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COMMITTEE REPORT

SENATE

4/29/82

FURTHER: None

Date:

May 7, 1982

Mr. President:

The Committee on JUDICIARY has had CSHB 74(R1s) on rights of debtors and creditors

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- [X] do pass [ ] do not pass
[ ] do pass with attached amendments(s)
[ ] replace with CS for [ ] same title [ ] new title
and recommends
[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note
[ ] reports it back without recommendation
[ ] referred to the Committee

MEMBERS SIGNING DO PASS

Handwritten signatures of committee members.

MEMBERS HAVING OTHER RECOMMENDATIONS:

Blank lines for other recommendations.

CHAIRMAN



Official Business

# Alaska State Legislature

## Senate

### Committee on Judiciary

Pouch V  
State Capitol  
Juneau, Alaska 99811

#### MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

May 7, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

#### Legislation Before Committee:

- HB 210 - "An Act relating to child custody."
- HB 47 - "An Act relating to the prohibition against waste of the meat of wild food animals."
- HB 74 - "An Act relating to the rights of debtors and creditors."
- HB 339 - "An Act relating to the judicial review of administrative regulations."
- HB 591 - "An Act making corrective amendments in the Alaska Statutes as recommended by the revisor of statutes; and providing for an effective date."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:30 P.M. Committee members present were: Senators Rodey, Anderson, Parr, and Ray. Senator Bennett was absent.

- 001 - Call to order.
- 005 - HB 210 was brought before the committee.
- 008 - Mr. Bruce goes over the changes in the committee substitute.
- 531 - After discussion, Chairman Rodey laid HB 210 on the table.
- 535 - Chairman Rodey next brought HB 47 before the committee.
- 537 - Mr. Bruce goes over the committee substitute.
- 556 - Ed Hein, Legal Services, testified, explaining the committee substitute.

705 - Senator Anderson moved the following: On Page 3, Line 25, delete [WALRUS] and delete [EXCEPTED]. Also on Page 3, Line 25, invert EXEMPTION and ANIMALS, so that it would read ANIMAL EXEMPTION. On Line 26, Page 3, delete [walrus if] and insert animals which. On Line 27, Page 3, delete [them]. There was no objection.

721 - Senator Ray moved to adopt the Senate committee substitute. There was no objection.

724 - Senator Rodey moved to pass SCSHB 47 from committee. There was no objection and the bill was passed.

733 - The next item on the agenda was HB 339.

740 - Diane Colvin, Department of Law, testified explaining the new draft.

870 - Senator Parr stated that his intent was not being met by this bill. He wanted statutes listed by specific sections, not titles and chapters which was not being set out by this legislation.

149 - Senator Parr moved to pass HB 339 with language in Diane Colvin's memo + sec. 2 of the draft committee substitute with individual recommendations. See attached.

221 - Next, Chairman Rodey brought HB 74 before the committee.

223 - Dickerson Regan, Code Revision Commission, testified, suggesting that the committee pass the bill as is because changes can be made by the revisor of statutes next year.

327 - Senator Anderson moved to pass the bill with individual recommendations.

336 - The last item on the agenda was HB 591.

340 - Mr. Walker testified in favor of this bill.

441 - Senator Anderson moved to pass HB 591 with individual recommendations. There was no objection.

444 - The meeting adjourned at 3:00 P.M.

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3630

MEMORANDUM

April 30, 1982

SUBJECT: Statutory authority for regulations  
(SCS HB 339)

TO: Senator Patrick M. Rodey  
Chairman, Senate Judiciary Committee

FROM: Diane T. Colvin  
Legislative Counsel

In connection with committee work on HB 339, you asked me to prepare a proposal in response to Senator Parr's suggestion on the need for specific, rather than general, statutory authority for administrative regulations. I had previously proposed an amendment to AS 44.52.020; suggested language for that amendment is contained in my memorandum to Senator Nels Anderson of April 28th.

Another possibility would be to amend AS 24.30, relating to the enactment of statutes, to require that all bills contain express language on the adoption of regulations. I believe this may be closer to meeting Senator Parr's intent. A new section could be added to this chapter to read:

Sec. 24.30.032. REGULATIONS STATEMENT ON BILLS. Each bill shall contain a statement regarding the adoption of regulations by the agency affected by the bill. The statement shall grant the express authority to adopt regulations to implement the provisions of the bill. If a bill does not contain this statement of authority an agency may not adopt regulations to implement the statutes affected by the bill.

It is the opinion of this office that this proposal, if enacted, would have a detrimental effect on the operations of all state departments and agencies. There would be a great deal of confusion resulting from any bills enacted which did not contain this statement but which affected

Senator Rodey  
Page 2  
April 30, 1982

statutes which are part of a broad statutory scheme or part of an integrated title.

In our opinion, there is no single approach which would cure this problem. The only solution would be to go through the statutes and remove, title by title or chapter by chapter, the general authority of departments and agencies to adopt regulations.

If we can be of further assistance, please do not hesitate to contact us.

DTC:ljb

Dick has talked  
to Mulcahy  
about having the  
bill waived - Dick  
discussed the  
points w/ Mulcahy  
as outlined in  
this memo.

Also note copy  
of previous memo to  
Mulcahy. Pat should  
probably review this memo  
in case Mulcahy discusses same.

MEMORANDUM

TO: Senator Bob Mulcahy, Chairman  
Senate Labor and Commerce Committee

FROM: Dickerson Regan, Consultant  
Alaska Code Revision Commission

DATE: April 28, 1982

RE: CSHB 74 (Rls) am (Exemptions Act)

Previously I have sent you materials on CSHB 74 (Rls) am. What I sent probably was in such detail that it could not be digested.

House committees and staff over the past two years spent a lot of time with the bill. Most of that time was spent in becoming familiar with the subject matter. With my memorandum to you dated April 15, 1982, I enclosed some analysis of House changes.

The House changes left the essential features of the bill intact. The bill does three important things.

(1) It adjusts for inflation the two most basic protections of the judgment debtor, i.e., the minimum earnings that are protected and the minimum value of a home that is protected.

(2) It provides for indexing exemptions to changes in the cost-of-living index, thereby keeping protections at the same level in terms of real value and avoiding the need for periodic adjustment by the legislature.

(3) It provides for a continuing garnishment of wages to pay off a court judgment. Both under existing law and under terms of the CSHB 74 (Rls) am, a judgment creditor may follow procedures to require the employer of a judgment debtor to withhold and pay over the unprotected part of the wages the employer owes to that judgment debtor. By existing law this costly and frictional procedure must be repeated each pay period until the judgment is satisfied. By terms of the bill

Senator Bob Mulcahy  
April 28, 1982  
Page 2

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once the judgment holder has had the required notice (garnishment) served, it continues in effect each successive pay period until the judgment is paid. This avoids a source of much frustration to the judgment creditor and a source of expense to the judgment debtor since costs of collection are added to the judgment he must pay.

I did not work with the code revision commission on drafting of the bill. However, I have become quite familiar with it. As I became familiar with it I recognized it to be well drafted and helpful legislation. And I have seen those legislators and staff members in the House who were able to study the details of the bill become supporters of it, regardless of their political persuasion.

Time threatens to run out on the bill. I understand Senator Rodey has suggested it be waived over to Judiciary. I hope you will follow this or some other means to move the bill along.

DR:chw

ALASKA CODE REVISION COMMISSION



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

EXECUTIVE SECRETARY  
BILLY G. BERRIER

MEMORANDUM

TO: Senator Bob Mulcahy, Chairman  
Senate Labor and Commerce Committee  
ATTN: Michael Thill, A.A.

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

DATE: April 15, 1982

RE: CSHB 74 (Rls) am--Debtor and Creditor

Quite extensive committee work was done on HB 74 (debtor and creditor) in the House, and I hope the bill can be moved rapidly through the Senate.

Both Jim Baldwin, who worked as draftsman on the bill, and I will be happy to respond to your committee's questions.

Attached are (1) a statement of the general background of the bill, (2) the Baldwin commentary for the original bill, marked with the changed section numbers, (3) a review of the changes from that bill as they appear in CSHB 74 (Rls) am, and (4) the changes by page and line.

The code revision commission's office telephone is 465-4878. Jim Baldwin is now in the Department of Law, telephone 465-3600.

DR:chw

Attachments:

## Background on CSHB 74 (Rls) am on Debtor and Creditor

CSHB 74 (Rules) deals with the nature and extent of a judgment debtor's rights as against the rights of a judgment creditor. It is often referred to as the "exemptions" bill since it defines what minimum property of a debtor is exempt from seizure and sale to satisfy a judgment. It also contains (1) procedures designed to be relatively simple for the creditor while assuring protection of the debtor's rights, and (2) an indexing of the dollar amounts of exemptions to the fluctuation of the consumer price index, thereby avoiding the need for frequent adjustments by the legislature.

Attached is a commentary that was drawn by Jim Baldwin, the Legislative Affairs Agency draftsman who worked with the code revision commission on the bill. (Baldwin is now the executive department representative on the commission. However, when the bill was drafted in 1977 he was not in a policy position with regard to the content of the bill.)

The bill was introduced in the 1979 legislative session as HB 56. It is basically a workaday procedural and cleanup bill; it had no active constituency either pushing it or opposing it, and it was not scheduled for committee hearings in the 1979 or 1980 sessions.

The bill was reintroduced in the 1981 legislature as HB 74. It was given staff work and committee hearings in the House Judiciary Committee in 1981 and was given more work and hearings by the reconstituted Judiciary Committee in 1982, resulting in a Judiciary CS bill that included figures marked-up for inflation and changed the bill's treatment of liquor licenses and limited entry permits so as to leave the exemption of these licenses and permits just as it is in existing law. There was no significant difference between the treatment given the bill by the House Judiciary Committee as constituted in 1981 and the treatment given the bill by the reconstituted committee in 1982.

The Rules Committee passed out the Judiciary substitute, but some of the figures were challenged on the floor, the Judiciary substitute was rejected, and the bill was returned to Rules.

By this point there were a core of representatives of differing political persuasions who thought the basic bill worth saving. Since the numbers (the dollar amounts) in the bill seemed to be the sticking points, the Rules Committee got out a substitute bill, mainly adjusting the dollar amounts. In outline these adjustments were a markup for inflation of only the two basic exemption figures--the homestead exemption and the wage exemption--leaving most of the other figures unchanged.

In the file of the code revision commission and in the file of the House committees there is correspondence which follows through the processing of the bill in the House.

Changes of HB 74 appearing in CSHB 74 (Rls) am

CSHB 74 (Rls) am includes a floor amendment that was not in either the Judiciary substitute or the Rules substitute: It eliminates from the bill a provision that would have placed alimony and separate maintenance payments in a category of claim against which no exemption applies.

CSHB 74 (Rls) am includes the following amendments to the original bill that are also in the Judiciary substitute and the Rules substitute:

(1) an amendment of the original bill that would retain the exemption of liquor licenses and limited entry permits without substantive change from existing law;

(2) technical amendments to correct an error in the repealer and to reflect a change in the name of the consumer price index;

(3) adjustments for inflation of (a) the basic homestead exemption, (b) the exemption for tools of trade, and (c) the wage exemption. The adjustments are based on the 43 percent increase in the Anchorage consumer price index since the bill was originally drafted in December, 1977.

CSHB 74 (Rls) am does not include the balance of the Judiciary Committee's markup of figures in the original bill. It marks down an exemption for pets from \$3,000 to \$500, and eliminates a provision of the original bill that would have given a larger exemption when a home is owned jointly or by the entirety.

CSHB 74 (Rls) am contains the following additional changes that were not in the Judiciary substitute:

(1) eliminating a provision of the original bill lumping the exemption of child support with certain other exemptions that are treated as an aggregate, the effect being to leave child support as it is treated in existing law;

(2) extending the period in which proceeds of the voluntary sale of a homestead are exempt from three to six months;

(3) requiring that a notice of rights be served on the judgment debtor along with an order temporarily restraining him from disposing of his exempt property;

(4) requiring notice of procedures for seeking a change of venue;

The foregoing changes are made by page-and-line amendments to HB 74 shown on the attached sheet.

Amendments to HB 74 appearing in CSHB 74 (Rls) am

- Page 1, line 20: Change "\$19,000" to \$27,000"
- Page 1, lines 26 and 28: Change \$28,000" to \$27,000"
- Page 4, line 5: Change \$1,000" to "\$1,400"
- Page 4, line 9: Change \$4,300" to "\$500"
- Page 6, line 5: Delete "support,"
- Page 8, line 6: Change "\$200" to "\$275"
- Page 8, line 8: Change "\$800" to "\$1,100"
- Page 8, lines 11-13: Delete the sentence starting on  
line 11
- Page 9, line 8: (A) delete "alimony,"  
insert "child"
- After "support"  
Delete ", or separate maintenance"
- Page 11, line 18: Delete "and"
- Page 11, line 20: Change period to comma
- Page 11, following line 20: Insert "(D) of the  
information required by AS 09.38.085(a)."
- Page 14, line 9: Before "AS 09.38.080(c)" insert  
"AS 09.38.075(b) and"
- Page 14, line 20: After "property" insert "changing  
venue,"
- Page 16, line 13: After "for" insert "All Urban  
Consumers for"
- Page 16, line 14: After "Area" delete "Consumer Price  
Index"
- Page 16, line 16: Change "November" to "January"  
  
Delete "preceding the year"
- Page 22, line 12: After "09.35.050" change the comma  
to a semicolon
- Page 22, line 13: Change "AS 21.42.320--21.42.350" to  
"AS 21.42.320--21.42.340, AS 21.-  
42.350"

Copy of this report located in LAA file.

JH 7/6/82



STATE OF ALASKA

Legislative Affairs Agency

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A

PROPOSED

ALASKA EXEMPTIONS ACT

PREPARED AND APPROVED FOR DISTRIBUTION

BY THE

"ALASKA CODE REVISION COMMISSION"

ALASKA STATE LEGISLATURE

Staff Preparation By the  
Division of Legal Services  
LEGISLATIVE AFFAIRS AGENCY

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DECEMBER

1980

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ALASKA CODE REVISION COMMISSION



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(907) 465-4878

EXECUTIVE SECRETARY  
BILLY G. BERRIER

MEMORANDUM

TO: Senator Tim Kelly, Chairman  
Senate Rules Committee

FROM: Dickerson Regan, Consultant  
Alaska Code Revision Commission

DATE: May 11, 1982

RE: CSHB 74 (Rls) am (debtor and creditor/exemptions)

CSHB 74 (Rls) am reached the Rules Committee May 8th after considerable attention had been given it by both House and Senate committees over the past two years.

