing lien on wages). The Commission wanted to make the employer's task of computing the nonexempt portion of earnings as easy as possible. To achieve this goal, the employer is required to pay the amount stated in the writ without figuring accrued interest on the unpaid balance. A creditor may recover accrued interest under a supplemental writ.

COMMENT

Sec. 09.38.090. PRIORITIES BETWEEN CONTINUING LIENS.

This section specifies the priorities in effect between competing liens upon wages. The intent is to avoid unnecessary legal services and litigation to determine the enforceability of various writs that may establish a continuing lien upon wages.

COMMENT

Sec. 09.38.100. EFFECTIVE DATE OF CONTINUING LIEN.

This section establishes the effective date of the continuing lien by reference to the date of service or expiration of prior writs.

COMMENT

Sec. 09.38.110. INCREASED EXEMPTION AMOUNT.

Section 110(a) was added by the Commission and provides an increased exemption for individuals who have received money in payment for an injury or disability. The section authorizes the court to examine the needs of a recipient for the purpose of determining whether there may be an excess that should be subject to execution at the instance of a creditor although another court presumably fixed the amount of the individual's award on the basis of a determination of the same needs. The creditor was not likely to have been a party to the proceeding in which the prior determination was made, and the award may have been sufficient to permit an accumulation of an asset surplus not reasonably required for the individual's and dependents' support.

Subsection (b) allows an increased exemption amount up to \$200 per week for wage earners or \$800 per month for seasonally employed persons if those persons are the only source of income for the household.

COMMENT

Sec. 09.38.120. BANKRUPTCY PROCEEDINGS.

The bankruptcy law vests in the federal district court exclusive jurisdiction to determine exemptions, but that court is bound to follow state law and the interpretation placed upon state statutes by decisions of state courts. The intent of the Commission in adding sec. 120 is to specifically designate which state exemptions are available to a bankrupt. It is not clear whether a state may provide that less than all of its exemption laws apply to a bankruptcy proceeding. The exemptions specifically made applicable are:

- 1) homestead exemption (sec. 30);
- 2) personal property exempt without limitation (sec. 40(a));
- 3) personal property exempt to a value limit (sec. 50);
- 4) life insurance exemption (sec. 60); and
- 5) earnings and liquid assets exemption (sec. 70).

It is also provided that limited entry permits and liquor licenses are non-exempt property during bankruptcy proceedings.

COMMENT

Sec. 09.38.130. TRACING EXEMPT PROPERTY.

(1) Subsections (a) and (b) of this section are nearly identical to sec. 9(a) and (c) of the Uniform Act as proposed for enactment by the Commissioners on Uniform Laws. This section differs from the Uniform Act in that it allows a three-month period in which to trace the proceeds from the voluntary sale of a homestead. The Commission felt that this period was sufficient time to protect a debtor while searching for a new homestead. It should also be noted that the Commissioners on Uniform Laws recommended that proceeds derived from the involuntary sale, conversion or destruction of exempt property be exempt for 18 months while under the Alaska Exemptions Act a 12-month period is proposed.

(2) To limit the protection of the individual to the proceeds in their original form would be to destroy the utility of the protection and defeat the purpose of the exemption statute. See 31 Am. Jur. 2d Exemptions §87 (1967). See also Riesenfeld, Life Insurance and Creditors Remedies in the United States, 4 UCLA L. Rev. 583, 603 - 04 (1957); Comment, 21 Iowa L. Rev. 153 (1935).

COMMENT

Sec. 09.38.140. CLAIMS ENFORCEABLE AGAINST EXEMPT PROPERTY.

This section is identical to section 10 of the Uniform Act as proposed for enactment by the Commissioners on Uniform State Laws. The official comment to section 10 of the Uniform Act follows (references to this Act appear in brackets following citations to the Uniform Act):

(1) This section authorizes levy by certain creditors against exempt property, both real and personal. Subsection (a) contains exceptions typically found in state exemption statutes. Sec 31 Am. Jur. 2d Exemptions §§ 122, 127, 131, 134, 135 (1967); Joslin, Debtors' Exemption Laws: Time for Modernization, 34 Ind. L.J. 355, 372-75 (1959).

