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STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH 5
JUNEAU, ALASKA 99811
PHONE: (907) 465-2300

February 11, 1982

The Honorable Ramona L. Barnes
Chairwoman
House Judiciary Committee
Room 122 - Capitol Building
Juneau, Alaska

Dear Ms. Barnes:

Re: House Bill No. 74

House Bill No. 74, an Act relating to the rights of debtors and creditors, was introduced in the House on February 4, 1981 and was referred to the House Judiciary Committee.

For the consideration of the House Judiciary Committee, I am enclosing a copy of a Fiscal Note prepared by Ms. Marilla Gemmer, Director, Enforcement Division, Department of Revenue concerning the proposed legislation.

Sincerely,



R. D. Stevenson
Special Assistant

Enclosure

cc: Joseph K. Donohue
Deputy Commissioner
Department of Revenue

Marilla Gemmer, Director
Enforcement Division
Department of Revenue

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 74

Title An Act relating to the rights of debtors and creditors

Requested by House Judiciary Committee

Date 2/5/82

II. FISCAL DETAIL

Agency Affected Department of Revenue

Program Category Affected Revenue Collection & Management

BRU, Program, or Subprogram(s) Affected Enforcement Division

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

NONE

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						

TOTAL

FUNDING (Thousands of Dollars)

NONE

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

NONE

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

See attached memo.

IV. DATE February 5, 1982

PREPARED BY Marilla L. Gemmer

AGENCY Department of Revenue

PHONE 465-2366

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

MEMORANDUM


State of Alaska

TO: R. D. Stevenson
Special Assistant
Department of Revenue

DATE: February 5, 1982

FILE NO:

TELEPHONE NO:

FROM: Marilla L. Gemmer 
Director
Enforcement Division

SUBJECT: House Bill 74

The Enforcement Division would not have any problem if HB 74 were to be enacted. The right to levy against exempt property under AS 09.35.080(b)(2)(C) which would be repealed by HB 74, would be preserved under 09.38.030(c) and 09.38.065(a)(1)(C).

There would be no additional costs.

NOTE: A new Sec. 15 should be added to HB 74 as follows:

Sec. 15. AS 43.20.270 is amended to read:

Sec. 43.20.270. DISTRAINT ON PROPERTY. (b)
Notwithstanding the provisions of AS 09.35.070,
09.33.010-09.38.020 (-09.38.020) or any other provision of law
exempting property from execution, only the following property,
if it belongs to the head of a family, is exempt from distraint
and sale under this chapter:

Sec. 16. Sec. 15 as it currently appears on HB 74 would now
become Sec. 16.

MLG:lw

cc: Joseph K. Donohue
Deputy Commissioner - Taxation

Art Peterson
Assistant Attorney General
Department of Law

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE Amended 3/2/82

I. REQUEST

Bill/Resolution No. HB 74

Title An Act relating to the Rights of Debtors and Creditors

Requested by House Judiciary Committee Date 2/15/82

II. FISCAL DETAIL

Agency Affected Alaska Court System

Program Category Affected Administration of Justice

BRU, Program, Or Subprogram(s) Affected Trial Courts

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		47.4	51.0	55.0	60.0	65.0
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT		2.5				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		49.9	51.0	55.0	60.0	65.0

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		49.9	51.0	55.0	60.0	65.0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

(See attached)

IV. DATE 3/2/82

PREPARED BY Richard P. Barrier

AGENCY Alaska Court System

Original: Legislative Finance

PHONE 264-0545

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

The court system's initial FY 83 budget projection of \$182,573 was based upon information provided by district court judges and the clerks of court. It was their belief that while the proposed statute is substantively sound, it will generate a substantially increased volume of hearings, and that clerical responsibilities will increase commensurately.

At the request of the administrative director of the court system, two members of the Code Revision Commission met with court system staff on February 26, 1982. They explained that although the bill does not eliminate any existing court functions, the result of the bill is not to burden the courts, but to simplify and modernize execution procedures. The bill can be implemented to place any new procedural requirements upon the parties and their attorneys rather than the courts, without frustrating the intention of its drafters.

Based upon the representation of the Commission members that the fiscal impact will not be substantial, it appears that HB 74 could be implemented with the addition of the Legal Technician (Range 13) in Anchorage and a part-time Legal Technician in Fairbanks. The Legal Technicians will: review affidavits pursuant to Section 9.30.050(b) (requests for increased exemption from wages) and pursuant to Sections 9.30.075 and .080 (prelevy affidavits filed by creditors); process orders for notice to debtors and develop notice forms; process paperwork generated by any additional hearings at the District Court level (for example, 9.38.050(a): increased exemption from disability or injury payments).

The cost of these positions is shown below:

Position:

Anchorage:	
Legal Technician at Range 13	\$23,136
Fairbanks:	
Legal Technician, Range 13 (half-time)	13,278
	<u>36,414</u>
Benefits:	11,025
	<u>47,439</u>
Equipment:	2,500
	<u>2,500</u>
	<u>49,939</u>
Total FY '83 Cost	\$49,939

ALASKA CODE REVISION COMMISSION



COMMISSIONERS
JOHN W. ABBOTT - CHAIRMAN
JAMES L. BALDWIN - VICE CHAIRMAN
PATRICK M. RODEY
CHARLES G. ANDERSON
L. S. KURTZ, JR.
JUDGE (RET.) THOMAS B. STEWART

ALASKA STATE LEGISLATURE
POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-4878

EXECUTIVE SECRETARY
BILLY G. BERRIER

MEMORANDUM

TO: Bill Cook, Committee Counsel
House Judiciary Committee *Dick Regan*

FROM: Dickerson Regan, Consultant
Alaska Code Revision Commission

DATE: February 11, 1982

RE: HB 74--Exemptions Act

Two things about the bill on exemptions from execution which I marked up for you "for inflation." I forwarded the marked up bill to you January 20, 1982.