Attached is a history of the bill as it worked its way to your committee. After committee work the main substance of the bill remains intact.

This is a bill that has been recognized on its merits with no special interest group pushing it. Since (I assume) it is not the kind of bill that will be anyone's trading material, I trust you will assure that the bill is placed on the calendar without the need for special contact from other legislators about it.

If you wish anything further about the bill, we will try to provide it. The code revision commission's telephone number through which I can be reached is 465-4878.

DR:chw

Attachments

*Handwritten notes:*  
Daria - copy  
Kevin  
for your file  
Dick

*Handwritten initials:*  
Dick  
Regan

Original sponsor: Rules/Legislative Council

Offered: 4/7/82  
For Calendar 4/8/82

1 IN THE HOUSE

BY THE RULES COMMITTEE

2 CS FOR HOUSE BILL NO. 74 (Rules) am  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the rights of debtors and credi-  
7 tors."

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

9 \* Section 1. It is the intent of the legislature to modernize the proce-  
10 dures for execution on a judgment and to afford to a judgment debtor adequate  
11 protection of his personal property and income necessary to provide for his  
12 own needs and the needs of his dependents while remaining independent of  
13 further public assistance.

14 \* Sec. 2. AS 09 is amended by adding a new chapter to read:

15 CHAPTER 38. ALASKA EXEMPTIONS ACT.

16 Sec. 09.38.010. HOME[STEAD] EXEMPTION. (a) An individual is en-  
17 titled to an exemption as a home[stead] of his interest in property in  
18 this state used as the principal residence of that individual or his  
19 dependents, but the value of the home[stea] exemption may not exceed  
20 \$27,000.

21 (b) If property owned by the entirety or in common is used by one  
22 or more individual owners or their dependents as their principal resi-  
23 dence, each owner is entitled to a home[stead] exemption of his interest  
24 in the property as provided in (a) of this section. The aggregate  
25 value of multiple home[stead] exemptions allowable with respect to a  
26 single living unit may not exceed \$27,000. If there are multiple  
27 owners of property exempt as a home[stead], the value of the exemption of  
28 each individual owner may not exceed his pro rata portion of \$27,000.

29 (c) If property that includes a home[stead] is sold under an execu-

1 tion, the sale becomes effective upon confirmation by order of the  
2 court. The court shall enter the order of confirmation unless, within  
3 60 days after the sale, the individual repurchases the property under  
4 this section or the court extends the time for confirmation upon the  
5 filing of a timely motion by a party in interest. The individual may  
6 repurchase property, including his homestead, at a sale on execution  
7 before confirmation by paying into court the costs of the sale plus the  
8 lesser of either (1) the difference between the highest bid and the  
9 amount of the exemption in the property, or (2) the amount of the  
10 creditor's claim. If the individual does not exercise his repurchase  
11 right under this subsection, the clerk of the court shall first remit  
12 an amount determined to be exempt to him from the proceeds of sale and  
13 the balance less the cost of the sale to the creditor. For the purpose  
14 of collecting an amount remaining unpaid on his judgment after repur-  
15 chase of property by an individual under this subsection, the creditor  
16 or his assignee may not make another levy on the property repurchased.

17 (d) Upon entry of the order of confirmation under (c) of this  
18 section and expiration of the time period for repurchase, the clerk may  
19 execute a deed to the property and when delivered it shall be sufficient  
20 to convey all title of the individual in the premises sold to the pur-  
21 chaser at the sale.

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

- 24 (1) a burial plot for the individual and his family;
- 25 (2) health aids reasonably necessary to enable the individual  
26 or a dependent to work or to sustain health;
- 27 (3) benefits paid or payable for medical, surgical, or hos-  
28 pital care to the extent they are or will be used to pay for the care;
- 29 (4) an award under AS 18.67 (Violent Crimes Compensation

1 Board) or a crime victim's reparations Act of another jurisdiction;

2 (5) benefits paid or payable as a longevity bonus under  
3 AS 47.45;

4 (6) compensation or benefits paid or payable and exempt  
5 under federal law;

6 (7) liquor licenses granted under AS 04;

7 (8) limited entry permits granted under AS 16.43, except as  
8 provided in that chapter.

9 (b) The right to benefits held by the state on behalf of an indi-  
10 vidual which may become payable by reason of disability, unemployment  
11 or illness, amounts held in the teachers' or public employees' retire-  
12 ment system, and child support <sup>payments due the obligee.</sup> (collections made by the child support  
13 enforcement agency) are exempt.

14 (c) Property of the state, a general law or home rule munici-  
15 pality, the Alaska State Housing Authority, the Alaska Municipal Bond  
16 Bank Authority, or other state public corporation is exempt.

17 (d) Real property held by a cemetery association established  
18 under AS 10.30 for the purpose of a cemetery and not exceeding 80 acres  
19 is exempt.

20 Sec. 09.38.020. EXEMPTIONS OF PERSONAL PROPERTY SUBJECT TO VALUE  
21 LIMITATIONS. (a) An individual is entitled to an exemption in property  
22 not to exceed an aggregate value of \$1,500 chosen by him from the fol-  
23 lowing categories of property:

24 (1) household goods and wearing apparel reasonably necessary  
25 for one household;

26 (2) if reasonably held for the personal use of the individual  
27 or a dependent, books and musical instruments; and

28 (3) family portraits and heirlooms of particular sentimental  
29 value to the individual.

1 (b) An individual is entitled to exemption of jewelry, not ex-  
2 ceeding \$500 in aggregate value, if held for the personal use of the  
3 individual or a dependent.

4 (c) An individual is entitled to exemption, not exceeding \$1,400  
5 in aggregate value, of implements, professional books, and tools of the  
6 trade.

7 (d) An individual is entitled to the exemption of pets to the  
8 extent of a value not exceeding \$500.

9 (e) An individual is entitled to an exemption of one motor vehicle  
10 to the extent of a value not exceeding \$1,500 if the full value of the  
11 motor vehicle does not exceed \$10,000.

12 Sec. 09.38.025. EXEMPTION OF UNMATURED LIFE INSURANCE AND ANNUITY  
13 CONTRACTS. (a) Except as provided in this section, an individual is  
14 entitled to exemption of unmatured life insurance and annuity contracts  
15 owned by him. If the contracts have accrued dividends and loan values  
16 available to the individual aggregating more than \$5,000, a creditor  
17 may obtain a court order requiring the individual debtor to pay the  
18 creditor, and authorizing the creditor on the debtor's behalf to obtain  
19 payment of, the amount of the accrued dividends and loan values in  
20 excess of \$5,000 or the amount of the creditor's claim, whichever is  
21 less.

22 (b) A judgment creditor or other claimant of an insurer may not  
23 levy upon any of the assets or securities held in this state as a de-  
24 posit for the protection of the insurer's policyholders or policyholders  
25 and creditors. Deposits under AS 21.09.270 may be levied upon if pro-  
26 vided in the order of the director of insurance, Department of Commerce  
27 and Economic Development, under which the deposit is made.

28 Sec. 09.38.030. EXEMPTION OF EARNINGS AND LIQUID ASSETS. (a)  
29 Except as provided in (b) and (c) of this section and AS 09.38.050, an

1 individual debtor is entitled to an exemption of his weekly net earnings  
2 not to exceed \$175. The weekly net earnings of an individual are  
3 determined by subtracting from the weekly gross earnings all sums  
4 required by law or court order to be withheld. The weekly net earnings  
5 of an individual paid on a monthly basis are determined by subtracting  
6 from the monthly gross earnings of the individual all sums required by  
7 law or court order to be withheld and dividing the remainder by 4.3.  
8 The weekly net earnings of an individual paid on a semi-monthly basis  
9 are determined by subtracting from the semi-monthly gross earnings all  
10 sums required by law or court order to be withheld and dividing the  
11 remainder by 2.17.

12 (b) An individual who does not receive earnings either weekly,  
13 semi-monthly or monthly is entitled to a maximum exemption for the  
14 aggregate value of cash and other liquid assets available in any month  
15 of \$700 except as provided in AS 09.38.050. The term "liquid assets"  
16 includes deposits, securities, notes, drafts, accrued vacation pay,  
17 refunds, prepayments, and receivables.

18 (c) A creditor may levy upon earnings exempt under (a) and (b) of  
19 this section if his claim is

20 (1) enforceable against exempt property under AS 09.38.-  
21 065(a)(1); or

22 (2) enforceable under an order of a court of bankruptcy  
23 under chapter XIII of the Bankruptcy Act (11 U.S.C., sec. 1001 et  
24 seq.).

25 (d) If the individual debtor is a nonresident, the limitations on  
26 garnishment imposed under 15 U.S.C. 1673 shall apply.

27 (e) The following property, unless exempt without limitation  
28 under AS 09.38.015, upon receipt by and while it is in the possession  
29 of the individual, shall be treated as earnings, income, cash, or other

1 liquid assets under this section:

2 (1) benefits paid by reason of disability, illness, or unem-  
3 ployment;

4 (2) money or property received for alimony or separate  
5 maintenance;

6 (3) proceeds of insurance, a judgment, or a settlement, or  
7 other rights accruing as a result of bodily injury of the individual or  
8 of the wrongful death or bodily injury of another individual of whom  
9 the individual was or is a dependent;

10 (4) proceeds or benefits paid or payable on the death of an  
11 insured, if the individual was the spouse or a dependent of the insured;  
12 and

13 (5) amounts paid under a stock bonus, pension, profit-  
14 sharing, annuity, or similar plan or contract, providing benefits by  
15 reason of age, illness, disability, or length of service.

16 Sec 09.38.035. CONTINUING LIEN ON WAGES. (a) In the case of a  
17 garnishment of earnings, when the garnishee's answer reflects that the  
18 defendant is employed by him, the judgment or balance due as reflected  
19 on the writ of garnishment shall become a lien on earnings due at the  
20 time of service of the writ to the extent that they are not exempt from  
21 garnishment, and that lien shall continue as to subsequent nonexempt  
22 earnings until the total subject to the lien equals the amount stated  
23 on the writ of garnishment, except that the lien on subsequent earnings  
24 shall terminate sooner if the employment relationship is terminated, if  
25 the underlying judgment is vacated, modified, or satisfied in full, or  
26 if the writ is dismissed.

27 (b) A garnishee shall pay into court all nonexempt earnings of  
28 the defendant subject to the continuing lien under (a) of this section.  
29 Accrued interest on the judgment or balance due as reflected on the

1 writ of attachment may be garnished under a supplemental writ of  
2 garnishment after the principal amount stated on the original writ of  
3 garnishment has been paid.

4 Sec 09.38.040. PRIORITIES BETWEEN CONTINUING LIENS. A lien  
5 obtained under AS 09.38.035 shall have priority over any subsequent  
6 garnishment lien or wage assignment. Any writ creating a continuing  
7 lien served upon an employer while a continuing lien imposed by a pre-  
8 vious writ is still in effect shall be answered by the employer with a  
9 statement that he is holding no funds and with a further statement  
10 stating when all previous liens are expected to terminate. The subse-  
11 quent writ shall have full effect from the termination of all prior  
12 liens or until it is otherwise terminated under AS 09.38.035; however,  
13 a subsequent writ is not effective if a writ in the same cause of  
14 action is pending at the time of service of garnishment.

15 Sec. 09.38.045. EFFECTIVE DATE OF CONTINUING LIEN. The effective  
16 date of a writ creating a continuing lien is the date of service upon  
17 the garnishee; however, if there are, on that date, liens by virtue of  
18 previous writs, the effective date is the date all previous writs  
19 terminate.

20 Sec. 09.38.050. INCREASED EXEMPTION AMOUNT. (a) An individual  
21 debtor who is in possession of money which was obtained as payment for  
22 an injury or disability may request the court to order an increase in  
23 the exemption amounts under AS 09.38.030. The individual debtor shall  
24 submit affidavits or offer testimony in support of his request as re-  
25 quired by the court. The court shall determine the exemption amount  
26 after consideration of the individual's responsibilities and all the  
27 present and anticipated property and income of the individual, including  
28 that which is exempt.

29 (b) The exemption amounts under AS 09.38.030 may be increased

1 when the individual submits an affidavit, under penalty of perjury,  
2 stating that his earnings alone support his household; by so doing, the  
3 maximum part of his aggregate disposable earnings for any week subject  
4 to execution may not exceed the amount by which his disposable earnings  
5 for that week exceed \$275, or, if the individual is claiming an exemp-  
6 tion for cash or other liquid assets under AS 09.38.030(b), a maximum  
7 amount of \$1,100 available in any month is exempt.

8 Sec. 09.38.055. BANKRUPTCY PROCEEDINGS. In a proceeding under  
9 the Bankrupt Act (11 U.S.C.) only the exemptions under AS 09.38.010,  
10 09.38.015(a), 09.38.020, 09.38.025 and 09.38.030 apply.

11 Sec. 09.38.060. TRACING EXEMPT PROPERTY. (a) If property, or a  
12 part of it, that could have been claimed as an exempt homestead under  
13 AS 09.38.010, a burial plot under AS 09.38.015(a)(1), a health aid  
14 under AS 09.38.015(a)(2), or personal property subject to a value  
15 limitation under AS 09.38.020(a)(1), (2) or 09.38.020(c), has been  
16 taken or sold by condemnation, or has been lost, damaged, or destroyed  
17 and the owner has been indemnified for it, the individual is entitled  
18 to an exemption of proceeds that are traceable for 12 months after the  
19 proceeds are received. An individual is entitled to an exemption of  
20 proceeds from the voluntary sale of an exempt homestead under AS 09.38.-  
21 010 that are traceable for six months after the proceeds are received.  
22 The exemption of proceeds under this subsection does not entitle the  
23 individual to claim an aggregate exemption in excess of the value  
24 limitation otherwise allowable under AS 09.38.010 or 09.38.020.

25 (b) Money or other property and proceeds exempt under this chapter  
26 are traceable under this section by application of the principle of  
27 first-in first-out, last-in first-out, or any other reasonable basis  
28 for tracing selected by the individual claiming the exemption.