(2) Garnishment of earnings for personal services is restricted by §§302-03 of the Consumer Credit Protection Act, 15 U.S.C. §§1671-73 (1970), and §§5.105 of the Uniform Consumer Credit Code. The considerations underlying these restrictions also support the exception of claims for unpaid earnings from those that are generally unenforceable against exempt property. A reasonable degree of protection is afforded the claimant by the provision in subsection (a)(1)(ii) allowing recovery from exempt property of one month's compensation or, if the claimant works part-time, an amount of compensation equal to the earnings of one month of full-time employment.

(3) A claim of a kind listed in this section may be enforced against exempt property by an assignee of the original creditor. A creditor seeking to collect such a claim by levy on exempt property must comply with subsection (c) of this section. Enforcement of a lien securing a claim of the kind listed in the section is subject to §11 [150] of this Act. As noted in the Comment (3) [5] accompanying §1 [20], this Act does not limit the enforcement of federal tax claims or liens against exempt property.

COMMENT

Sec. 09.38.150. LIMITATION ON ENFORCEMENT OF CERTAIN SECURITY INTERESTS IN EXEMPT GOODS.

This section is similar to section 11 of the Uniform Act as proposed for enactment by the National Conference of Commissioners on Uniform State Laws. A portion of the official comment to section 11 of the Uniform Act follows:

This section is an adaptation of §5.116 of the Uniform Consumer Credit Code. It provides protection against potentially oppressive enforcement of a security interest in exempt personal property unless the creditor is seeking collection of the unpaid purchase money obligation. Restrictions on the enforceability of non-purchase-money security interests in household goods were recommended by the National Commission on Consumer Finance in Consumer Credit in the United States xx (1972). See also §4-503(f) of the Commission's Proposed Act; FTC's Trade Regulation Rules on Credit Practices §444.2(a)(4); and FRB's Rules on Uniform Credit Practices §228.2(a)(4). The premise of the section is that actual or threatened enforcement of the secured creditor's right against exempt goods of the kinds embraced by its provisions may so seriously disrupt the family life of the individual and his dependents that the creditor should first afford the individual notice and an opportunity to be heard in court on whether enforcement of the security interest may create undue hardship.

This section differs from section 11 of the Uniform Act by excluding security interests in motor vehicles even though the security interest does not secure the payment of money used to purchase the motor vehicle. The Commission felt that since motor vehicles are so easily moved from one jurisdiction to another that the notices and procedural requirements imposed by this section would unduly frustrate the collection efforts of creditors.

## COMMENT

### Sec. 09.38.160. SPECIAL PROCEDURES RELATING TO LIMITED VALUE EXEMPTIONS.

This section is similar to section 12 of the Uniform Act as proposed for enactment by the National Conference of Commissioners on Uniform State Laws. The official comment to section 12 of the Uniform Act follows; (citations appearing in brackets are to the Alaska Exemptions Act):

(1) This section is based on the assumption that all of the property owned listed in §8(a) and (b) [50] is likely to be exempt. Property of an individual of the kinds listed is unlikely to bring at a forced sale under execution a sum exceeding the amount of the applicable exemption. Another assumption underlying this section is that an effective levy on such property is likely to involve an intrusion by the officer of the court into the privacy of the individual's home. Moreover, his creditors do not ordinarily expect to collect their debts out of the sale of such property. A reasonable balance of the rights of individual debtors and creditors in respect to such property is provided by the procedures prescribed in this section. Before any levy is made against these items, the individual is provided a notice of the creditor's belief that he has property of one or more of the kinds listed which is not exempt, and an opportunity to claim the property in these categories as exempt or to indicate which items, if any, are not claimed as exempt. If the individual and his creditor cannot agree as to whether particular items are exempt, the dispute may be resolved by resort by any interested person to the procedure prescribed in §14(e) [170(e)]. If the individual does not respond to a notice of the creditor's belief that the debtor has nonexempt property of the kind listed in §8(a) or (b) [50], he may be required by court order to appear and submit to a disclosure respecting his property. If the individual fails to appear and submit to a disclosure, he is deemed to have waived any claim of exemption to the property described in the creditor's notice served under this section. The individual is subject to such further processes for disobedience of the court order as may be provided by the laws of the state.

(2) Any costs incurred in proceedings under this section are to be charged against the creditor, unless sufficient proceeds to cover the costs are obtained by a sale of property of a kind listed in §8(a) or (b) [50].