1. On the first page of the bill on line 20, the figure "\$19,000" should go to "\$27,000." My file copy indicates I may have marked in a wrong figure. Also on that page, I may not have marked the change on line 28: \$28,000 on that line becomes \$40,000.

2. I had marked in on the bill two changes that I believe were on the "work draft" the committee had last session. My notes are unclear, but please check page 3 on your copy of that 1981 "work draft." There may be one additional change there, moving line 9 on limited entry permits up to become a subparagraph (7) following line 5.

DR:chw

ALASKA CODE REVISION COMMISSION



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ALASKA STATE LEGISLATURE
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JUNEAU, ALASKA 99811
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EXECUTIVE SECRETARY
BILLY G. BERRIER

MEMORANDUM

TO: Bill Cook, Counsel
House Judiciary Committee

FROM: Dickerson Regan, Consultant
Alaska Code Revision Commission *Dickerson*

DATE: January 20, 1982

RE: Inflation adjustments to HB 74

You asked me to mark up the figures in HB 74 on exemptions (rights of debtors and creditors).

The bill was introduced as HB 56 in the 1979 session. As introduced it apparently contained figures based upon the December 31, 1977, Consumer Price Index for All Urban Consumers for the Anchorage Metropolitan Area. I am informed the House Judiciary Committee last year was given the December 31, 1977 date by John Abbott, Chairman of the Alaska Code Revision Commission, who was active in drafting the bill.

Attached is a memorandum dated March 9, 1981, from Jack Kreinheder, Issues Analyst, to Representative Fred Brown relating the figures that are penciled in the "mark-up" bill from last year.

One can carry forward the concepts of that memorandum and adjust the figures to a January 1982 date (extrapolating for the January 1982 CPI which is not yet available). On that basis the CPI rose from 179.2 for December 31, 1977, to 256.9 for January 1982, an increase of about 43 percent.

All figures penciled on the attached copy of HB 74 are rounded in the way described in the March 9, 1981 Kreinheder memorandum attached.

Although I did not work on the bill, if there are questions about it I would be glad to be intermediary to get further information from the commission.

DF:chw

Attachments

1-21-82
Bill - I also marked on the bill the other two changes that were in the 1981 markup and explained in the two attached memoranda (Kreinheder 3-9-81; Webber 2-17-81). Secp. 16+22 of the bill.
Dick Regan



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

March 9, 1981

MEMORANDUM

TO: Representative Fred Brown

FROM: Jack Kreinheder *JK*
Issues Analyst

RE: Inflation Adjustments to HB 74
Research Request No. 81-61

[1981 OR] - You requested that we adjust the dollar amounts used in HB 74, "An Act relating to the rights of debtors and creditors," to account for inflation since December 31, 1977. Between January, 1978, and January 1980 (the most recent data available), the Anchorage Consumer Price Index (CPI) rose from 179.2 to 240.1, an increase of about 34 percent¹. The dollar figures in HB 74 have therefore been increased by this amount.

The enclosed copy of HB 74 has the inflation-adjusted figures printed in red above the original amounts used in the bill. In making these adjustments, the figures were rounded to the nearest \$25 for amounts under \$500, the nearest \$100 for amounts between \$500 and \$5,000, and the nearest \$500 for amounts over \$5,000. For example, an adjusted figure of \$168 was rounded up to \$175, while an amount of \$1,340 was rounded down to \$1,300.

If these updated figures are incorporated into the bill, an amendment to Section 09.38.115, Adjustment of Dollar Amounts, would appear to be necessary. This section now reads, in part (lines 16-17, page 16): "The index for November of the year preceding the year in which this section becomes effective is the reference base index." Given the fact that the dollar amounts have been updated through January, 1981, it would appear appropriate to change this wording from "November of the year preceding the year in which ..." to "January of the year in which...".

¹ In June, 1978, the single Consumer Price Index published until that time was replaced with two new series for "All Urban Consumers," and "Urban Wage Earners and Clerical Workers." The All Urban Consumers index would appear to be the most appropriate one for this purpose, and has been used in making the adjustments for inflation since 1977.

Representative Fred Brown

March 9, 1981

Page 2

One additional amendment may be desirable, although it does not appear necessary. As discussed in the footnote on the preceding page, the Consumer Price Index was divided into two new series in June, 1978. Because the language in HB 74 was drafted before this change in the CPI was made, the bill refers only to the single Consumer Price Index as a basis for future adjustments of dollar amounts. Section 09.38.115 does specify that if the single index is superseded, the index referred to in the bill is the one which reflects most accurately the effects of inflation on Alaskan consumers. However, it may be clearer and more accurate to change the wording on lines 12-13 of page 16 from "changes in the Consumer Price Index for the Anchorage Metropolitan Area Consumer Price Index..." to "changes in the Consumer Price Index for All Urban Consumers for the Anchorage Metropolitan Area...". It would probably be desirable to retain the existing language regarding superseding of the CPI in the event that additional changes are made to the index in the future.

I hope this information is helpful. If we may be of further assistance, please do not hesitate to contact us.

JK/bf
Enclosures

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

Phone. ---

February 17, 1981

Honorable Fred Brown
Chairman
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Mr. Brown:

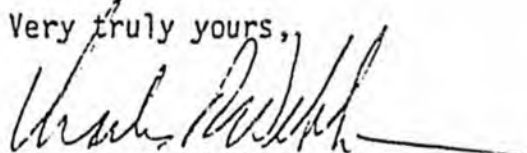
RE: HB 74

Thank you for your request to comment on the unintentional repealer contained in HB 74. The bill organizes statutes relating to exemptions to execution on a judgement in a single chapter within the code of civil procedure. It also repeals a number of statutes, including some in the insurance code (AS 21).