29 Sec. 09.38.065. CLAIMS ENFORCEABLE AGAINST EXEMPT PROPERTY. (a)

1 Notwithstanding other provisions of this chapter,

2 (1) a creditor may make a levy against exempt property of  
3 any kind to enforce a claim for

4 (A) child support;

5 (B) unpaid earnings of up to one month's compensation  
6 or the full-time equivalent of one month's compensation for per-  
7 sonal services of an employee; or

8 (C) state or local taxes; and

(2) a creditor may make a levy against exempt property to  
10 enforce a claim for

11 (A) the purchase price of the property or a loan made  
12 for the express purpose of enabling an individual to purchase the  
13 property and used for that purpose;

14 (B) labor or materials furnished to make, repair,  
15 improve, preserve, store, or transport the property; and

16 (C) a special assessment imposed to defray costs of a  
17 public improvement benefiting the property.

18 (b) Except as provided in AS 09.38.070, limiting the enforcement  
19 of certain security interests, this chapter does not affect any statu-  
20 tory lien or security interest in exempt property.

21 (c) A creditor having a claim enforceable under (a) of this  
22 section against exempt property, before, at the time of, or a reasonable  
23 time after making a levy on property of an individual, shall serve on  
24 the individual a notice of the levy and of the basis for the creditor's  
25 right to make a levy on exempt property.

26 Sec. 09.38.070. LIMITATION ON ENFORCEMENT OF CERTAIN SECURITY  
27 INTERESTS IN EXEMPT GOODS. (a) This section applies to a security  
28 interest, except a purchase-money security interest, or a security  
29 interest in a motor vehicle, in an item of goods (1) possessed by an

1 individual, (2) being used by him or a dependent, and (3) exempt under  
2 AS 09.38.020(a) - (d).

3 (b) Unless the individual, after written notice to him of his  
4 rights under this section, voluntarily surrenders to the secured credi-  
5 tor possession of an item of goods to which this section applies, the  
6 creditor may not take possession of the item or otherwise enforce the  
7 security interest according to its terms without an order or process of  
8 court.

9 (c) The court may order or authorize process respecting any item  
10 of goods to which this section applies only after a hearing, upon  
11 notice to the individual of the hearing and of his rights at it. The  
12 notice shall be as directed by the court. The order or authorization  
13 may prescribe appropriate conditions as to payments upon the debt  
14 secured or otherwise. The court may not order or authorize process  
15 respecting the item if it finds upon the hearing both that the indivi-  
16 dual lacks the means to pay all or part of the debt secured and that  
17 continued possession or use of the item is necessary to avoid undue  
18 hardship for the individual or a dependent.

19 (d) The court, upon application of the creditor or the individual  
20 and notice to the other and after a hearing and finding of changed  
21 circumstances, may vacate or modify an order or authorization under  
22 this section.

23 Sec. 09.38.075. SPECIAL PROCEDURES RELATING TO LIMITED VALUE  
24 EXEMPTIONS. (a) Unless he is seeking collection of a claim enforceable  
25 against exempt property under AS 09.38.065, a creditor may obtain a  
26 levy on an individual's property of a kind listed in AS 09.38.020 only  
27 by complying with this section. Before levy, the creditor shall file  
28 with the court out of which the process issues

29 (1) an affidavit stating that he has reason to believe the

1 individual has property of a kind listed in AS 09.38.020 that is not  
2 exempt, identifying the property, setting out facts constituting the  
3 basis for believing the property is not exempt; and

4 (2) a request for an order by the court notifying the  
5 individual

6 (A) of the creditor's claim of a right to levy on the  
7 property identified as nonexempt,

8 (B) of the individual's right to contest the creditor's  
9 claim of a right to levy by filing with the clerk of the court, on  
10 or before a date fixed by the court, but not exceeding 15 days  
11 after the issuance of the order, a written objection to the pro-  
12 posed levy and a statement of the grounds for the objection and of  
13 his right to describe the property in lieu of setting its value,

14 (C) of the possible consequences of failure to respond  
15 to the notice as provided in (c) of this section, and

16 (D) of the information required by AS 09.38.0&5(a).

17 (b) Notice of an order issued in accordance with a request under  
18 (a) of this section, together with the creditor's affidavit, shall be  
19 served on the individual. The order shall restrain the individual from  
20 removing, encumbering, damaging, or disposing of any property of the  
21 kind listed in AS 09.38.020 for 30 days after receipt of the order,  
22 unless the court reduces, extends, or otherwise modifies the restraining  
23 order during the 30-day period.

24 (c) If exemption of property identified in a notice served on an  
25 individual under (b) of this section depends on its value, the indi-  
26 vidual may describe the property in his responsive statement and indi-  
27 cate the amount of any indebtedness chargeable against it. If the  
28 individual, within the time allowed by the order of the court, fails to  
29 respond to a notice served under (b) of this section that the creditor

1 believes the debtor has nonexempt property of a kind listed under  
2 AS 09.38.020, the court may order the individual to appear and disclose  
3 the description, location, and value of his property. If the individual  
4 fails to appear and disclose the information specified in the order, he  
5 waives objection to the creditor's levy on property of that kind.

6 (d) Except to the extent the procedure is prescribed by this  
7 section, AS 09.38.080(e) governs a proceeding for the determination of  
8 a contest in respect to a claim to exemption of property under AS 09.-  
9 38.020.

10 (e) Costs incurred in making, or proposing to make, a levy on  
11 property of a kind listed in AS 09.38.020 shall be paid out of the  
12 proceeds of a sale of property of that kind. If the proceeds of a sale  
13 of the property are insufficient to cover the costs incurred in pro-  
14 ceedings commenced under this section, the creditor shall pay the costs  
15 and may not recover them from the individual, notwithstanding any  
16 agreement of the parties to the contrary.

17 (f) The burden of proving the validity of an exemption by a pre-  
18 ponderance of the evidence is upon the individual claiming the exemp-  
19 tion.

20 Sec. 09.38.080. PROCEDURES APPLICABLE TO A LEVY ON PROPERTY OF AN  
21 INDIVIDUAL. (a) Except in a proceeding under AS 09.38.065, a creditor  
22 shall comply with this section in obtaining a levy on property of an  
23 individual. In a proceeding to levy on personal property of a kind  
24 listed in AS 09.38.020, a creditor shall comply with this section and  
25 AS 09.38.075.

26 (b) Before, at the time of, or within three days after levy  
27 against property of an individual, the creditor shall file with the  
28 court from which the process issued an affidavit stating that he has  
29 reason to believe the individual has property that is not exempt, iden-

1 tifying the property, and stating facts constituting the basis for that  
2 belief.

3 (c) Before, at the time of, or within three days after levy, the  
4 creditor shall serve on the individual a notice under AS 09 38.085,  
5 including a copy of the affidavit filed under (b) of this section.

6 (d) A bid for property that is less than the amount of the exempt  
7 value is not acceptable at a sale of property under a levy. If in-  
8 debtedness secured by a valid lien is chargeable against the proceeds  
9 of the sale, the bid must exceed the amount of the indebtedness secured  
10 plus the amount of the exempt value. If a sufficient bid is not re-  
11 ceived, the officer shall file a notation of the fact with the clerk of  
12 the court and return the property to the individual. The costs incurred  
13 during levy, offering the property for sale, and returning the property  
14 shall be assessed against the creditor and are not recoverable from the  
15 individual, notwithstanding any agreement of the parties to the con-  
16 trary.

17 (e) If any question arises as to the rights of an individual  
18 entitled to an exemption under this chapter, an interested person may  
19 file with the clerk of the court from which the process issued a state-  
20 ment of the claim of exemptions and the question raised. The statement  
21 shall be referred to the court as soon as practicable thereafter. The  
22 court shall order that notice of a hearing be given. After hearing the  
23 matter, the court shall make findings and issue an appropriate order.  
24 The court may award to the prevailing party costs of a proceeding under  
25 this subsection.

26 (f) An objection to levy on the ground that the property seized  
27 is exempt must be filed with the clerk of the court within 15 days  
28 after the levy. The burden of proving the validity of an exemption by  
29 a preponderance of the evidence is upon the individual claiming the

1 exemption. Failure to file a timely objection may be held to be a  
2 waiver of a claim to exemption in the property, unless for cause shown  
3 the court excuses the failure.

4 Sec. 09.38.085. CONTENTS OF NOTICE. (a) The notice required by  
5 AS 09.38.075(b) and 09.38.080(c) shall include the following information:  
6

7 (1) the amount and date of the judgment to be enforced by  
8 levy and sale or other mode of appropriating the individual's property;

9 (2) the name and address of the clerk of the court with whom  
10 objections must be filed;

11 (3) the name and address of the creditor and of his attorney,  
12 if any;

13 (4) a copy of the affidavit filed under AS 09.38.080(b);

14 (5) a summary statement in lay terminology of the exemptions  
15 provided by the laws of this state;

16 (6) a summary statement in lay terminology of the procedures  
17 for claiming exemptions, objecting to a levy on exempt property, changing  
18 venue, and exercising the right to repurchase homestead property from a  
19 sale before its confirmation; and

20 (7) a statement in lay terminology of the rights of persons  
21 other than the individual as provided in AS 09.38.090.

22 (b) The supreme court may prescribe forms to be used by creditors,  
23 debtors and court officers under this chapter. A notice substantially  
24 complying with this section is effective even though the notice contains  
25 errors if those errors do not result in substantial prejudice to the  
26 rights of the individual debtor or his dependents.

27 Sec. 09.38.090. ASSERTION OF RIGHTS BY ANOTHER. If an individual  
28 fails to select property entitled to be claimed as exempt or to object  
29 to a levy on the property or to assert any other right under this chap-

1 ter, the spouse or a dependent of the individual or any other person  
2 authorized by law may make the claim or objection or assert the rights  
3 provided by this chapter.

4 Sec. 09.38.095. JUDICIAL RELIEF. (a) An individual or the  
5 spouse, a dependent of the individual, or any other person authorized  
6 by law is entitled to injunctive relief, damages, or both, against a  
7 creditor or other person to prevent or redress a violation of this  
8 chapter as provided in the Alaska Rules of Civil Procedure. A court  
9 may award costs and reasonable attorney fees to a party entitled to  
10 injunctive relief or damages.

11 (b) For cause shown the court may relieve a person from the  
12 consequences of failing to take timely action to assert rights under  
13 this chapter.

14 Sec. 09.38.100. DEBTOR'S PROPERTY OWNED WITH ANOTHER. (a) If an  
15 individual and another own property in this state as tenants in common  
16 or tenants by the entirety, a creditor of the individual, subject to  
17 the individual's right to claim an exemption under this chapter, may  
18 obtain a levy on and sale of the interest of the individual in the  
19 property. A creditor who has obtained a levy, or a purchaser who has  
20 purchased the individual's interest at the sale, may have the property  
21 partitioned or the individual's interest severed.

22 (b) A partner's right in specific partnership property is exempt  
23 except on a claim against the partnership; when partnership property is  
24 attached for a partnership debt, the partners or any of them or the  
25 representatives of a deceased partner may not claim an exemption for  
26 that property under this chapter.

27 Sec. 09.38.105. WAIVER OF EXEMPTION. A waiver of exemption exe-  
28 cuted in favor of an unsecured creditor before levy on an individual's  
29 property is unenforceable, but a valid security interest may be given

1 in exempt property.

2 Sec. 09.38.110. FEDERAL REQUIREMENTS. If a federal department or  
3 agency issues a formal ruling that a section of this chapter relating  
4 to public assistance will cause a state plan for the delivery of ser-  
5 vices or benefits to be out of conformity with federal requirements,  
6 the section will not apply to the extent that it causes the program to  
7 be out of conformity with federal requirements.

8 Sec. 09.38.115. ADJUSTMENT OF DOLLAR AMOUNTS. (a) The dollar  
9 amounts in this chapter change, as provided in this section, according  
10 to and to the extent of changes in the Consumer Price Index for all  
11 Urban Consumers for the Anchorage Metropolitan Area compiled by the  
12 Bureau of Labor Statistics, United States Department of Labor (the  
13 index). The index for January of the year in which this section becomes  
14 effective is the reference base index.

15 (b) The dollar amount change on July 1 of each even-numbered year  
16 if the percentage of change, calculated to the nearest whole percentage  
17 point, between the index for December of the preceding year and the  
18 reference base index, is 10 percent or more, but

19 (1) the portion of the percentage change in the index in  
20 excess of a multiple of 10 percent is disregarded and the dollar amounts  
21 change only in multiples of 10 percent of the amounts appearing in this  
22 chapter on the effective date of this chapter; and

23 (2) the dollar amounts do not change if the amounts required  
24 by this section are those currently in effect as a result of earlier  
25 application of this section.

26 (c) If the index is revised, the percentage of change is calcu-  
27 lated on the basis of the revised index. If a revision of the index  
28 changes the reference base index, a revised reference base index is  
29 determined by multiplying the reference base index applicable by the

1 rebasing factor furnished by the United States Bureau of Labor Statis-  
2 tics. If the index is superseded, the index referred to in this section  
3 is the one represented by the Bureau of Labor Statistics as reflecting  
4 most accurately changes in the purchasing power of the dollar for Alas-  
5 kan consumers.

6 (d) The Department of Labor shall adopt a regulation announcing  
7 (1) on or before April 30 of each year in which dollar  
8 amounts are to change, the changes in dollar amounts required by (b) of  
9 this section; and

10 (2) promptly after the changes occur, changes in the index  
11 required by (c) of this section, including, if applicable, the numerical  
12 equivalent of the reference base index under a revised reference base  
13 index and the designation or title of any index superseding the index.

14 (e) The Department of Labor shall also provide notification of a  
15 change in exemption amounts required under (c) of this section to the  
16 clerks of court in each judicial district of the state.

17 Sec. 09.38.120. PROTECTION OF PROPERTY OF RESIDENTS AND NONRESI-  
18 DENTS. (a) Residents of this state are entitled to the exemptions  
19 provided under this chapter. Nonresidents are entitled to the exemp-  
20 tions provided by the law of the jurisdiction of their residence.

21 (b) The term "resident" means an individual who is physically  
22 present in the state and who intends to maintain his permanent home in  
23 Alaska.