## COMMENT

### Sec. 09.38.170. PROCEDURES APPLICABLE TO A LEVY ON PROPERTY OF AN INDIVIDUAL.

This section is similar to section 14 of the Uniform Act as proposed for enactment by the National Conference of Commissioners on Uniform State Laws. The official comment to section 14 of the Uniform Act follows; (citations appearing in brackets refer to the Alaska Exemptions Act):

A secured creditor who is resorting to judicial process for the purpose of enforcing his lien against goods in the possession of an individual is subject to the requirement of §11 [150] but need not comply with §§13 [160] and 14 [170], since these sections govern only a levy issued as a process for collecting unsecured debt. A secured creditor may nevertheless obtain a levy for the purpose of collecting a deficiency judgment against an individual out of property that is not subject to the creditor's lien and, when doing so, should comply with §14 [170] and, if appropriate, with §13 [160].

Subsection (d) applies to a sale under a levy against property that is exempt to the extent its value does not exceed a statutory limit. Such value limitations are prescribed by §4 [030] for the homestead exemption and subsections (a), (b), and (c) of §8 [050] for certain tangible personal property. Provisions comparable in part to subsection (d) are found in Mich.Stat.Ann. §§27A.6027, 27A.6033, and 27A.6059 (1962). The restoration of property to an individual debtor under this subsection does not preclude a new levy on the property in accordance with the provisions of this Act and other applicable law.

Subsection (e) is an adaptation of Iowa Code §628.21 (1971). "An interested person" under this section may be an individual debtor who has been served a notice pursuant to §13 [160] or §14 [170] of this Act, a person entitled under §16 [190] to claim an exemption or object to a levy, a creditor who has levied or attempted to levy on an individual's property, a sheriff or other officer of the court who has made a levy or been requested to make one, or any other person whose rights may be affected by a determination of an individual's claim to an exemption under this Act.

The last sentence of subsection (f) states the possible consequences of delay in filing an objection to a levy but is not to be read as a limitation on the discretion of the court to afford judicial relief under §17(b) [200(b)]. Thus an individual who is deterred from

filing a timely objection by a representation by a creditor that he does not intend to pursue collection against a particular asset may present an appropriate case for judicial relief.

Section 14(b) of the Uniform Act required individual debtors to object to a levy within 10 days after it is made. The Commission increased this period to 15 days to equal the time allowed for objections under current state law. See AS 09.35.035.

COMMENT

Sec: 09.38.180. CONTENTS OF NOTICE.

This section is similar to section 15 of the Uniform Act as proposed for enactment by the National Conference of Commissioners on Uniform State Law. Excerpts from the official comment to section 15 of the Uniform Act follows; (citations in brackets refer to the Alaska Exemptions Act):

(1) The notice to the individual required for compliance with §§14 [170] and 15 [180] may vary depending on the nature of the property the creditor proposed to levy on. Thus, a levy on a bank account or other obligation owed the judgment debtor by a third person ordinarily contemplates no sale of the debtor's property. Rather the creditor in such a case proceeds by garnishment or similar process, and the debtor should raise any objection to the creditor's attempt to collect through such means by filing an answer or appropriate motion in the garnishment proceeding. If a creditor is proceeding to levy on property of a kind listed in §8(a) [050(a)], he must, in addition to serving on the individual a notice that complies with §§14 [170] and 15 [180], serve a copy of an order issued pursuant to a request of a notice under the Act as specified in §1(8) [020(12)].

(2) The court with rule-making authority may appropriately promulgate forms in more than one language when there is a likelihood that the notice required by §§14 [170] and 15 [180] will be served on a significant number of individuals unable to understand English. The items of information required to be included in the notice by the section are not intended to be exclusive. Thus, the court with rule-making authority may adopt appropriate requirements to facilitate identification, in the notice, of the proceeding in which the notice is issued.

The Commission was requested by Alaska Legal Services Corporation to prepare legislation which provided for automatic claims of exemption by individual debtors. Representatives of that public law firm argued that their clients frequently are intimidated by the complexity of legal proceedings and for this reason are reluctant to assert their exemption claims. The Commission rejected an automatic claim-of-exemption-approach because the debtor has information concerning his property that is difficult for a creditor to obtain. The Commission was of the opinion that forms for the claiming of

exemptions could be prepared by the Supreme Court in simple, lay terminology. The use of carefully prepared forms could simplify the procedures and, in non-complex cases, significantly reduce the need for legal assistance to individual debtors.