On page 22, line 13, there is a repeal of AS 21.42.320-21.42.350. Sections 320, 330, 340 and 350 are appropriately repealed in view of the structure of HB 74. However, AS 21.42.345 is also repealed and does not relate to the material in Sections 320, 330, 340 or 350. It deals with required provisions for coverage of newly born children in disability policies. This can be corrected by amending "AS 21.42.320-21.42.350" to read "AS 21.42.320-21.42.340; AS 21.42.350."

We appreciate any help you can give us in correcting this unintentional repeal.

Very truly yours,


Charles R. Webber
Commissioner

CRW/jar2/3

1 under AS 47.25.790 - 47.25.970 is inalienable by assignment or transfer
2 and is exempt from garnishment, levy, or execution as provided in
3 AS 09.38 (exemptions) [UNDER THE LAWS OF THIS STATE].

4 * Sec. 13. AS 47.45.120 is amended to read:

5 Sec. 47.45.120. EXEMPTION FROM TAXATION AND PROCESS. (a) Bonuses
6 received under this chapter are exempt from all state and political
7 subdivision taxes except sales and use taxes [AND ARE NOT SUBJECT TO
8 EXECUTION, ATTACHMENT, GARNISHMENT OR OTHER PROCESS]. No bonus received
9 under this chapter may be exempt from a federal tax requirement.

10 (b) Bonuses received under this chapter are exempt from levy to
11 enforce the collection of a debt as provided in AS 09.38 (exemptions).

12 * Sec. 14. AS 09.35.035, 09.35.040, 09.35.050; ^{AS} 09.35.080 - 09.35.090,
13 ^{AS} 09.35.120; AS 21.24.110; AS 21.42.320 - ^{21.42.340} ~~21.42.350~~; ^{AS 21.42.350} AS 23.20.405(b) and (c);
14 and AS 32.05.200(b)(3) are repealed.

15 * Sec. 15. All writs of execution, claims of exemption, sales, confirma-
16 tions of sales, rights of redemption and priorities of redemption issued or
17 filed under any law repealed by this Act and in full force and effect on the
18 effective date of this Act, shall remain in full force and effect for the
19 term issued or until revoked, vacated, or modified under the provisions of
20 this Act.

PER WEBBER MEMO 2-17-81

M E M O R A N D U M

February 21, 1980

SUBJECT: Comparison of exemption schedules

TO: John Abbott, Chairman
Code Revision Commission

FROM: James L. Baldwin
Legislative Counsel

Congress has enacted a new bankruptcy law, Title 11 of the United States Code - Bankruptcy. This new law is commonly known as the Bankruptcy Reform Act of 1978 (P.L. 95 - 598). This new law of bankruptcy took effect on October 1, 1979, and repeals the Bankruptcy Act of 1898, and the Nelson Act, as revised generally 40 years later by the Chandler Act. The provisions of the old Bankruptcy Act provided that the bankrupt was entitled to exclude certain property from bankruptcy if he was entitled to exempt the property from debt collection under the law of the state of his domicile or nonbankruptcy federal law. The new Bankruptcy Act 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 old bankruptcy act). It should be noted that the new Bankruptcy 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. However, spouses who are joint debtors are not required to choose the same exemptions. Under this system it is expected that a debtor will compare the state and federal exemptions and choose the alternative more advantageous to him. Set out in the attachments 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 enacted by the Bankruptcy Reform Act of 1978.

JLB:jdn

Attachments

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.....

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.

Debtor's dwelling (Mobile home) \$12,000 \$12,000 \$19,000¹
 (\$10,000 if mobile home on rented apnce)

Tracing of proceeds 1 year from time of removal or absence 1 year from date of voluntary sale 1 year from sale, destruction, 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)
Violent Crimes Benefits	no provision	no provision	no provision	exempt
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 (all pensions)	} exempt (all pensions)	nonexempt**
TRS benefits	exempt*			

* Totally exempt until paid to beneficiary
 ** Treated as income to which a separate exemption amount is provided
 *** If cash surrender value does not exceed \$5,000

Debra's dwelling (Mobile home) \$17,000 \$12,000 \$19,000¹
 (\$10,000 if mobile home on rented apoco)

Tracing of proceeds 1 year from time of removal or absence 1 year from date of voluntary sale 1 year from date, destruction, 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)
Violent Crimes Benefits	no provision	no provision	no provision	exempt
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 (all pensions)	} exempt (all pensions)	nonexempt**
TRS benefits	exempt*			nonexempt**

* Totally exempt until paid to beneficiary

** Treated as income to which a separate exemption amount is provided

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

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB-74

Title An act relating to the rights of debtors and creditors.