24 Sec. 09.38.125. DEFINITIONS. As used in this chapter, unless the  
25 context otherwise requires,

26 (1) "burial plot" means a parcel of real estate used for  
27 burial of human remains and which is located within an area designated  
28 for cemetery purposes by the state or a general law or home rule munici-  
29 pality;

1 (2) "debt" means a legally enforceable monetary obligation  
2 or liability of an individual, whether arising out of contract, tort,  
3 or otherwise;

4 (3) "dependent" means an individual who derives support  
5 primarily from another individual;

6 (4) "earnings" means money received by the individual for  
7 personal services and denominated as wages, salary, commissions, or  
8 otherwise;

9 (5) "exempt" means protected, and "exemption" means pro-  
10 tection, from subjection to process or a proceeding to collect an unse-  
11 cured debt;

12 (6) "household goods" includes those items that make a resi-  
13 dence habitable according to modern standards;

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

17 (8) "levy" means the seizure of property under a writ of  
18 attachment, garnishment, execution, or any similar legal or equitable  
19 process issued for the purpose of collecting an unsecured debt;

20 (9) "lien" means a security interest, or a judicial,  
21 statutory, or common-law lien, or any other interest in property secur-  
22 ing payment of a debt or performance of an obligation;

23 (10) "principal residence" means the actual dwelling place of  
24 the individual or his dependents and includes real and personal prop-  
25 erty;

26 (11) "security interest" means an interest in property created  
27 by contract to secure payment or performance of an obligation;

28 (12) "serve notice" means to give the person to be served a  
29 written personal notice in the same manner a summons in a civil action

1 is served, or to mail the notice to the person's last known address by  
2 first-class mail and by using a form of mail requiring a signed receipt;

3 (13) "statutory lien" means a lien arising by force of a  
4 statute under specified circumstances or conditions, but does not in-  
5 clude a security interest;

6 (14) "value" means fair market value of an individual's  
7 interest in property, exclusive of liens of record;

8 (15) "wearing apparel" means clothing and garments intended  
9 and adapted to be worn on the person to protect the person against the  
10 elements or to provide personal comfort or decency, or serving to orna-  
11 ment the person but does not include jewelry.

12 Sec. 09.38.110. SHORT TITLE. This chapter may be cited as the  
13 Alaska Exemptions Act.

14 \* Sec. 3. AS 14.25.200 is amended to read:

15 Sec. 14.25.200. EXEMPTION FROM TAXATION AND PROCESS. (a) Bene-  
16 fits and other amounts held in the retirement fund on behalf of the  
17 members are exempt from Alaska state and municipal taxes and are not  
18 subject to anticipation, alienation, sale, transfer, assignment, pledge,  
19 encumbrance, or charge [, GARNISHMENT, EXECUTION OR LEVY] of any kind,  
20 either voluntary or involuntary, before they are received by the person  
21 entitled to the amount under the terms of the system, and any attempt  
22 to anticipate, alienate, sell, transfer, assign, pledge, encumber,  
23 charge, or otherwise dispose of any right to amounts accrued in the  
24 retirement fund is void.

25 (b) Teachers' retirement salaries and other amounts held in the  
26 retirement fund on behalf of the members are exempt from garnishment,  
27 execution or levy as provided in AS 09.38 (exemptions).

28 \* Sec. 4. AS 23.20.405 is amended by adding a new subsection to read:

29 (e) Benefits paid or payable under this chapter are exempt from

1 levy to enforce the collection of a debt as provided in AS 09.38 (exemp-  
2 tions).

3 \* Sec. 5. AS 23.30.160 is amended to read:

4 Sec. 23.30.160. ASSIGNMENT AND EXEMPTION FROM CLAIMS OF CREDITORS.

5 (a) No assignment, release, or commutation of compensation or benefits  
6 due or payable under this chapter, except as provided by this chapter,  
7 is valid [, AND THE COMPENSATION AND BENEFITS ARE EXEMPT FROM ALL  
8 CLAIMS OF CREDITORS AND FROM LEVY, EXECUTION, AND ATTACHMENT OR OTHER  
9 REMEDY FOR RECOVERY OR COLLECTION OF A DEBT]. This exemption may not  
10 be waived.

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

13 \* Sec. 6. AS 34.15.140(b) is repealed and reenacted to read:

14 (b) A homestead held by tenants by the entirety is exempt from  
15 execution on a debt to the value specified under AS 09.38.010(b) and  
16 may be liable for the debts of either tenant after partition of the  
17 tenancy under AS 09.38.100.

18 \* Sec. 7. AS 39.35.500 is amended to read:

19 Sec. 39.35.500. SAFEGUARD OF EMPLOYEE FUNDS HELD BY THE SYSTEM.

20 (a) Employee contributions and other amounts held in the pension fund  
21 are exempt from Alaska state and local taxes. Amounts held on behalf  
22 of, or payable to, any employee or other person who is or may become  
23 eligible for benefits under the system are not subject to anticipation,  
24 alienation, sale, transfer, assignment, pledge, encumbrance, or charge  
25 [, GARNISHMENT, EXECUTION, OR LEVY] of any kind, either voluntary or  
26 involuntary, before being received by the person entitled to the amount  
27 under the terms of the system. An attempt to anticipate, alienate,  
28 sell, transfer, assign, pledge, encumber, charge, or otherwise dispose  
29 of a right to amounts held under the system is void.

1           (b) Employee contributions and other amounts held in the pension  
2 fund and retirement benefits payable under this chapter are exempt from  
3 levy to enforce the collection of a debt as provided in AS 09.38 (exemp-  
4 tions).

5 \* Sec. 8. AS 47.25.210 is amended to read:

6           Sec. 47.25.210. ALIENATION AND ATTACHMENT. Assistance granted  
7 under AS 47.25.120 - 47.25.300 is inalienable by assignment or transfer  
8 and is exempt from garnishment, levy, or execution as provided in  
9 AS 09.38 (exemptions) [UNDER THE LAWS OF THIS STATE].

10 \* Sec. 9. AS 47.25.395 is amended to read:

11           Sec. 47.25.395. ALIENATION AND ATTACHMENT. Assistance granted  
12 under AS 47.25.310 - 47.25.420 is inalienable by assignment or transfer  
13 and is exempt from garnishment, levy, or execution as provided in  
14 AS 09.38 (exemptions) [UNDER THE LAWS OF THIS STATE].

15 \* Sec. 10. AS 47.25.550 is amended to read:

16           Sec. 47.25.550. ALIENATION AND ATTACHMENT. Assistance granted  
17 under AS 47.25.430 - 47.25.610 is inalienable by an assignment or  
18 transfer and is exempt from garnishment, levy, or execution as provided  
19 in AS 09.38 (exemptions) [UNDER THE LAWS OF THIS STATE].

20 \* Sec. 11. AS 47.25.710 is amended to read:

21           Sec. 47.25.710. ALIENATION AND ATTACHMENT. Assistance granted  
22 under AS 47.25.620 - 47.25.780 is inalienable by assignment or transfer  
23 and is exempt from garnishment, levy, or execution as provided in  
24 AS 09.38 (exemptions) [UNDER THE LAWS OF THE STATE].

25 \* Sec. 12. AS 47.25.880 is amended to read:

26           Sec. 47.25.880. ALIENATION AND ATTACHMENT. Assistance granted  
27 under AS 47.25.790 - 47.25.970 is inalienable by assignment or transfer  
28 and is exempt from garnishment, levy, or execution as provided in  
29 AS 09.38 (exemptions) [UNDER THE LAWS OF THIS STATE].

1 \* Sec. 13. AS 47.45.120 is amended to read:

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

7 (b) Bonuses received under this chapter are exempt from levy to  
8 enforce the collection of a debt as provided in AS 09.35 (exemptions).

9 \* Sec. 14. AS 09.35.035, 09.35.040, 09.35.050, 09.35.080 - 09.35.090,  
10 09.35.120; AS 21.24.110; AS 21.42.320 - 21.42.340, 21.42.350; AS 23.20.405(b)  
11 and (c); and AS 32.05.200(b)(3) are repealed.

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

## Background on CSHB 74 (Rls) am on Debtor and Creditor

CSHB 74 (Rules) deals with the nature and extent of a judgment debtor's rights as against the rights of a judgment creditor. It is often referred to as the "exemptions" bill since it defines what minimum property of a debtor is exempt from seizure and sale to satisfy a judgment. It also contains (1) procedures designed to be relatively simple for the creditor while assuring protection of the debtor's rights, and (2) an indexing of the dollar amounts of exemptions to the fluctuation of the consumer price index, thereby avoiding the need for frequent adjustments by the legislature.

Attached is a commentary that was drawn by Jim Baldwin, the Legislative Affairs Agency draftsman who worked with the code revision commission on the bill. (Baldwin is now the executive department representative on the commission. However, when the bill was drafted in 1977 he was not in a policy position with regard to the content of the bill.)

The bill was introduced in the 1979 legislative session as HB 56. It is basically a workaday procedural and cleanup bill; it had no active constituency either pushing it or opposing it, and it was not scheduled for committee hearings in the 1979 or 1980 sessions.

The bill was reintroduced in the 1981 legislature as HB 74. It was given staff work and committee hearings in the House Judiciary Committee in 1981 and was given more work and hearings by the reconstituted Judiciary Committee in 1982, resulting in a Judiciary CS bill that included figures marked-up for inflation and changed the bill's treatment of liquor licenses and limited entry permits so as to leave the exemption of these licenses and permits just as it is in existing law. There was no significant difference between the treatment given the bill by the House Judiciary Committee as constituted in 1981 and the treatment given the bill by the reconstituted committee in 1982.

The Rules Committee passed out the Judiciary substitute, but some of the figures were challenged on the floor, the Judiciary substitute was rejected, and the bill was returned to Rules.

By this point there were a core of representatives of differing political persuasions who thought the basic bill worth saving. Since the numbers (the dollar amounts) in the bill seemed to be the sticking points, the Rules Committee got out a substitute bill, mainly adjusting the dollar amounts. In outline these adjustments were a markup for inflation of only the two basic exemption figures--the homestead exemption and the wage exemption--leaving most of the other figures unchanged.

In the file of the code revision commission and in the file of the House committees there is correspondence which follows through the processing of the bill in the House.

Amendments to SB 74 appearing in CSHB 7 (RIs) am

- Page 1, line 20: Change "\$15,000" to \$27,000" A
- Page 1, lines 26 and 28: Change \$28,000" to \$27,000" A+B
- Page 3, lines 6-9: Delete all material and insert  
"(7) liquor licenses granted under  
AS 04; (8) limited entry permits  
granted under AS 16.43, except as  
provided in that chapter." G
- Page 3, line 10: Change "(c)" to (b)"
- Page 3, line 15: Change "(d)" to "(c)"
- Page 3, line 18: Change "(e)" to "(d)"
- Page 4, line 5: Change \$1,000" to "\$1,400" C
- Page 4, line 9: Change \$3,000" to "\$500" D
- Page 5, line 3: Change "125" to "175" F
- Page 6, line 5: Delete "support," E
- Page 8, line 6: Change "\$200" to "\$275" F
- Page 8, line 8: Change "\$800" to "\$1,100" F
- Page 8, lines 11-13: Delete the sentence starting on  
line 11 G
- Page 8, line 25: Change "three" to "six" H
- Page 9, line 8: (A) delete "alimony,"  
insert "child"  
After "support"  
Delete ", or separate maintenance" I
- Page 11, line 18: Delete "and"
- Page 11, line 20: Change period to comma
- Page 11, following line 20: Insert "(D) of the  
information required by AS 09.38.085(a)." J
- Page 14, line 9: Before "AS 09.38.080(c)" insert  
"AS 09.38.075(b) and"
- Page 14, line 20: After "property" insert "changing  
venue," K
- Page 16, line 13: After "for" insert "All Urban  
Consumers for"
- Page 16, line 14: After "Area" delete "Consumer Price  
Index" L

Amendments to HB 74 (cont'd)

Page 16, line 16: Change "November" to "January"

Delete "preceding the year"

Page 22, line 12: After "09.35.050" change the comma  
to a semicolon

Page 22, line 13: Change "AS 21.42.320--21.42.350" to  
"AS 21.42.320--21.42.340, AS 21.-  
42.350"

L

M

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EXECUTIVE SECRETARY  
BILLY G. BERRIER

MEMORANDUM

TO: Senator Patrick M. Rodey, Chairman  
Senate Judiciary Committee  
ATTN: Kevin Bruce, Committee Aide

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

DATE: May 3, 1982

RE: CSHB 74 (Rls) am--Debtor and Creditor

As you know, there were several committee hearings on HB 74 in the House.

You have the commentary prepared by Jim Baldwin for the original bill.

To supplement that commentary, there are attached:

- bill;
- (1) a statement on the general background of the
  - (2) a review of the changes from that bill as they appear in CSHB 74 (Rls) am; and
  - (3) the changes by page and line.

The line-and-page changes are marked with penciled letters that are also marked on the page explaining the changes, providing a cross reference.

DR:chw

Attachments

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EXECUTIVE SECRETARY  
BILLY G. BERRIER

MEMORANDUM

TO: Senator Patrick M. Rodey, Chairman  
Senate Judiciary Committee

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

DATE: April 27, 1982

RE: CSHB 74 (Rls) am (exemptions)

Except by my memorandum to Senator Mulcahy, attached, and by contacts Kate Walsh made with Michael Thill soon after CSHB 74 (Rls) am reached the Senate Labor and Commerce Committee, we have not sought to get the bill heard by the committee.

We need your guidance.

We have understood that you will ask Senator Mulcahy, Chairman of the Labor and Commerce Committee, to waive jurisdiction so the bill can be heard by the Judiciary Committee and can quickly get to the floor. Should I also be trying to reach Senator Mulcahy, and, if so, should my effort be to get the bill released to Judiciary? Or should I leave the waiver question to you?

A great deal of work was done by committees in the House to get an understanding of the bill. This did not result in large changes, however, and the bill retains the structure and the basic provisions of the code revision commission bill.

Please note that the attachments to my memorandum to Senator Mulcahy include the history of the bill and a statement of the difference between the original bill and CSHB 74 (Rls) am, as well as the general commentary prepared by Jim Baldwin.

I will do anything you may suggest to help move the bill to passage.

DR:chw

Attachments

# MEMORANDUM

# State of Alaska

TO: Joseph K. Donohue  
Deputy Commissioner, Taxation

DATE: April 30, 1982

FILE NO:

TELEPHONE NO:

FROM: Marilla Gemmer  
Director, Enforcement Division

SUBJECT: CSHB 74 (Rules) am  
Requested Amendments

Dan Copeland, Director of Child Support Enforcement Division and this writer request that the following three amendments be added to CSHB 74 am:

No. 1.