COMMENT

Sec. 09.39.190. ASSERTION OF RIGHTS BY ANOTHER.

The reference to "other authorized person" in this section is not intended to enable a creditor to assert the right to exemption merely by reason of the fact that he has an unprotected security interest in exempt property or that he is a creditor with a right to levy on exempt property. The Commission altered the proposed draft of the Uniform Act by adding the words "any other person authorized by law". This was intended to clearly provide that there must be some legally recognized agency existing between the debtor and the "other authorized person". "It has been held that, ordinarily, the claim cannot be made by the debtor's mortgagee or assignee, because the right of exemption is personal and not vendible or assignable, but, so far as the selection of statutory exemptions is concerned, there is authority that under a statute permitting the selection to be made by the debtor 'or his authorized agent,' a mortgagor..., giving the mortgagee the right to make the selection, is not against public policy." 31 Am. Jur. 2d Exemptions 445 (1967).

COMMENT

Sec. 09.38.200. JUDICIAL RELIEF.

This section is identical to section 17 of the Uniform Act as proposed for enactment by the National Conference of Commissioners on Uniform State Laws. The official comment to section 17 of the Uniform Act follows:

(1) Generally injunctive relief provides the only adequate and complete protection for the beneficiaries of exemption laws. Sometimes, however, that relief is no longer available, and sometimes both an injunction and an award of damages may be appropriate. See generally 31 Am. Jur. 2d Exemptions §§173-90 (1967). The section does not authorize or require an award of damages for every violation, in particular one that is merely technical and causes no loss or prejudice to those protected by the exemption laws. Because of the difficulty of proving actual damages for a violation of the Act, an award of costs and reasonable attorney's fees may also be justified. Cf. U.C.C.C. §§5.108(6) and 5.201(8) and the accompanying comments.

(2) Subsection (b) enables the court to take into account any special circumstances in granting relief to a party or any other person, including a spouse or dependent of a debtor, for noncompliance with a time limitation prescribed by the Act or fixed by the court in proceedings under the Act. Such circumstances may include not only failure to receive timely notice or knowledge of the right or duty to take action but also inaction induced by a communication received from an adversary party or an officer of the court indicating that no action is necessary.

## COMMENT

Sec. 09.38.210. DEBTOR'S PROPERTY OWNED WITH ANOTHER.

Section 210(a) of this Act is similar to section 18 of the Uniform Act proposed by the National Conference of Commissioners on Uniform State Laws.

(1) The section is a restatement of existing law as presently enacted in AS 34.15.140. The section is included here in an effort to consolidate provisions relating to exemptions. The divisibility of tenancies by the entirety for the purpose of satisfying an execution upon a debt has been recognized in Pilip v. U. S. 186 F. Supp. 397 (D Alas. 1960). Under the law of some states, a debtor's interest in a tenancy by the entirety is exempt from execution for the payment of a judgment based upon a debt owed by only one of the co-tenants. However, under the law of the state the shelter afforded by a tenancy by the entirety has been somewhat diminished through the operation of AS 34.15.140 which protects the tenancy by the entirety against the debts of one or either of the co-tenants only to the extent of the value of the homestead exemption. See also, Barclay v. Automatic Welding and Supply, Inc. Superior Court, 3rd Jud. Dist., Civ. No. 73-2476 (1974).

(2) Section 210(b) is a restatement of AS 32.05.200 version of the Uniform Partnership Act which was inserted here to consolidate the exemption laws of this state.

COMMENT

Sec. 09.38.220. WAIVER OF EXEMPTION.

This section is identical to section 12 of the Uniform Act as proposed for enactment by the Commissioners on Uniform State Laws. The official comment to section 12 of the Uniform Act follows; (citations appearing in brackets are to the Alaska Exemptions Act):

This section is comparable to §4-503(f) of the Proposed Bankruptcy Act. Waivers of exemption executed in favor of unsecured creditors are generally unenforceable. Annot., 94 A.L.R. 2d 967 (1964). The purpose of this section is to protect an individual against pressure to execute a waiver of his exemptions except insofar as he may create a valid security interest in exempt property as provided in §11 [150]. Section 12 [220] furthers the policy underlying §11 [150] by providing protection against harsh enforcement of security interests in exempt property.