Requested by Rules Committee

Date 2/11/81

II. FISCAL DETAIL

Agency Affected Department of Commerce and Economic Development

Program Category Affected Public Protection

BRU, Program, or Subprogram(s) Affected DIVISION OF Insurance

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. DATE 2/11/81

PREPARED BY Kenneth C. Moore, Director

AGENCY Division of Insurance

PHONE 465-2515

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB-74
 Title An act relating to the rights of debtors and creditors.
 Requested by Rules Committee Date 2/11/81

II. FISCAL DETAIL

Agency Affected Department of Commerce and Economic Development
 Program Category Affected Public Protection
 BRU, Program, or Subprogram(s) Affected DIVISION OF Insurance

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. DATE 2/11/81 PREPARED BY Kenneth C. Moore, Director
 AGENCY Division of Insurance
 PHONE 465-2515
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. 10 74
 Title An Act relating to the rights of debtors and creditors
 Requested by House Judiciary Committee Date 2/23/82

II. FISCAL DETAIL

Agency Affected Alaska Court System
 Program Category Affected Administration of Justice
 BRU, Program, Or Subprogram(s) Affected Trial Courts
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		166.6	175.0	190.0	205.0	220.0
200 TRAVEL		6.0				
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT		10.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		182.6	175.0	190.0	205.0	220.0

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND		182.6	175.0	190.0	205.0	220.0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

SEE ATTACHED

IV. DATE 2/23/82

PREPARED BY Richard P. Barrier

AGENCY Alaska Court System

PHONE 264-0545

Original: Legislative Finance
cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

III. ANALYSIS

Since the Uniform Exemptions Act upon which HB 74 is based has not been adopted in any other state, there is no comparative basis for estimating costs to the Court System.

From a review of the statute in light of current clerical and judicial workload it appears that five new positions would be required to implement HB 74: two Court Clerk IIIs (Range 12) in Anchorage, one in Juneau and one in Fairbanks, and a Standing Master (Range 20) in Anchorage.

The Court Clerk IIIs would develop and maintain an ongoing accounting system in conjunction with statutory provisions for continuing liens on wages; would process affidavits submitted by creditors and orders issued by the court; adjust dollar amounts in conjunction with changes in the Consumer Price Index; and other related duties. The Standing Master would be located in Anchorage, which has the largest volume of executions (approximately 360 per month), and would review debtor affidavits for increased exemption amounts, would conduct hearings relating to execution upon security interests in exempt goods, and would conduct other hearings as required by the statute and as requested by creditors and debtors pursuant to the statute.

The cost of these positions is shown below.

Positions:

Anchorage:	
2 Clerk IIIs at Range 12 (\$21,768)	\$43,536
1 Standing Master at Range 20 (\$37,836)	37,836
Fairbanks:	
1 Clerk III at Range 12 (\$24,756)	24,756
Juneau:	
1 Clerk III at Range 12 (\$21,768)	21,768
	<u>\$127,896</u>
Benefits:	<u>38,677</u>
Total Personnel	\$166,573
Travel (initial training)	6,000
Equipment	
5 desks, chairs, typewriters, file cabinets	<u>10,000</u>
Total FY '83 Cost	\$182,573

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 31, 1981

SUBJECT: Conflict between HB 74 and current federal
law (Work Order Number 12-1247)

TO: House Judiciary Committee

FROM: Randolph G. Berry
Legislative Counsel

Attached is a memorandum prepared by Bernie M. Tuggle, a legal extern serving with the Division of Legal Services. I have reviewed the memorandum and agree with his conclusions.

RGB:ljb

Attachment

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAP. IOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 31, 1981

SUBJECT: Conflict between HB 74 and current federal law (Work Order Number 12-1247)

TO: House Judiciary Committee

FROM: Bernie M. Tuggle
Legislative Legal Extern

You have asked whether there is a conflict between HB 74 relating to the rights of debtors and creditors and federal law, especially federal bankruptcy law. I have reviewed current federal law and have found that no conflict exists. In particular, where HB 74 specifically refers to federal law, there is no conflict.

"Sec. 09.38.015. PROPERTY EXEMPT WITHOUT LIMITATION.
(a) An individual is entitled to exemption of the following property:

* * *

(6) compensation or benefits paid or payable and exempt under federal law."

11 U.S.C. 522 exempts from the debtor's estate benefits such as the debtor's right to receive social security, unemployment compensation, local public assistance benefits, etc. Therefore, HB 74 also would exempt social security benefits, etc. 11 U.S.C. 522(b)(1) meanwhile says that an individual debtor may exempt from property of his estate those benefits and compensation listed in Sec. 522, "unless the State law that is applicable to the debtor . . . specifically does not so authorize". Since Sec. 09.38.015(a)(6) specifically does authorize such an exemption, HB 74 and federal law are clearly consistent.

Sec. 09.38.020. Exemption of earnings and liquid assets. This section states that an individual who does not receive

earnings in excess of \$500 a month may exempt that amount.
But,

"(c) A creditor may levy upon earning exempt under
. . . this section if his claim is

* * *

(2) enforceable under an order of a court of bank-
ruptcy under Chapter XIII of the Bankruptcy Act . . ."

Since earnings of the individual are part of his estate
under 11 U.S.C. 541 and 1306, this section does not conflict
with federal law.

Sec. 09.38.030(d). If the individual debtor is a non-
resident, the limitations on garnishment imposed under
15 U.S.C. 1673 shall apply.

The Sec. 1673 restrictions are applicable to the "maximum
part of the aggregate disposable income of individuals which
would encompass resident and nonresident individuals. HB 74
incorporates the federal restrictions by reference and applies
them only to nonresidents. Therefore, there is no statutory
conflict between HB 74 and federal law. However, potential
constitutional problems arise whenever a statutory scheme
discriminates between nonresidents and residents. I believe
that due to the nature of bankruptcy legislation, the state
could show interests strong enough to defeat any privileges
and immunities clause and equal protection clause attacks.

Sec. 09.38.055. BANKRUPTCY PROCEEDINGS. In a pro-
ceeding under the Bankruptcy Act . . . only the
exemptions under AS 09.38.010, 09.38.015(a), 09.38.020,
09.38.025 and 09.38.030 apply . . .

This first sentence of Sec. 09.38.055 does not conflict with
federal law, since 11 U.S.C. 522 allows for exemptions under
state law of certain types of property.