A.S 09.65.132 is amended to read:

Sec. 09.65.132 (g) An income assignment under this section has priority over all other attachments, executions, garnishments, or other assignments unless otherwise ordered by the court. An income assignment is not limited to the wages of an obligor but may include all money owed to the obligor not otherwise exempt by law. The exemptions from execution by judgment debtors under AS 09.38 [AS 09.35.080 (A) AND THE RESTRICTIONS FROM EXECUTION BY JUDGEMENT DEBTORS UNDER AS 09.35.080 (b)(1)] do not apply to income assignments under this section; however, 50 percent of the gross wages of the obligor or \$100 a week, whichever is less, is exempt from execution under this section.

No. 2.

AS 43.20.270 is amended to read:

Sec.43.20 270. DISTRAINT ON PROPERTY. (b) Notwithstanding the provisions of AS 09.35.070, 09.38.010-09.38.020 (-09.35.090) 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:

No. 3.

As.47.23.250 is amended to read:

Sec.47.23.250.(1) The exemptions from execution by judgment debtors under AS 09.38 [AS 09.35.080(b)(1)] do not apply to proceeding to enforce the payment of child support under AS 47.23.230 - 47.23.270; however, 50 percent of the gross wages of the obligor or \$100 a week whichever is less, is exempt from execution under AS 47.23.230 - 47.23.270. (29 ch 126 SLA 1977; am 8 ch 96 SLA 1981)

Background on CSHB 74 (Rls) am on Debtor and Creditor

CSHB 74 (Rls) deals with the nature and extent of a judgment debtor's rights as against the rights of a judgment creditor. It is often referred to as the "exemptions" bill since it defines what minimum property of a debtor is exempt from seizure and sale to satisfy a judgment. It also contains (1) procedures designed to be relatively simple for the creditor while assuring protection of the debtor's rights, and (2) an indexing of the dollar amounts of exemptions to the fluctuation of the consumer price index, thereby avoiding the need for frequent adjustments by the legislature.

Attached is a commentary that was drawn by Jim Baldwin, the Legislative Affairs Agency draftsman who worked with the code revision commission on the bill. (Baldwin is now the executive department representative on the commission. However, when the bill was drafted in 1977 he was not in a policy position with regard to the content of the bill.)

The bill was introduced in the 1979 legislative session as HB 56. It is basically a workaday procedural and cleanup bill; it had no active constituency either pushing it or opposing it, and it was not scheduled for committee hearings in the 1979 or 1980 sessions.

The bill was reintroduced in the 1981 legislature as HB 74. It was given staff work and committee hearings in the House Judiciary Committee in 1981 and was given more work and hearings by the reconstituted Judiciary Committee in 1982, resulting in a Judiciary CS bill that included figures marked-up for inflation and changed the bill's treatment of liquor licenses and limited entry permits so as to leave the exemption of these licenses and permits just as it is in existing law. There was no significant difference between the treatment given the bill by the House Judiciary Committee as constituted in 1981 and the treatment given the bill by the reconstituted committee in 1982.

The Rules Committee passed out the Judiciary substitute, but some of the figures were challenged on the floor, the Judiciary substitute was rejected, and the bill was returned to Rules.

By this point there were a core of representatives of differing political persuasions who thought the basic bill worth saving. Since the numbers (the dollar amounts) in the bill seemed to be the sticking points, the Rules Committee got out a substitute bill, mainly adjusting the dollar amounts. In outline these adjustments were a markup for inflation of only the two basic exemption figures--the homestead exemption and the wage exemption--leaving most of the other figures unchanged.

The vote for the bill in the House, after a minor floor amendment was 34-2.

In the Senate, the bill, now CSHB 74 (Rls) am, was referred to Labor and Commerce. After a review of the bill by the chairman, the referral to Labor and Commerce was waived and the bill was referred to Judiciary.

The Senate Judiciary Committee held hearings on the bill on May 3, 1982, and on May 7, 1982, and voted the bill out with no changes.

On May 8, 1982, the bill was referred to Rules.

In the file of the code revision commission there are notes on the amendments to the original bill, and there is correspondence which follows through the processing of the bill in both houses.

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EXECUTIVE SECRETARY  
BILLY G. BERRIER

MEMORANDUM

TO: Senate Judiciary Committee

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

DATE: May 6, 1982

RE: CSHB 74 (Rls) am (debtor and creditor)

Following the hearing May 3, 1982, on the exemptions bill, CSHB 74 (Rls) am, I got from committee staff copies of two memoranda, one from the Child Support Enforcement Agency (Revenue) dated May 3, 1982, concerning exemptions when a claim is for child support and one from the Department of Labor dated April 30, 1982, concerning the consumer price index.

When the Judiciary Committee met on the bill neither Jim Baldwin nor I knew that the amendments set out in these memoranda were to be proposed.

This memorandum covers the subject matter of the two memoranda and other questions that were raised at the hearing.

The Revenue memorandum, May 3, 1982. Ms. Gemmer is correct that cross references in AS 09.65.132(g), AS 43.20.-270(b), and AS 47.23.250 would be obsolete if CSHB 74 (Rls) am is enacted in its present form. However, there are two reasons why it is not necessary to make the amendments at this time:

(a) The cross-references are clearly matters that can be included in the next session's revisor's bill. Donna Pegues is my authority for this.

(b) In the interim, the obsolete cross references do no harm. I called and talked with Dan Copeland, Director of Child Support Enforcement, on April 9, 1982, about the child support sections referred to (No. 1 and No. 3 in the Gemmer memorandum). At that time we both recognized that the cross references would be obsolete, but that seemed to be of no concern for two reasons:

(1) The repeal of the sections that appear as cross-references in AS 09.65.132(g) and AS 47.23.250(i) does not affect the meaning of the two sections: The old exemptions in AS 09.35 will not apply since they will be repealed. The new exemptions in AS 09.38 will not apply when the claim is for collection of child support, because the bill includes a section, AS 09.38.065, that says the exemptions do not apply when the claim is for child support.

(2) In the instances when the claim for child support has been brought within the auspices of the Child Support Enforcement Agency for use of the "order to withhold and deliver" under AS 47.23.250(i), and in the instances when the wage assignment under AS 09.65.132 has gone into effect, the minimal exemption provided in these two sections applies.

(c) The same thing is true of Item No. 2 in the Gemmer memorandum as is true of Items Nos. 1 and 3. The meaning of AS 43.20.270(b) is the same whether or not the requested change is made, and the change can be made in next year's revisor's bill.

The Department of Labor memorandum, April 30, 1982. Please see the attached memorandum showing that the request for changes related to the December consumer price index is withdrawn. If the bill has to go back to the House for other reasons, these changes, or a form of them, could be included, but the needed change or changes can wait for the 1983 revisor's bill with no problem.

Please see also the attached memorandum to Donna Pegues, a co-revisor of statutes.

Child support matters. There will be differences of opinion on exemptions relating to child support. A comparison is attached as an Appendix.

The question is whether there is likelihood of losing the good features of the bill by opening up this area for further legislative action.

DR:chw

Attachments

## APPENDIX

### Comparison of Exemptions Relating to Child Support in Present Law, HB 74 and CSHB 74 (Rls) am

#### Present law.

AS 09.35.085 provides for an exemption of the amount the judgment debtor is required to pay to a court trustee as child support.

AS 09.55.210(2) provides for an exemption of an amount the judgment debtor has assigned to a court trustee for child support.

There is no general exemption of the amount a judgment debtor is required to pay as child support.

The usual exemption; can be claimed by a judgment debtor, even when the claim against him is for enforcement of child support except there is a more limited exemption (1) when the claim is made for funds to be paid to the Child Support Enforcement Agency under assignment procedures of AS 09.65.132, or (2) when the claim is being enforced by the Child Support Enforcement Agency under the procedure of AS 47.23.250 using an "order to withhold and deliver."

#### Original bill (HB 74)

(a) The original bill (AS 09.38.065) provides that no exemption is available to the debtor when the claim is for child support. However, since AS 09.65.132(g) and AS 47.23.-250(i) are not repealed by the bill, it appears that when the claim for child support is made by the Child Support Enforcement Agency under one of those two sections (statutory wage assignment or "order to withhold and deliver") a minimal exemption (the lesser of \$100 per week or 50% of weekly earnings) can be claimed by the debtor.

(b) The money (up to \$175 per week) that has been received as a child support payment is exempt when it is in the hands of the person who has received it (the mother, usually), but that \$175 exemption is an aggregate exemption that covers money from certain other sources as well--unemployment compensation, disability or injury payments, pension payments.

#### Bill that passed the House (CSHB 74 (Rls) am)

(a) Child support is not exempt in the hands of the person (the mother, usually) who receives it. (This is existing law, also.)

(b) Child support not yet paid by the obligor (the father, usually) is not protected (exempt) from a judgment

creditor's claim against him, except in the rare cases where he has given an assignment of his wages to the court trustee for child support payments (AS 47.23.070(c)).

(c) A person can claim no exemptions when the claim is for child support, except for the limited exemption under existing law in those instances when the Child Support Enforcement Agency is involved (AS 09.65.132(g) and AS 47.23.250(i)).

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EXECUTIVE SECRETARY  
BILLY G. BERRIER

## MEMORANDUM

TO: Donna Pegues  
Co-Revisor of Statutes  
Legislative Affairs Agency

FROM: Dickerson Regan, Consultant  
Alaska Code Revision Commission

DATE: May 5, 1982

RE: CSHB 74 (Rls) am (exemptions)

We talked about CSHB 74 (Rls) am on exemptions.

HB 74 and its identical predecessor have been in the legislative process for four years. This year and last year, House committees considered the bill in depth. Finally, it came through the House substantially in its original form, with amendments that did not go to the heart of the bill.

No two legislators will agree on all the inclusions, exclusions and dollar amounts in a bill on exemptions. I see little chance of its passage at this stage of the legislature if it is amended in the Senate. As I see it, a lot of committee and staff time, and the time and effort of the code revision commission, probably will be wasted if the bill is further amended at this point.

Therefore, I ask whether, if the bill is enacted as it is, certain corrections could be made in the annual revisor's bill in 1983.

(1) Regarding the consumer price index. On page 16, line 17 of the bill, in referring to the consumer price index, the term "index for December" is used. At present there is no "index for December." The consumer price index comes out every other month. There is no change in the consumer price index issued for November until an index is issued for January. This is the subject of the attached memorandum dated April 30, 1982, from Judy Knight of the Department of Labor to Senator Rodey and the Judiciary Committee.

The question is, if the bill is enacted referring to a "December" index, can the next revisor's bill simply change the term to "November"? The November figure remains

unchanged during December, and the change could be considered a change in form only, as I see it.

But, of course, the question is how you and David Walker see it.

If you have a definite position on the question, please let me know by marking your concurrence here, so I can provide a copy to the Judiciary Committee. That committee then can better make its choices of what to do with the bill.

(2) Regarding cross-references. Attached is a memorandum from Marilla L. Gemmer to Joseph K. Donohue. It refers to cross references in three sections of law that the Department of Revenue administers.

You will remember that you and I looked over the Gemmer memorandum together May 4th. You agreed that the changes proposed in the memorandum could be made in the 1983 revisor's bill. If that still is your opinion, please add your concurrence here or provide me with something else I can give to the committee to clarify the point.

Thanks.

DR:chw

Attachments

*This correction will be privileged in 1983 revisor's bill.  
D. Pegues  
5/6/82*

*These corrections will be included in the 1983 revisor's bill.  
D. Pegues  
5/6/82*

ALASKA CODE REVISION COMMISSION



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EXECUTIVE SECRETARY  
BILLY G. BARRIER

MEMORANDUM

TO: Judy Knight, Legislative Liason  
Department of Labor

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

DATE: May 5, 1982

RE: CSHB 74 (Rls) am--Debtor and Creditor

This follows up the conversation I had with you and Chris Miller of the Research and Analysis Section on May 4th, 1982.

As I understood from our conversation you had, since you testified May 3rd, discussed with Art Peterson of the Department of Law the content of the May 3rd memorandum you had addressed to Senator Rodey and the Senate Judiciary Committee. Based upon the advice received from Art Peterson, I understand that you no longer ask for the amendments proposed in your May 3rd memorandum unless the committee finds there is a need for some other amendments to the bill. I understand there are at least three reasons you are withdrawing your request.

(1) The Revisor of Statutes in the revisor's bill next session probably can take care of the fact that at present a consumer price index comes out every other month and no consumer price index is issued for "December," the month referred to in the bill. My memorandum to the Revisor of Statutes is attached.

(2) The Commissioner of Labor can "adopt" a regulation by April 30, the date used in the bill, even if a January CPI were to be used in preparing the regulation. Therefore, a change in the "April 30" date on page 17, line 7, is not necessary. What makes the difference is the distinction between the date of "adoption" and the date thirty days later when a regulation takes effect.

Judy Knight, Legislative Liason  
May 5, 1982  
Page 2

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(3) In any event, since the computation is made and the regulation is called for every other year, there will be no need for any action by the Department of Labor before another legislature has time to enact the annual Revisor's Bill, and to deal with unforeseen problems, if any problems appear.

After we talked, I talked with Donna Pegues, one of the co-revisors of statutes. Whether the "December" on page 16, line 17 is changed to "November" or "January" is not of much significance. Please see my attached memorandum to Donna in which I suggest that since the November CPI does not change until a January CPI is issued, it would be a revisor's prerogative to change the word to "November." With that change there would be more than ample time to adopt the regulation by April 30, the date in the bill.

If you agree with what I have set out in this memorandum, please add your concurrence so I can provide it to the committee.

DR:chw

Attachment

I concur.

*Glenn Lumbell, Deputy Commissioner*

*Jn*  
\_\_\_\_\_  
Judy Knight, Legislative Liason  
Department of Labor


# MEMORANDUM

# State of Alaska

TO: Joseph K. Donohue  
Deputy Commissioner - Taxation

DATE: May 3, 1982

FILE NO:

FROM: Marilla L. Gemmer   
Director  
Division of Enforcement

TELEPHONE NO:

CSHB 74 (Rules) am  
Requested Amendments

SUBJECT:

Dan Copeland, Director of Child Support Enforcement Division and this writer request that the following three amendments be added to CSHB 74 am:

No. 1.

AS 09.65.132 is amended to read:

Sec. 09.65.132. (g) An income assignment under this section has priority over all other attachments, executions, garnishments, or other assignments unless otherwise ordered by the court. An income assignment is not limited to the wages of an obligor but may include all money owed to the obligor not otherwise exempt by law. The exemptions from execution by judgment debtors under AS 09.38 [AS 09.35.080 (a) and restrictions from execution by judgment debtors under AS 09.35.080(b)(1)] do not apply to income assignments under this section; however 50 percent of the gross wages of the obligor or \$100 a week, whichever is less, is exempt from execution under this section.