COMMENT

Sec. 09.38.230. FEDERAL REQUIREMENTS.

The Commission has proposed that certain benefits payable under a public assistance program should lose their exempt status once in the possession of the recipient. The protection afforded by the "earnings and other liquid assets exemption" created under §70 is intended to be sufficient to exceed the value of public assistance benefits. This section is intended to prevent a loss of federal funding for state-administered public assistance programs if the exemption of the benefits while in the hands of the recipient is a precondition to receipt of federal financial participation. The formal ruling by a federal department or agency referred to in this section is any ruling having determinative effect on the availability of federal financial participation.

COMMENT

Sec. 09.38.240. ADJUSTMENT OF DOLLAR AMOUNTS.

This section is similar to section 2 of the Uniform Act. The Commission determined that the index for the U.S. City Average used in the Uniform Act would not realistically reflect the buying power of the Alaskan consumer. The Anchorage Metropolitan Area Consumer Price Index was selected because it would realistically reveal fluctuations in the local consumer price index. Anchorage is a commercial center and one in which a majority of the debtor-creditor litigations occur. The ravages of inflation have eroded the effectiveness of the protections intended under the existing exemption laws. The intent of the Commission is to recommend a proposal for legislation that will not require regular oversight, and to protect the citizens of Alaska by allowing exemptions determined under modern economic standards.

## COMMENT

### Sec. 09.38.250. PROTECTION OF PROPERTY OF RESIDENTS AND NON-RESIDENTS.

This section is similar to section 3 of the Uniform Act as proposed by the National Conference of Commissioners on Uniform State Laws. An excerpt from the official comment to that section follows:

Many states restrict the benefits of their exemption laws to resident debtors, and the full faith and credit clause does not require a state to accord a non-resident debtor the protection of the exemption laws of his domicile. Vukowich, Debtors Exemption Rights, 62 Geo. L.J. 779, 838 - 41 (1974); Note 68 Yale L.J. 1472 - 75 (1959). In allowing a non-resident the benefit of the exemption laws of his own residence, the section adopts a rule frequently adopted as a matter of comity. Vukowich, supra, 62 Geo. L.J. at 839. Cf. Restatement 2nd Conflict of Laws §132 (1971) (Forum should apply the exemption laws of another state which, "by reason of such circumstances as the domicile of the creditor and debtor within its territory, has the dominant interest in the questions of exemptions"); Comment, 68 Yale L.J. 1459, 1474 (arguing that a state's exemption law should be accorded full faith and credit by other states). According to an individual debtor, the exemptions provided by the law of his residence will generally conform to the expectations and understanding of his creditors in more cases than an alternate rule would. Vukowich, supra, 62 Geo. L.J. at 840; Cf. Hanover National Bank v. Moyses, 186 U.S. 181, 189 (1902).

Section 250(b) was altered from the original (b) of section 3 of the Uniform Exemptions Act to include the same definition of "resident" as was applied in State v. Adams, 522 P.2d 1125 (Alaska, 1974). For the purposes of this section, the term "resident" means the same as "domicile".

## COMMENTS TO AMENDING SECTIONS

### Sections 3 - 13

These sections of the Act contain proposed amendments to existing law. The amendments are intended to consolidate provisions relating to exemptions under one title and to provide cross-references from related provisions to AS 09.38 as an aid to finding the exemption laws of the state. The technique used in Alaska for setting out new language in an existing section of the law is to underscore the new material. When material is deleted from an existing section, the deleted material appears in brackets and is capitalialied. Set out below is a list of the amending sections and the subjects to which they relate:

- Section 3: teachers retirement benefits;
- Section 4: unemployment compensation benefits;
- Section 5: workmen's compensation benefits;
- Section 6: tenancies by the entirety;
- Section 7: public employee retirement benefits;
- Section 8: general relief assistance benefits;
- Section 9: aid to families with dependent children;
- Section 10: old age assistance benefits;
- Section 11: aid to the blind;
- Section 12: aid to the permanently and totally disabled; and
- Section 13: longevity bonuses.