Sec. 09.38.055. The second sentence of this section makes
it clear that the exemption of certain permits, licenses and
certificates does not apply to a chapter VII proceeding. The
Title VII definitions of "customer property" do not exempt
licenses, permits and certificates. See U.S.C. 741 and 761.
Again, there is no conflict between HB 74 and federal law.

BMT:ljb

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TO: Alaska Code Revision Commission
FROM: Alaska Legal Services Corporation
Elisabeth A. Werby *EAW*
RE: Proposed Alaska Exemptions Act
DATE: May 25, 1978

M E M O R A N D U M

I

INTRODUCTION

At the April meeting of the Commission, Alaska Legal Services Corporation (hereinafter ALSC) was asked to compare the exemptions and procedures of existing law with those set forth in the AEA and, additionally, to comment on the impact of the proposed Act on low income debtors. Don Clocksin's Comments on a Proposed Alaska Exemptions Act, dated January 12th, thoroughly addresses each of these requests. It seems unnecessary to reiterate that extensive analysis here.

Many of the specific comments and comparisons made by ALSC in January have been mooted by subsequent revisions of the AEA. For the most part, these revisions have been responsive to ALSC's concerns, beneficial to low income debtors, and have clarified inconsistent or confusing portions of the AEA. Substantial sections of the AEA, however, continue to balance the competing interests of the creditor and debtor strongly in favor of the creditor. An example of this balancing, the treatment of welfare benefits under the AEA, is discussed below. The issue was raised by ALSC in the April meeting, and this discussion summarizes the comments made at that time.

II

DISCUSSION

Current law provides unlimited exemptions for welfare benefits based on need. See, e.g. AS 47.25.395; AS 47.25.500; AS 47.25.710; AS 47.25.080. Under the AEA, these benefits are treated as earnings or liquid assets, exempt only to the extent they do not exceed the ceiling set forth in 09.38.060 or the increased exemption available under 09.38.100.*

*Citations refer to the Commission's Work Draft of 4/12/78 as revised and amended at the April meeting.

Where liquid assets are derived from State assistance programs such as AFDC or APA, a ceiling on the total liquid asset exemption will result in an unjustifiable hardship for Legal Services' clients, regardless of the dollar amount of the exemption. The procedures designed to insure that a recipient debtor in fact requires assistance are unnecessarily burdensome on the debtor and a drain of judicial resources. Provisions of existing law are therefore preferable to those of the AEA. Simplified procedures should be drafted to offer further protection to these low income debtors.

A. Substantive Treatment of Welfare Benefits

The AEA seems to reflect the notion that most recipients of welfare programs are accumulating benefits far beyond what is actually necessary for their support. The Reports submitted by Legislative Affairs on March 23, 1978 and March 31, 1978 belie this notion. These reports indicate that eligibility and assistance levels are carefully calculated to serve the needs of the recipients and, in the long term, the needs of the public.

It is true that a person with relatively high earnings may be eligible for some form of assistance. This would be most likely to occur in AFDC cases. For purposes of AFDC, portions of earned income (\$30.00 plus one third of the remainder) and the costs of earning the income (transportation, union dues, child care) are disregarded in eligibility and benefit calculations. See example of Ms. Higher Earnings in March 31 Report from Legislative Affairs. However, the purpose of the AFDC formula is to encourage recipients to develop skills allowing them to become independent of welfare. This goal is consistent with the purpose of the AEA: "to afford to a judgement debtor adequate protection of his...income while remaining independent of further public assistance".

In this example, execution or garnishment in any amount would operate as a disincentive to further employment and, consequently, increase dependence on public funds. It should be noted also that, if she continues working, amounts garnished from Ms. Higher Earnings wages would probably not be compensated by an adjustment in AFDC benefits. Therefore, the children of the recipient, to whom the program is directed, will not receive the assistance they have been deemed to require.

The Legislative Affairs Report of March 31st indicates that the example of Ms. Higher Earnings is rare, indeed: "Such a situation is not common; most welfare cases have little or no income."

In most situations, the liquid assets of a welfare recipient will not exceed the increased exemption or will do so only by marginal amounts. In all cases, the actual need of the recipient and his or her family has been carefully calculated in accordance with the legislative and administrative mandates. Overpayments resulting from error or misrepresentation will be collected from the recipient in accordance with established procedures.

In light of both the prior administrative determination of need and the fact that, ordinarily, benefits will not accumulate much beyond the increased exemption permitted under the AEA, the absolute exemptions available under existing law should be retained. To the extent that a creditor may reach welfare benefits, the AEA conflicts with the policy of the public assistance statutes and the agencies that effectuate these statutes.

B. Procedural Provisions Relating to Welfare Benefits Exemptions.

Pursuant to 09.38.100 of the AEA, a debtor who is already determined needy is required to submit proof to obtain an increased exemption based on need or disability. To avoid conflicts with administrative agencies and statutory policies, it would seem likely that an affidavit stating that liquid assets are traceable to welfare benefits will be deemed prima facie proof of actual need. The procedures of the AEA, then, appear a waste of judicial resources, an unnecessary rubber stamp.

Obviously, many ALSC clients receiving various welfare benefits are unfamiliar with formal documents and legal proceedings. For them, even a straightforward explanation of exemptions and procedures in lay terminology may be inadequate to insure timely assertion of legal rights. The benefits of the increased exemption may be inaccessible to those who need it the most.