No. 2.

AS 43.20.270 is amended to read:

Sec. 43.20.270. DISTRAINT ON PROPERTY. (b) Notwithstanding the provisions of AS 09.35.070, 09.38.010-09.38.020 [-09.35.090] 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:

No. 3 - Corrected from memorandum of April 30, 1982.

AS 47.23.250 is amended to read:

Sec. 47.23.250. (i) The exemptions from execution by judgment debtors under AS 09.35.080(a) and the restrictions from execution by judgment debtors under AS 09.38 [AS 09.35.080(b)(1)] do not apply to proceedings to enforce the payment of child support under AS 47.23.230-47.23.270; however, 50 percent of the gross wages of the obligor or \$100 a week, whichever is less, is exempt from execution under AS 47.23.230-47.23.270. (sec. 29 ch 126 SLA 1977; am sec. 8 ch 96 SLA 1981),

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

P. O. BOX 1149  
JUNEAU, ALASKA 99811

Phone: 465-2700

April 30, 1982

The Honorable Patrick M. Rodey  
Chairman, Senate Judiciary Committee  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Dear Senator Rodey:

The Department of Labor was not aware of the requirements prescribed in Section 09.38.115, page 16 and 17, of Committee Substitute for House Bill No. 74 (Rules) until the bill was calendared by the House of Representatives. The department does have the information and the requirements of this section would not present a work load problem.

However, several technical changes are needed. The Consumer Price Index for Anchorage is only published bi-monthly and there is approximately a 30-day delay in publishing data. For instance, data published for January of a given year would not be available until the end of February. Therefore, the following changes are requested.

Page 16, line 17 should be amended to read:

"point, between the index for January of the even-numbered year . . ."

Page 17, line 7 should be amended to read:

"1) On or before June 15 of each year . . ."

There is no consumer price index for December and the date change would insure the department could adopt the regulation and adhere to the statutory time requirements for promulgating regulations.

The Honorable Patrick M. Rodey  
April 30, 1982  
Page 2

Thank you for your consideration of these amendments. If a hearing is scheduled, a representative of the department would be available to provide testimony. A fiscal note is enclosed.

Sincerely,

*Judy Knight*

Judy Knight  
Legislative Liaison

Enclosure

Marked with changes  
as bill passed the House -  
CS HB 74 (Rls) am

Introduced: 2/4/81  
Referred: Judiciary

BY THE RULES COMMITTEE BY REQUEST  
OF THE LEGISLATIVE COUNCIL (for  
the Code Revision Commission)

1 IN THE HOUSE

2 HOUSE BILL NO. 74

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the rights of debtors and credi-  
7 tors."

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

9 \* Section 1. It is the intent of the legislature to modernize the proce-  
10 dures for execution on a judgment and to afford to a judgment debtor adequate  
11 protection of his personal property and income necessary to provide for his  
12 own needs and the needs of his dependents while remaining independent of  
13 further public assistance.

14 \* Sec. 2. AS 09 is amended by adding a new chapter to read:

15 CHAPTER 38. ALASKA EXEMPTIONS ACT.

16 Sec. 09.38.010. HOMESTEAD EXEMPTION. (a) An individual is en-  
17 titled to an exemption as a homestead of his interest in property in  
18 this state used as the principal residence of that individual or his  
19 dependents, but the value of the homestead exemption may not exceed

20 27,000  
\$19,000.

21 (b) If property owned by the entirety or in common is used by one  
22 or more individual owners or their dependents as their principal resi-  
23 dence, each owner is entitled to a homestead exemption of his interest  
24 in the property as provided in (a) of this section. The aggregate  
25 value of multiple homestead exemptions allowable with respect to a  
26 single living unit may not exceed 27,000 \$28,000. If there are multiple  
27 owners of property exempt as a homestead, the value of the exemption of  
28 each individual owner may not exceed his pro rata portion of 27,000 \$28,000.

29 (c) If property that includes a homestead is sold under an execu-

1 tion, the sale becomes effective upon confirmation by order of the  
2 court. The court shall enter the order of confirmation unless, within  
3 60 days after the sale, the individual repurchases the property under  
4 this section or the court extends the time for confirmation upon the  
5 filing of a timely motion by a party in interest. The individual may  
6 repurchase property, including his homestead, at a sale on execution  
7 before confirmation by paying into court the costs of the sale plus the  
8 lesser of either (1) the difference between the highest bid and the  
9 amount of the exemption in the property, or (2) the amount of the  
10 creditor's claim. If the individual does not exercise his repurchase  
11 right under this subsection, the clerk of the court shall first remit  
12 an amount determined to be exempt to him from the proceeds of sale and  
13 the balance less the cost of the sale to the creditor. For the purpose  
14 of collecting an amount remaining unpaid on his judgment after repur-  
15 chase of property by an individual under this subsection, the creditor  
16 or his assignee may not make another levy on the property repurchased.

17 (d) Upon entry of the order of confirmation under (c) of this  
18 section and expiration of the time period for repurchase, the clerk may  
19 execute a deed to the property and when delivered it shall be sufficient  
20 to convey all title of the individual in the premises sold to the pur-  
21 chaser at the sale.

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

- 24 (1) a burial plot for the individual and his family;  
25 (2) health aids reasonably necessary to enable the individual  
26 or a dependent to work or to sustain health;  
27 (3) benefits paid or payable for medical, surgical, or hos-  
28 pital care to the extent they are or will be used to pay for the care;  
29 (4) an award under AS 18.67 (Violent Crimes Compensation

1 Board) or a crime victim's reparations Act of another jurisdiction;

2 (5) benefits paid or payable as a longevity bonus under  
3 AS 47.45;

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

6 (b) Except as provided in AS 09.38.055, a person is entitled to  
7 exemption of the following transferable business rights:

8 (7) ~~(1)~~ liquor licenses granted under AS 04;

9 *(8) (2) limited entry permits granted under AS 16.43, except as  
provided in that chapter.*

10 (c) The right to benefits held by the state on behalf of an indi-  
11 vidual which may become payable by reason of disability, unemployment  
12 or illness, amounts held in the teachers' or public employees' retire-  
13 ment system, and child support collections made by the child support  
14 enforcement agency are exempt.

15 (d) Property of the state, a general law or home rule munici-  
16 pality, the Alaska State Housing Authority, the Alaska Municipal Bond  
17 Bank Authority, or other state public corporation is exempt.

18 (e) Real property held by a cemetery association established  
19 under AS 10.30 for the purpose of a cemetery and not exceeding 80 acres  
20 is exempt.

21 Sec. 09.38.020. EXEMPTIONS OF PERSONAL PROPERTY SUBJECT TO VALUE  
22 LIMITATIONS. (a) An individual is entitled to an exemption in property  
23 not to exceed an aggregate value of \$1,500 chosen by him from the fol-  
24 lowing categories of property:

25 (1) household goods and wearing apparel reasonably necessary  
26 for one household;

27 (2) if reasonably held for the personal use of the individual  
28 or a dependent, books and musical instruments; and

29 (3) family portraits and heirlooms of particular sentimental

1 value to the individual.

2 (b) An individual is entitled to exemption of jewelry, not ex-  
3 ceeding \$500 in aggregate value, if held for the personal use of the  
4 individual or a dependent.

5 (c) An individual is entitled to exemption, not exceeding 1,400  
6 in aggregate value, of implements, professional books, and tools of the  
7 trade.

8 (d) An individual is entitled to the exemption of pets to the  
9 extent of a value not exceeding 300  
10 ~~\$3,600.~~

11 (e) An individual is entitled to an exemption of one motor vehicle  
12 to the extent of a value not exceeding \$1,500 if the full value of the  
13 motor vehicle does not exceed \$10,000.

14 Sec. 09.38.025. EXEMPTION OF UNMATURED LIFE INSURANCE AND ANNUITY  
15 CONTRACTS. (a) Except as provided in this section, an individual is  
16 entitled to exemption of unmatured life insurance and annuity contracts  
17 owned by him. If the contracts have accrued dividends and loan values  
18 available to the individual aggregating more than \$5,000, a creditor  
19 may obtain a court order requiring the individual debtor to pay the  
20 creditor, and authorizing the creditor on the debtor's behalf to obtain  
21 payment of, the amount of the accrued dividends and loan values in  
22 excess of \$5,000 or the amount of the creditor's claim, whichever is  
23 less.

24 (b) A judgment creditor or other claimant of an insurer may not  
25 levy upon any of the assets or securities held in this state as a de-  
26 posit for the protection of the insurer's policyholders or policyholders  
27 and creditors. Deposits under AS 21.09.270 may be levied upon if pro-  
28 vided in the order of the director of insurance, Department of Commerce  
29 and Economic Development, under which the deposit is made.

30 Sec. 09.38.030. EXEMPTION OF EARNINGS AND LIQUID ASSETS. (a)

1 Except as provided in (b) and (c) of this section and AS 09.38.050, an  
2 individual debtor is entitled to an exemption of his weekly net earnings  
3 not to exceed <sup>175</sup>\$125. The weekly net earnings of an individual are  
4 determined by subtracting from the weekly gross earnings all sums  
5 required by law or court order to be withheld. The weekly net earnings  
6 of an individual paid on a monthly basis are determined by subtracting  
7 from the monthly gross earnings of the individual all sums required by  
8 law or court order to be withheld and dividing the remainder by 4.3.  
9 The weekly net earnings of an individual paid on a semi-monthly basis  
10 are determined by subtracting from the semi-monthly gross earnings all  
11 sums required by law or court order to be withheld and dividing the  
12 remainder by 2.17.

13 (b) An individual who does not receive earnings either weekly,  
14 semi-monthly or monthly is entitled to a maximum exemption for the  
15 aggregate value of cash and other liquid assets available in any month  
16 of \$500, except as provided in AS 09.38.050. The term "liquid assets"  
17 includes deposits, securities, notes, drafts, accrued vacation pay,  
18 refunds, prepayments, and receivables.

19 (c) A creditor may levy upon earnings exempt under (a) and (b) of  
20 this section if his claim is

21 (1) enforceable against exempt property under AS 09.38.-  
22 065(a)(1); or

23 (2) enforceable under an order of a court of bankruptcy  
24 under chapter XIII of the Bankruptcy Act (11 U.S.C., sec. 1001 et  
25 seq.).

26 (d) If the individual debtor is a nonresident, the limitations on  
27 garnishment imposed under 15 U.S.C. 1673 shall apply.

28 (e) The following property, unless exempt without limitation  
29 under AS 09 38.015, upon receipt by and while it is in the possession

1 of the individual, shall be treated as earnings, income, cash, or other  
2 liquid assets under this section:

3 (1) benefits paid by reason of disability, illness, or unem-  
4 ployment;

5 (2) money or property received for alimony ~~support~~ or  
6 separate maintenance;

7 (3) proceeds of insurance, a judgment, or a settlement, or  
8 other rights accruing as a result of bodily injury of the individual or  
9 of the wrongful death or bodily injury of another individual of whom  
10 the individual was or is a dependent;

11 (4) proceeds or benefits paid or payable on the death of an  
12 insured, if the individual was the spouse or a dependent of the insured;  
13 and

14 (5) amounts paid under a stock bonus, pension, profit-  
15 sharing, annuity, or similar plan or contract, providing benefits by  
16 reason of age, illness, disability, or length of service.

17 Sec 09.38.035. CONTINUING LIEN ON WAGES. (a) In the case of a  
18 garnishment of earnings, when the garnishee's answer reflects that the  
19 defendant is employed by him, the judgment or balance due as reflected  
20 on the writ of garnishment shall become a lien on earnings due at the  
21 time of service of the writ to the extent that they are not exempt from  
22 garnishment, and that lien shall continue as to subsequent nonexempt  
23 earnings until the total subject to the lien equals the amount stated  
24 on the writ of garnishment, except that the lien on subsequent earnings  
25 shall terminate sooner if the employment relationship is terminated, if  
26 the underlying judgment is vacated, modified, or satisfied in full, or  
27 if the writ is dismissed.

28 (b) A garnishee shall pay into court all nonexempt earnings of  
29 the defendant subject to the continuing lien under (a) of this section.

1 Accrued interest on the judgment or balance due as reflected on the  
2 writ of attachment may be garnished under a supplemental writ of  
3 garnishment after the principal amount stated on the original writ of  
4 garnishment has been paid.

5 Sec. 09.38.040. PRIORITIES BETWEEN CONTINUING LIENS. A lien  
6 obtained under AS 09.38.035 shall have priority over any subsequent  
7 garnishment lien or wage assignment. Any writ creating a continuing  
8 lien served upon an employer while a continuing lien imposed by a pre-  
9 vious writ is still in effect shall be answered by the employer with a  
10 statement that he is holding no funds and with a further statement  
11 stating when all previous liens are expected to terminate. The subse-  
12 quent writ shall have full effect from the termination of all prior  
13 liens or until it is otherwise terminated under AS 09.38.035; however,  
14 a subsequent writ is not effective if a writ in the same cause of  
15 action is pending at the time of service of garnishment.

16 Sec. 09.38.045. EFFECTIVE DATE OF CONTINUING LIEN. The effective  
17 date of a writ creating a continuing lien is the date of service upon  
18 the garnishee; however, if there are, on that date, liens by virtue of  
19 previous writs, the effective date is the date all previous writs  
20 terminate.

21 Sec. 09.38.050. INCREASED EXEMPTION AMOUNT. (a) An individual  
22 debtor who is in possession of money which was obtained as payment for  
23 an injury or disability may request the court to order an increase in  
24 the exemption amounts under AS 09.38.030. The individual debtor shall  
25 submit affidavits or offer testimony in support of his request as re-  
26 quired by the court. The court shall determine the exemption amount  
27 after consideration of the individual's responsibilities and all the  
28 present and anticipated property and income of the individual, including  
29 that which is exempt.

1 (b) The exemption amounts under AS 09.38.030 may be increased  
2 when the individual submits an affidavit, under penalty of perjury,  
3 stating that his earnings alone support his household; by so doing, the  
4 maximum part of his aggregate disposable earnings for any week subject  
5 to execution may not exceed the amount by which his disposable earnings  
6 for that week exceed ~~\$200,~~ <sup>275</sup> or, if the individual is claiming an exemp-  
7 tion for cash or other liquid assets under AS 09.38.030(b), a maximum  
8 amount of ~~\$800~~ <sup>1,100</sup> available in any month is exempt.

9 Sec. 09.38.055. BANKRUPTCY PROCEEDINGS. In a proceeding under  
10 the Bankruptcy Act (11 U.S.C.) only the exemptions under AS 09.38.010,  
11 09.38.015(a), 09.38.020, 09.38.025 and 09.38.030 apply. The exemption  
12 of certain permits, licenses, and certificates provided in AS 09.38.-  
13 015(b) does not apply in a proceeding under chapter VII of the Bank-  
14 ruptcy Act (11 U.S.C.).

15 Sec. 09.38.060. TRACING EXEMPT PROPERTY. (a) If property, or a  
16 part of it, that could have been claimed as an exempt homestead under  
17 AS 09.38.010, a burial plot under AS 09.38.015(a)(1), a health aid  
18 under AS 09.38.015(a)(2), or personal property subject to a value  
19 limitation under AS 09.38.020(a)(1), (2) or 09.38.020(c), has been  
20 taken or sold by condemnation, or has been lost, damaged, or destroyed  
21 and the owner has been indemnified for it, the individual is entitled  
22 to an exemption of proceeds that are traceable for 12 months after the  
23 proceeds are received. An individual is entitled to an exemption of  
24 proceeds from the voluntary sale of an exempt homestead under AS 09.38.-  
25 010 that are traceable for ~~three~~ <sup>six</sup> months after the proceeds are received.  
26 The exemption of proceeds under this subsection does not entitle the  
27 individual to claim an aggregate exemption in excess of the value  
28 limitation otherwise allowable under AS 09.38.010 or 09.38.020.

29 (b) Money or other property and proceeds exempt under this chapter

1 are traceable under this section by application of the principle of  
2 first-in first-out, last-in first-out, or any other reasonable basis  
3 for tracing selected by the individual claiming the exemption.

4 Sec. 09.38.065. CLAIMS ENFORCEABLE AGAINST EXEMPT PROPERTY. (a)  
5 Notwithstanding other provisions of this chapter,

6 (1) a creditor may make a levy against exempt property of  
7 any kind to enforce a claim for

8 (A) <sup>Child</sup> ~~alimony~~ support, ~~or separate maintenance~~

9 (B) unpaid earnings of up to one month's compensation  
10 or the full-time equivalent of one month's compensation for per-  
11 sonal services of an employee; or

12 (C) state or local taxes; and

13 (2) a creditor may make a levy against exempt property to  
14 enforce a claim for

15 (A) the purchase price of the property or a loan made  
16 for the express purpose of enabling an individual to purchase the prop-  
17 erty and used for that purpose;

18 (B) labor or materials furnished to make, repair,  
19 improve, preserve, store, or transport the property; and

20 (C) a special assessment imposed to defray costs of a  
21 public improvement benefiting the property.

22 (b) Except as provided in AS 09.38.070, limiting the enforcement  
23 of certain security interests, this chapter does not affect any statu-  
24 tory lien or security interest in exempt property.

25 (c) A creditor having a claim enforceable under (a) of this  
26 section against exempt property, before, at the time of, or a reasonable  
27 time after making a levy on property of an individual, shall serve on  
28 the individual a notice of the levy and of the basis for the creditor's  
29 right to make a levy on exempt property.

1           Sec. 09.38.070.   LIMITATION ON ENFORCEMENT OF CERTAIN SECURITY  
2 INTERESTS IN EXEMPT GOODS. (a) This section applies to a security  
3 interest, except a purchase-money security interest, or a security  
4 interest in a motor vehicle, in an item of goods (1) possessed by an  
5 individual, (2) being used by him or a dependent, and (3) exempt under  
6 AS 09.38.020(a) - 09.38.020(d).

7           (b) Unless the individual, after written notice to him of his  
8 rights under this section, voluntarily surrenders to the secured credi-  
9 tor possession of an item of goods to which this section applies, the  
10 creditor may not take possession of the item or otherwise enforce the  
11 security interest according to its terms without an order or process of  
12 court.

13           (c) The court may order or authorize process respecting any item  
14 of goods to which this section applies only after a hearing, upon  
15 notice to the individual of the hearing and of his rights at it. The  
16 notice shall be as directed by the court. The order or authorization  
17 may prescribe appropriate conditions as to payments upon the debt  
18 secured or otherwise. The court may not order or authorize process  
19 respecting the item if it finds upon the hearing both that the indivi-  
20 dual lacks the means to pay all or part of the debt secured and that  
21 continued possession or use of the item is necessary to avoid undue  
22 hardship for the individual or a dependent.

23           (d) The court, upon application of the creditor or the individual  
24 and notice to the other and after a hearing and finding of changed  
25 circumstances, may vacate or modify an order or authorization under  
26 this section.

27           Sec. 09.38.075.   SPECIAL PROCEDURES RELATING TO LIMITED VALUE  
28 EXEMPTIONS. (a) Unless he is seeking collection of a claim enforceable  
29 against exempt property under AS 09.38.065, a creditor may obtain a

1 levy on an individual's property of a kind listed in AS 09.38.020 only  
2 by complying with this section. Before levy, the creditor shall file  
3 with the court out of which the process issues

4 (1) an affidavit stating that he has reason to believe the  
5 individual has property of a kind listed in AS 09.38.020 that is not  
6 exempt, identifying the property, setting out facts constituting the  
7 basis for believing the property is not exempt; and

8 (2) a request for an order by the court notifying the indi-  
9 vidual

10 (A) of the creditor's claim of a right to levy on the  
11 property identified as nonexempt,

12 (B) of the individual's right to contest the creditor's  
13 claim of a right to levy by filing with the clerk of the court, on  
14 or before a date fixed by the court, but not exceeding 15 days  
15 after the issuance of the order, a written objection to the pro-  
16 posed levy and a statement of the grounds for the objection and of  
17 his right to describe the property in lieu of setting its value,

18 ~~and~~

19 (C) of the possible consequences of failure to respond  
20 to the notice as provided in (c) of this section.

21 → (b) Notice of <sup>(D) of the information required by AS 09.38.085(a).</sup> an order issued in accordance with a request under  
22 (a) of this section, together with the creditor's affidavit, shall be  
23 served on the individual. The order shall restrain the individual from  
24 removing, encumbering, damaging, or disposing of any property of the  
25 kind listed in AS 09.38.020 for 30 days after receipt of the order,  
26 unless the court reduces, extends, or otherwise modifies the restraining  
27 order during the 30-day period.

28 (c) If exemption of property identified in a notice served on an  
29 individual under (b) of this section depends on its value, the indi-

1 individual may describe the property in his responsive statement and indi-  
2 cate the amount of any indebtedness chargeable against it. If the  
3 individual, within the time allowed by the order of the court, fails to  
4 respond to a notice served under (b) of this section that the creditor  
5 believes the debtor has nonexempt property of a kind listed under  
6 AS 09.38.020, the court may order the individual to appear and disclose  
7 the description, location, and value of his property. If the individual  
8 fails to appear and disclose the information specified in the order, he  
9 waives objection to the creditor's levy on property of that kind.

10 (d) Except to the extent the procedure is prescribed by this  
11 section, AS 09.38.080(e) governs a proceeding for the determination of  
12 a contest in respect to a claim to exemption of property under AS 09.-  
13 38.020.

14 (e) Costs incurred in making, or proposing to make, a levy on  
15 property of a kind listed in AS 09.38.020 shall be paid out of the  
16 proceeds of a sale of property of that kind. If the proceeds of a sale  
17 of the property are insufficient to cover the costs incurred in pro-  
18 ceedings commenced under this section, the creditor shall pay the costs  
19 and may not recover them from the individual, notwithstanding any  
20 agreement of the parties to the contrary.

21 (f) The burden of proving the validity of an exemption by a pre-  
22 ponderance of the evidence is upon the individual claiming the exemp-  
23 tion.

24 Sec. 09.38.080. PROCEDURES APPLICABLE TO A LEVY ON PROPERTY OF AN  
25 INDIVIDUAL. (a) Except in a proceeding under AS 09.38.065, a creditor  
26 shall comply with this section in obtaining a levy on property of an  
27 individual. In a proceeding to levy on personal property of a kind  
28 listed in AS 09.38.020, a creditor shall comply with this section and  
29 AS 09.38.075.

1 (b) Before, at the time of, or within three days after levy  
2 against property of an individual, the creditor shall file with the  
3 court from which the process issued an affidavit stating that he has  
4 reason to believe the individual has property that is not exempt, iden-  
5 tifying the property, and stating facts constituting the basis for that  
6 belief.

7 (c) Before, at the time of, or within three days after levy, the  
8 creditor shall serve on the individual a notice under AS 09.38.085,  
9 including a copy of the affidavit filed under (b) of this section.

10 (d) A bid for property that is less than the amount of the exempt  
11 value is not acceptable at a sale of property under a levy. If in-  
12 debtedness secured by a valid lien is chargeable against the proceeds  
13 of the sale, the bid must exceed the amount of the indebtedness secured  
14 plus the amount of the exempt value. If a sufficient bid is not re-  
15 ceived, the officer shall file a notation of the fact with the clerk of  
16 the court and return the property to the individual. The costs incurred  
17 during levy, offering the property for sale, and returning the property  
18 shall be assessed against the creditor and are not recoverable from the  
19 individual, notwithstanding any agreement of the parties to the con-  
20 trary.

21 (e) If any question arises as to the rights of an individual  
22 entitled to an exemption under this chapter, an interested person may  
23 file with the clerk of the court from which the process issued a state-  
24 ment of the claim of exemptions and the question raised. The statement  
25 shall be referred to the court as soon as practicable thereafter. The  
26 court shall order that notice of a hearing be given. After hearing the  
27 matter, the court shall make findings and issue an appropriate order.  
28 The court may award to the prevailing party costs of a proceeding under  
29 this subsection.

1 (f) An objection to levy on the ground that the property seized  
2 is exempt must be filed with the clerk of the court within 15 days  
3 after the levy. The burden of proving the validity of an exemption by  
4 a preponderance of the evidence is upon the individual claiming the  
5 exemption. Failure to file a timely objection may be held to be a  
6 waiver of a claim to exemption in the property, unless for cause shown  
7 the court excuses the failure.

8 ~~Sec. 09.38.085.~~

CONTENTS OF NOTICE. (a) The notice required by

9 ~~AS 09.38.075(b) and~~  
i. AS 09.38.080(c) shall include the following information:

- 10 (1) the amount and date of the judgment to be enforced by  
11 levy and sale or other mode of appropriating the individual's property;  
12 (2) the name and address of the clerk of the court with whom  
13 objections must be filed;  
14 (3) the name and address of the creditor and of his attorney,  
15 if any;  
16 (4) a copy of the affidavit filed under AS 09.38.080(b);  
17 (5) a summary statement in lay terminology of the exemptions  
18 provided by the laws of this state;  
19 (6) a summary statement in lay terminology of the procedures  
20 for claiming exemptions, objecting to a levy on exempt property, <sup>change of venue,</sup> and  
21 exercising the right to repurchase homestead property from a sale  
22 before its confirmation; and  
23 (7) a statement in lay terminology of the rights of persons  
24 other than the individual as provided in AS 09.38.090.

25 (b) The supreme court may prescribe forms to be used by creditors,  
26 debtors and court officers under this chapter. A notice substantially  
27 complying with this section is effective even though the notice contains  
28 errors if those errors do not result in substantial prejudice to the  
29 rights of the individual debtor or his dependents.

1           Sec. 09.38.090. ASSERTION OF RIGHTS BY ANOTHER. If an individual  
2 fails to select property entitled to be claimed as exempt or to object  
3 to a levy on the property or to assert any other right under this chap-  
4 ter, the spouse or a dependent of the individual or any other person  
5 authorized by law may make the claim or objection or assert the rights  
6 provided by this chapter.

7           Sec. 09.38.095. JUDICIAL RELIEF. (a) An individual or the  
8 spouse, a dependent of the individual, or any other person authorized  
9 by law is entitled to injunctive relief, damages, or both, against a  
10 creditor or other person to prevent or redress a violation of this  
11 chapter as provided in the Alaska Rules of Civil Procedure. A court  
12 may award costs and reasonable attorney fees to a party entitled to  
13 injunctive relief or damages.

14           (b) For cause shown the court may relieve a person from the  
15 consequences of failing to take timely action to assert rights under  
16 this chapter.

17           Sec. 09.38.100. DEBTOR'S PROPERTY OWNED WITH ANOTHER. (a) If an  
18 individual and another own property in this state as tenants in common  
19 or tenants by the entirety, a creditor of the individual, subject to  
20 the individual's right to claim an exemption under this chapter, may  
21 obtain a levy on and sale of the interest of the individual in the  
22 property. A creditor who has obtained a levy, or a purchaser who has  
23 purchased the individual's interest at the sale, may have the property  
24 partitioned or the individual's interest severed.

25           (b) A partner's right in specific partnership property is exempt  
26 except on a claim against the partnership; when partnership property is  
27 attached for a partnership debt, the partners or any of them or the  
28 representatives of a deceased partner may not claim an exemption for  
29 that property under this chapter.

1           Sec. 09.38.105. WAIVER OF EXEMPTION. A waiver of exemption exe-  
2 cuted in favor of an unsecured creditor before levy on an individual's  
3 property is unenforceable, but a valid security interest may be given  
4 in exempt property.

5           Sec. 09.38.110. FEDERAL REQUIREMENTS. If a federal department or  
6 agency issues a formal ruling that a section of this chapter relating  
7 to public assistance will cause a state plan for the delivery of ser-  
8 vices or benefits to be out of conformity with federal requirements,  
9 the section will not apply to the extent that it causes the program to  
10 be out of conformity with federal requirements.

11           Sec. 09.38.115. ADJUSTMENT OF DOLLAR AMOUNTS. (a) The dollar  
12 amounts in this chapter change, as provided in this section, according  
13 to and to the extent of changes in the Consumer Price Index for <sup>*All Urban Consumers for*</sup> the  
14 Anchorage Metropolitan Area ~~Consumer Price Index~~ compiled by the Bureau  
15 of Labor Statistics, United States Department of Labor (the index).  
16 The index for ~~November~~ <sup>*January*</sup> of the year ~~preceding the year~~ in which this  
17 section becomes effective is the reference base index.