III

SUGGESTIONS FOR REVISION OF THE AEA

ALSC's objections to the substantive and procedural treatment of welfare benefits can be met by (1) incorporating the existing absolute exemptions into the AEA and (2) making such exemptions automatic, shifting the burden of proof from the debtor to the creditor. Procedural provisions should be revised to insure that prior to a garnishment or execution, the creditor submits proof that the liquid assets in the hands of the debtor are not traceable to exempt welfare benefits; that no wages may be garnished from an ALSC recipient; and that the debtor be provided with notice and an opportunity to contest any determination prior to garnishment or execution.

It has been suggested that an absolute, automatic exemption of the kind proposed here will tighten the credit market for ALSC clients. There appears to be no evidence before the Commission to substantiate this claim. The discussion at the April meeting indicated that few creditors would bother to reach the limited assets of a welfare recipient. Therefore, the substantive and procedural changes suggested above may be inconsistent with the attitude of the Commission in theory only.

IV

CONCLUSION

The treatment of welfare benefits under the AEA is one example of the manner in which the Act reflects the interest of creditors rather than low income debtors. This example and the specific criticisms set forth in Don Clocksin's memorandum provide the basis for ALSC's inability to support the AEA in its present form.

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COMMENTS ON A PROPOSED ALASKA
EXEMPTIONS ACT

ALASKA LEGAL SERVICES CORPORATION
By: Donald E. Clocksin
Chief Counsel
January 12, 1978

I. INTRODUCTION AND SUMMARY

The proposed Alaska Exemptions Act (AEA), dated November, 1977, has been compared with the Uniform Exemptions Act (UEA)¹ and with existing Alaska state laws. The Act states the Legislature's intent, adds a new chapter of twenty-one sections to Title 9, amends A.S. 09.35.250, recalls a list of Alaska Statutes, and establishes an effective date. In general form the AEA attempts to place all personal exemptions from execution of judgments in one chapter of the statutes, and establish a new procedure for claiming those exemptions.

My review has concluded that the AEA is sufficiently different from the Uniform act to make the goal of national uniformity an unfulfilled one. In addition, it would be a serious setback for low-income debtors in Alaska, would provide essentially no streamlining of present procedures, does not dovetail with existing law, and therefore, should not be adopted in its present form.

earnings, this provision might well result in a greater amount taken from these debtors than allowed under the federal limitation at 15 U.S.C. § 1673(a). See 29 C.F.R. § 170.10(c) establishing the manner of calculating pay for a period longer than a week.

09. 38.035

~~09.38.060~~: Continuing Lien on Wages.

The AEA creates a continuing lien on wages, so that one execution will be sufficient to levy on earnings each time they are paid until the debt is paid off. The UEA, the federal garnishment law, and the existing Alaska law do not have such a provision and it should not now be adopted. In Anchorage Helicopter Service v. Anchorage Westward Hotel, 417 P.2d 903 (Alaska 1966), the supreme court held that Civil Rule 89⁴ does not allow prospective garnishment.

The magistrate's order was invalid and ineffective so far as it purported to regulate wages to be earned in the future . . ."

Supra, 417 P.2d at 909.

Continuing liens should not be allowed because 1) they deprive the debtor of an opportunity to utilize exemptions made available under section .050 which accrue after the garnishment is originally imposed; 2) authorizing them will increase the number of garnishments, which is inconsistent with the federal finding that garnishments "divert money into excessive credit payments and thereby hinder the production and flow of goods in interstate commerce." 15 U.S.C. § 1671; and 3) it is unfair to the extent that it regulates wages earned in the future and encourages job terminations.

09. 38.040

~~09.38.070~~: Priorities Between Continuing Liens.

No comment, except that this section should be deleted.

09. 38.045

~~09.38.080~~: Effective Date of Continuing Lien.

Same comment.

⁴ The existence of Civil Rules relating to attachment and garnishment and the need to amend those rules as well as the statutes will be discussed later.

09.38.050

~~09.38.090~~: Increased Exemption Amount.

Subsection (a) is an attempt to allow debtors receiving payments for injury or disability to increase the garnishment exemption of section .050(d) and (e) if they must rely on the money for support for a long time.

Subsection (b) allows the \$125 per week exemption (or the \$500 lump sum exemption)⁵ to be increased to \$200 per week if the debtor 1) is married, 2) has a spouse who has no earnings or liquid assets, and 3) supports the household on these earnings alone.

Subsection (c) defines certain benefits as earnings for purposes of the garnishment section when they are received.

This section .090 should be deleted. Sub(a) is unnecessary if injury or disability payments are made totally exempt as they are now. Besides, the complex motion, affidavit, hearing and order procedure will only burden the court. One can expect every recipient of a workmen's compensation award or an insurance award to proceed under this section if they are garnished. All this subsection does is put the burden on the debtor to prove that he/she really needs the injury or disability award or to prove he/she can't support the household on \$125 per week. Both those things should be assumed. Finally, this subsection conflicts with the personal property seizure procedure in CR 88 and the garnishment hearing in CR 89.

Sub(b) should be deleted and replaced by a wage exemption sufficient to support a family that has no outside income, or by a means of obtaining a total exemption. Why \$200 when even that amount would be inadequate to support a large family?

Sub (c) is completely irrelevant to (a) and (b) and should go in section .050. Even if it were in the right place, the policy of including these items as earnings and thereby subjecting them to garnishment is wrong.

09.38.055

~~09.38.100~~: Bankruptcy proceedings.

This section deprives bankrupt debtors of the right to increased exemptions under section .090. Since bankruptcy exemptions are determined on state law, this chapter would seem to dictate those exemptions. However, depriving a person exercising a federal right of an exemption available to persons not exercising that right is of questionable legality. Note the discussion of the affect of state exemptions on bankruptcies in 13 Uniform Laws Annotated at 23 (1977 Supp.).

⁵ How the lump sum exemption of \$500 in section .050(e) can be "increased" to \$200 per week when the two are mutually exclusive escapes me.

09.38.060

09.38.105: Tracing Exempt Property.

Subsection (a) allows a debtor to exempt the proceeds of forced sale or loss of a burial plot, homestead, health aid, or other goods partially exempt as household or employment items for 12 months. The proceeds of a voluntary sale of a homestead may be exempt for three months. The UEA, by comparison, allows tracing of ~~the~~ the proceeds from converted goods for 18 months and allows exemption of proceeds from a voluntary sale of a homestead.⁶ Existing Alaska law exempts all the proceeds of the homestead, whether or not voluntarily sold, without a time limit. A.S. 09.35.090. I see no reason why the proceeds of a voluntary sale should not be exempt, though a reasonable time in which to reinvest in another home makes sense. The creditor is protected by the requirement that the debtor live in the house, so that he/she cannot keep several houses, selling them all periodically, and claim an exemption.

Sub (b) of the AEA section .105 establishes the standard for tracing proceeds by allowing "the individual" to decide which method to use. Is "the individual" the debtor, the creditor, or the third party subject to the levy?

The most important point about section .105 is what it leaves out. The comparable UEA section--section 9--contains a subsection stating that certain benefits which are exempt remain exempt even when they are deposited in a bank account. This is an important provision, since much of the litigation Alaska Legal Services does on behalf of debtors involves welfare benefits, etc. garnished from bank accounts. Money which is identifiable, i.e., traceable, should continue to be exempt. The current Alaska law, as well as the UEA, allows such tracing. Miller v. Monrean, 507 P.2d 771 (Alaska 1973) and Etheredge v. Bradley, 502 P.2d 146 (dictum) (Alaska 1972).

09.38.065

09.38.110: Claims Enforceable Against Exempt Property.

This section creates a preference for certain creditors which supercedes any exemptions. I will discuss each in turn. First, I must confess that I do not understand the distinction between those preferences in section .110(a)(1) and those in section .110(a)(2). The only difference is the words "of any kind" which appear in (1) but not (2). This obscure sentence structure appears in the UEA as well, but seems meaningless.

(a)(1)(A): Alimony, support and separate maintenance may be collected from any exempt property. I should note here a matter which confused me at first. This section allows the person receiving

⁶ It should be noted that, by transposing the words "taken or sold" on p. 9, line 7, the AEA reversed the meaning of the UEA language "sold or taken." The UEA intends the language to allow exemption of proceeds of a voluntary sale (see Comment 1 to UEA Section 9) while the AEA intends the opposite.

the support to collect it from exempt property of the debtor. Section .090(c)(2) says these types of support are the earnings of the person receiving them and are thus subject to section .050(c). That section, in subsection (d)(2)(A), completely exempts "support of any person" from garnishment. Thus, we have the amount of the support exempt from any garnishment except garnishment by the recipient of the support. Or do we have conflicting provisions? At the same time one should note A.S. 09.35.085 which totally exempts child support to be paid by the debtor.

(a)(1)(B): One month's earnings for personal services of an employee may be collected despite the exemptions in section .050(d) and (e). A similar conflict to that discussed above is present. A wage earner who hires another wage earner can have wages garnished despite the exemption in section .050. It is possible that this conflicts with the federal garnishment law because it provides less protection for certain wage earners than the federal law, thereby resulting in federal preemption. See Comment 2 to UEA section 10 regarding this conflict.

(a)(2)(A): The exemptions don't apply to a levy against property to collect the purchase price of that property or to collect a loan made to buy that property. This preference goes far beyond the traditional purchase money security interest situation to allow any person who makes a loan to claim that the borrower-debtor intended to buy the property with the money. The definition of a purchase money security interest in the Alaska commercial code is much narrower than this. A.S. 45.05.702. If the loan did not result in a security interest under the law, no preference should be given.

(a)(2)(B): The preference in (B) extends far beyond the traditional mechanics lien. In fact, since the various liens summarized in (B) have not been repealed, a conflict exists. See A.S. 34.35.050 et seq. and A.S. 34.35.220. The inconsistent wording of these statutes will result in a great deal of confusion as to the extent of this preference. The problem is worsened by subsection (b) which reaffirms existing statutory leases.

(a)(2)(C): A preference is provided for the cost of a "public improvement" which benefits the property. Again, such a preference conflicts with an existing statute (A.S. 34.35.085) and raises the question whether only improvements by local improvement districts or other governmental entities should be preferred. Allowing a landlord to impose an involuntary improvement on a tenant, for example, and then garnishing all his/her wages to pay for it is a questionable policy. If only public bodies are intended, the "state or local taxes" provision should suffice.

09.38.070

09.38.120: Limitation on Enforcement of Certain Security Interests in Exempt Goods.

This section allows a non-purchase money secured party to execute on goods or wages exempt under section .050 if 1) the debtor refuses to voluntarily surrender the goods or wages, 2) he obtains a court hearing, and 3) either the debtor can afford to pay the debt or can get along without the exempt item.

The section should be deleted completely. I do not believe that a secured creditor who does not hold a purchase money security interest should be allowed to execute on exempt property. A non-specific security interest does not justify eliminating the protections for debtors provided by the exemptions. A security interest created to assure payment of the purchase price is essential to a healthy commercial environment. However, the generalized security interests created pro forma in "all household goods" or other overbroad categories are not as vital as the ability of the debtor to continue to work and live a decent life.

~~09.38.075~~
~~09.38.130~~: Special Procedures Relating to Limited Value Exemptions.

~~09.38.080~~
~~09.38.140~~: Procedures Applicable to a Levy on Property of an Individual.

~~09.38.085~~
~~09.38.150~~: Contents of Notice

Section .130 allows a creditor to levy on the property listed in section .050(a), (b), and (c) by 1) filing an affidavit with the court (not the debtor) alleging the existence of non-exempt property, 2) requesting a court order notifying the debtor of his/her right to contest the claim in writing within 15 days, 3) getting the order served (an automatic restraining order is imposed on the debtor), 4) requiring the debtor to respond in writing or appear in court, and 5) requiring the debtor to prove that the property is exempt.

Since many of my objections to section .130 also relate to sections .140 and .150, I will also discuss them here.

Sections .140 and .150 provides the procedure for levying on any of the debtor's property, not just section .050 property. The differences with section .130 are 1) the affidavit to the court can be held at the same time or after the property is taken; 2) this time the debtor gets a copy of the affidavit; 3) an automatic restraining order does not go into effect; 4) a "declaratory judgment" procedure is provided to determine what exemptions, if any, are available; 5) the debtor only has 10 days to object; 6) the debtor does not have a right to personally appear, except in the "declaratory judgment" proceeding which may fall after the 10 days; and 7) the notice provided must contain certain information set out in section .150.

My comments on this scheme are as follows:

1. The procedures make it very difficult for a debtor to claim the exemptions that are rightfully his/hers. The presumptions favor the creditor. A way should be found to place the burden on the creditor to prove the goods and wages, especially those with partial exemptions under section .050, are not exempt.

2. The ex parte restraining order against the debtor, without a hearing, raises serious constitutional questions, especially to the extent it stops the debtor from moving property or spending money which is exempt under section .050. Etheredge v. Bradley, 502 P.2d 146 (Alaska 1972).

3. The procedures repeatedly conflict with Civil Rules regarding injunctions, attachments, garnishments, etc. See civil Rules 65(b), (c) and (d), 69(b), 88(c) and (j), and 89(m) and (n).

4. The notice provisions are a serious setback from existing Alaska law. A.S. 09.35.035(3) and (7), which are repealed by the AEA, require notices "in lay terminology," require the provision with the notice of blank forms for the debtor to complete and return, and require the supreme court to provide and distribute a pamphlet with information, in lay terminology, of available exemptions. All of this is eliminated and replaced with optional forms. The case of Aguchak v. Montgomery Ward, 520 P.2d 1352, 1357 (Alaska 1974), recognized the need for more complete and simple information. The AEA would wipe out the efforts made since A.S. 09.35.035 was promulgated and that case decided.

Other provisions should be in the notices (both of them, not just the notice under section .150) including 1) the right to free attorneys if unable to afford private counsel and how to contact them, 2) bilingual notices in areas where a substantial portion of the population use English as a second language, 3) a notice pursuant to Aguchak that they need not appear and venue can be changed to a place closer to where they live, Aguchak supra, 520 P.2d at 1356-57.

5. I can see no reason to separate sections .130 and .140. In both situations, the creditor should, at a minimum, give the debtor an opportunity to evaluate whether the levy affects exempt property and object, both in writing and in person. In the situation where the levy is on section .050 property, the debtor will receive two notices, one affidavit, two time periods to respond, and a restraining order, some with overlapping provisions. The analysis of those notices, etc. and the decision about what to do and in what period of time will often be overwhelming. And, since the burden is on the debtor, a delay can be disastrous.

6. The section .150 notice requires information about the underlying judgment "if any." If that language implies that a judgment need not be obtained prior to using these procedures. I respectfully refer the drafters to Sniadach v. Family Finance Corp., 395 U.S. 337 (1969); Fuentes v. Shevin, 407 U.S. 67 (1972);

Goldberg v. Kelly, 397 U.S. 254 (1970); and Etheredge v. Bradley,
supra.

7. It is not clear how A.S. 09.35.035(1), (2), (4), (5) and (6) fit in to all this. These subsections are not repealed and seem to conflict with the scheme proposed in the AEA.

09.38.090

~~09.38.160~~: Assertion of Rights by Another.

This section allows a third party to claim an exemption in property or object to a levy if the debtor fails to do so. Third parties include a spouse, a dependent, or "any other person authorized by law" to make such claims or exemptions. The UEA, in comparison to the quoted language, allows "any other authorized person" to make the claims or exemptions. The language in the AEA seems to allow, for example, the holder of a mortgage to claim a homestead exemption for the debtor. Or the language may allow a person with power of attorney to select among the choices available under section .050(a)-(c). See Comment 2 to UEA Section 16. The alteration in the AEA from the UEA language may eliminate the possibility that the first example will occur, but the intent is not clear.

09.38.095

~~09.38.170~~: Judicial Review.

No comment, except that the same "any other person authorized by law" has been inserted here too. Also, to the extent the last sentence of sub(a) conflicts with Civil Rule 82, it is void.

09.38.100

~~09.38.100~~: Debtor's Property Owned With Another.

This section allows a creditor of one of two owners of a piece of non-exempt property to force the partition and sale of the property. To the extent that it allows a creditor to take anything more than rents and profits to pay the debts of one owner, the section conflicts with A.S. 34.15.140, as interpreted in Pilip v. United States, 186 F. Supp. 397 (D. Alas. 1960). The tenancy is indivisible, and the creditor can only divide the rents or profits and, perhaps, take the property as the survivor when the other owner dies. A.S. 34.15.140 is not repealed by this AEA, and probably should not be. AS the comments to the UEA indicate:

The constitutionality of applying this section to tenancies by the entirety created prior to the enactment of the Act is not settled.

13 Uniform Laws Annotated, at 45, Comment 2, UEA Section 18.