18           (b) The dollar amount change on July 1 of each even-numbered year  
19 if the percentage of change, calculated to the nearest whole percentage  
20 point, between the index for December of the preceding year and the  
21 reference base index, is 10 percent or more, but

22           (1) the portion of the percentage change in the index in  
23 excess of a multiple of 10 percent is disregarded and the dollar amounts  
24 change only in multiples of 10 percent of the amounts appearing in this  
25 chapter on the effective date of this chapter; and

26           (2) the dollar amounts do not change if the amounts required  
27 by this section are those currently in effect as a result of earlier  
28 application of this section.

29           (c) If the index is revised, the percentage of change is calcu-

1 lated on the basis of the revised index. If a revision of the index  
2 changes the reference base index, a revised reference base index is  
3 determined by multiplying the reference base index applicable by the  
4 rebasing factor furnished by the United States Bureau of Labor Statis-  
5 tics. If the index is superseded, the index referred to in this section  
6 is the one represented by the Bureau of Labor Statistics as reflecting  
7 most accurately changes in the purchasing power of the dollar for Alas-  
8 kan consumers.

9 (d) The Department of Labor shall adopt a regulation announcing

10 (1) on or before April 30 of each year in which dollar  
11 amounts are to change, the changes in dollar amounts required by (b) of  
12 this section; and

13 (2) promptly after the changes occur, changes in the index  
14 required by (c) of this section, including, if applicable, the numerical  
15 equivalent of the reference base index under a revised reference base  
16 index and the designation or title of any index superseding the index.

17 (e) The Department of Labor shall also provide notification of a  
18 change in exemption amounts required under (c) of this section to the  
19 clerks of court in each judicial district of the state.

20 Sec. 09.38.120. PROTECTION OF PROPERTY OF RESIDENTS AND NONRESI-  
21 DENTS. (a) Residents of this state are entitled to the exemptions  
22 provided under this chapter. Nonresidents are entitled to the exemp-  
23 tions provided by the law of the jurisdiction of their residence.

24 (b) The term "resident" means an individual who is physically  
25 present in the state and who intends to maintain his permanent home in  
26 Alaska.

27 Sec. 09.38.125. DEFINITIONS. As used in this chapter, unless the  
28 context otherwise requires,

29 (1) "burial plot" means a parcel of real estate used for

1 burial of human remains and which is located within an area designated  
2 for cemetery purposes by the state or a general law or home rule municipi-  
3 pality;

4 (2) "debt" means a legally enforceable monetary obligation  
5 or liability of an individual, whether arising out of contract, tort,  
6 or otherwise;

7 (3) "dependent" means an individual who derives support  
8 primarily from another individual;

9 (4) "earnings" means money received by the individual for  
10 personal services and denominated as wages, salary, commissions, or  
11 otherwise;

12 (5) "exempt" means protected, and "exemption" means pro-  
13 tection, from subjection to process or a proceeding to collect an unse-  
14 cured debt;

15 (6) "household goods" includes those items that make a resi-  
16 dence habitable according to modern standards;

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

20 (8) "levy" means the seizure of property under a writ of  
21 attachment, garnishment, execution, or any similar legal or equitable  
22 process issued for the purpose of collecting an unsecured debt;

23 (9) "lien" means a security interest, or a judicial,  
24 statutory, or common-law lien, or any other interest in property secur-  
25 ing payment of a debt or performance of an obligation;

26 (10) "principal residence" means the actual dwelling place of  
27 the individual or his dependents and includes real and personal prop-  
28 erty;

29 (11) "security interest" means an interest in property created

1 by contract to secure payment or performance of an obligation;

2 (12) "serve notice" means to give the person to be served a  
3 written personal notice in the same manner a summons in a civil action  
4 is served, or to mail the notice to the person's last known address by  
5 first-class mail and by using a form of mail requiring a signed receipt;

6 (13) "statutory lien" means a lien arising by force of a  
7 statute under specified circumstances or conditions, but does not in-  
8 clude a security interest;

9 (14) "value" means fair market value of an individual's  
10 interest in property, exclusive of liens of record;

11 (15) "wearing apparel" means clothing and garments intended  
12 and adapted to be worn on the person to protect the person against the  
13 elements or to provide personal comfort or decency, or serving to orna-  
14 ment the person but does not include jewelry.

15 Sec. 09.38.130. SHORT TITLE. This chapter may be cited as the  
16 Alaska Exemptions Act.

17 \* Sec. 3. AS 14.25.200 is amended to read:

18 Sec. 14.25.200. EXEMPTION FROM TAXATION AND PROCESS. (a) Bene-  
19 fits and other amounts held in the retirement fund on behalf of the  
20 members are exempt from Alaska state and municipal taxes and are not  
21 subject to anticipation, alienation, sale, transfer, assignment, pledge,  
22 encumbrance, or charge [, GARNISHMENT, EXECUTION OR LEVY] of any kind,  
23 either voluntary or involuntary, before they are received by the person  
24 entitled to the amount under the terms of the system, and any attempt  
25 to anticipate, alienate, sell, transfer, assign, pledge, encumber,  
26 charge, or otherwise dispose of any right to amounts accrued in the  
27 retirement fund is void.

28 (b) Teachers' retirement salaries and other amounts held in the  
29 retirement fund on behalf of the members are exempt from garnishment,

1 execution or levy as provided in AS 09.38 (exemptions).

2 \* Sec. 4. AS 23.20.405 is amended by adding a new subsection to read:

3 (e) Benefits paid or payable under this chapter are exempt from  
4 levy to enforce the collection of a debt as provided in AS 09.38 (exemp-  
5 tions).

6 \* Sec. 5. AS 23.30.160 is amended to read:

7 Sec. 23.30.160. ASSIGNMENT AND EXEMPTION FROM CLAIMS OF CREDITORS.

8 (a) No assignment, release, or commutation of compensation or benefits  
9 due or payable under this chapter, except as provided by this chapter,  
10 is valid [, AND THE COMPENSATION AND BENEFITS ARE EXEMPT FROM ALL  
11 CLAIMS OF CREDITORS AND FROM LEVY, EXECUTION, AND ATTACHMENT OR OTHER  
12 REMEDY FOR RECOVERY OR COLLECTION OF A DEBT]. This exemption may not  
13 be waived.

14 (b) Benefits payable under this chapter are exempt from levy to  
15 enforce the collection of a debt as provided in AS 09.38 (exemptions).

16 \* Sec. 6. AS 34.15.140(b) is repealed and reenacted to read:

17 (b) A homestead held by tenants by the entirety is exempt from  
18 execution on a debt to the value specified under AS 09.38.010(b) and  
19 may be liable for the debts of either tenant after partition of the  
20 tenancy under AS 09.38.100.

21 \* Sec. 7. AS 39.35.500 is amended to read:

22 Sec. 39.35.500. SAFEGUARD OF EMPLOYEE FUNDS HELD BY THE SYSTEM.

23 (a) Employee contributions and other amounts held in the pension fund  
24 are exempt from Alaska state and local taxes. Amounts held on behalf  
25 of, or payable to, any employee or other person who is or may become  
26 eligible for benefits under the system are not subject to anticipation,  
27 alienation, sale, transfer, assignment, pledge, encumbrance, or charge  
28 [, GARNISHMENT, EXECUTION, OR LEVY] of any kind, either voluntary or  
29 involuntary, before being received by the person entitled to the amount

1 under the terms of the system. An attempt to anticipate, alienate,  
2 sell, transfer, assign, pledge, encumber, charge, or otherwise dispose  
3 of a right to amounts held under the system is void.

4 (b) Employee contributions and other amounts held in the pension  
5 fund and retirement benefits payable under this chapter are exempt from  
6 levy to enforce the collection of a debt as provided in AS 09.38 (exemp-  
7 tions).

8 \* Sec. 8. AS 47.25.210 is amended to read:

9 Sec. 47.25.210. ALIENATION AND ATTACHMENT. Assistance granted  
10 under AS 47.25.120 - 47.25.300 is inalienable by assignment or transfer  
11 and is exempt from garnishment, levy, or execution as provided in  
12 AS 09.38 (exemptions) [UNDER THE LAWS OF THIS STATE].

13 \* Sec. 9. AS 47.25.395 is amended to read:

14 Sec. 47.25.395. ALIENATION AND ATTACHMENT. Assistance granted  
15 under AS 47.25.310 - 47.25.420 is inalienable by assignment or transfer  
16 and is exempt from garnishment, levy, or execution as provided in  
17 AS 09.38 (exemptions) [UNDER THE LAWS OF THIS STATE].

18 \* Sec. 10. AS 47.25.550 is amended to read:

19 Sec. 47.25.550. ALIENATION AND ATTACHMENT. Assistance granted  
20 under AS 47.25.430 - 47.25.610 is inalienable by an assignment or  
21 transfer and is exempt from garnishment, levy, or execution as provided  
22 in AS 09.38 (exemptions) [UNDER THE LAWS OF THIS STATE].

23 \* Sec. 11. AS 47.25.710 is amended to read:

24 Sec. 47.25.710. ALIENATION AND ATTACHMENT. Assistance granted  
25 under AS 47.25.620 - 47.25.780 is inalienable by assignment or transfer  
26 and is exempt from garnishment, levy, or execution as provided in  
27 AS 09.38 (exemptions) [UNDER THE LAWS OF THE STATE].

28 \* Sec. 12. AS 47.25.880 is amended to read:

29 Sec. 47.25.880. ALIENATION AND ATTACHMENT. Assistance granted

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, 09.35.080 - 09.35.090,~~  
13 ~~AS 21.42.320 - 21.42.340, 21.42.350;~~  
14 ~~AS 21.42.320 - 21.42.350;~~ AS 23.20.405(b) and (c);  
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.

FILE - INC FOLDER

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CSHB 74 (Rls) am  
 Title "An Act relating to the Rights of debtors and creditors"  
 Requested by Home Rules Date 4/21/82

II. FISCAL DETAIL

Agency Affected Department of Revenue  
 Program Category Affected Revenue Collection and Management  
 BRU, Program, Or Subprogram(s) Affected Child Support 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)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL None						

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
None						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						
None						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)  
 Statutes affecting child support enforcement AS 09.65.132(g) and AS 47.23.250(i) include reference to sections of current law AS 09.35 which section 14 of HB 74 moves to repeal. These references exempt certain child support enforcement actions from the restrictions from execution by judgment debtors under AS 09.35 and impose specific restrictions for child support actions. Language in HB 74 under AS 09.38.065 presents every indication that child support enforcement should continue to maintain this exemption.

With the reference changes from AS 09.35 to AS 09.38 in both AS 09.65.132(g) and AS 47.23.250(i), the child support agency and the obligor should experience the benefits of the procedures for execution on judgments. Without the reference changes the child support agency would experience additional legal expense in executing on judgments where two sets of requirements and restrictions are in effect.

IV. DATE 4/21/82 PREPARED BY Dan R. Copeland  
 AGENCY Child Support Enforcement - Dept. of Revenue  
 Original: Legislative Finance PHONE 276-3441  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/81)

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH 5  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-2360

March 3, 1982

The Honorable Patrick M. Rodey  
Chairman  
Senate Judiciary Committee  
Room 125 - Capitol Building  
Juneau, Alaska

Re: CS for House Bill No. 74 (Rules) am

Dear Senator Rodey:

On April 29, 1982, Senator Mulcahy, Chairman of the Labor and Commerce Committee moved and asked unanimous consent that the Labor and Commerce Committee referral on CS for House Bill No. 74 (Rules) am, be waived.

Without objection, it was so ordered and the bill was referred to the Senate Judiciary Committee.

For the consideration of the Senate Judiciary Committee, I am enclosing copies of Fiscal Notes prepared by Mr. Dan R. Copeland, Director, Child Support Enforcement Division, Anchorage and Ms. Marilla L. Gemmer, Director, Enforcement Division of the Department of Revenue concerning the Committee Substitute.

Sincerely,



R. D. Stevenson  
Special Assistant

Enclosures

cc: Joseph K. Donohue  
Deputy Commissioner  
Department of Revenue

Dan R. Copeland, Director  
Child Support Enforcement  
Department of Revenue

Marilla L. Gemmer, Director  
Enforcement Division  
Department of Revenue

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST  
 Bill/Resolution No. CSHB 74 (Rules) am  
 Title Act relating to the rights of debtors and creditors  
 Requested by Senate Labor and Commerce Date 4/19/82

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

FUNDING (Thousands of Dollars)

NONE	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

NONE	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)

IV. DATE April 19, 1982 PREPARED BY Marilla L. Gemner, Director  
 AGENCY Department of Revenue - Enforcement Division  
 Original: Legislative Finance PHONE 465-2366  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/81)





STATE OF ALASKA

Legislative Affairs Agency

---

A

PROPOSED

ALASKA EXEMPTIONS ACT .

PREPARED AND APPROVED FOR DISTRIBUTION

BY THE

"ALASKA CODE REVISION COMMISSION"

ALASKA STATE LEGISLATURE

Staff Preparation By the  
Division of Legal Services  
LEGISLATIVE AFFAIRS AGENCY

---

DECEMBER

1980

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A Proposed

ALASKA EXEMPTIONS ACT

- D R A F T -

1980

Alaska Code Revision Commission  
(AS 24.20.075)

---

Chairman: John W. Abbott  
Vice Chairman: Susan A. Burke  
Members: Patrick M. Rodey  
Fred Brown  
L. S. (Jerry) Kurtz, Jr.  
Wm. Grant Callow  
Executive Secretary: Billy G. Berrier, Director  
Division of Legal Services  
Legislative Affairs Agency

Prepared and distributed for the  
Alaska Code Revision Commission  
by the  
LEGISLATIVE AFFAIRS AGENCY  
Pouch Y, State Capitol  
Juneau, Alaska 99811

December 1980

## 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.

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APPENDIX

1 \* Section 1. It is the intent of the legislature to modernize the pro-  
2 cedures for execution of a judgment and to afford to a judgment debtor  
3 adequate protection of his personal property and income necessary to provide  
4 for his own needs and the needs of his dependents while remaining independent  
5 of further public assistance.

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1 \* Sec. 2. AS 09 is amended by adding a new chapter to read:

2 CHAPTER 38. ALASKA EXEMPTIONS ACT.

3 ARTICLE 1. GENERAL PROVISIONS.

4 Sec. 09.38.010. SHORT TITLE. This chapter may be cited as the  
5 Alaska Exemptions Act.

1           Sec. 09.38.020. DEFINITIONS. As used in this chapter, unless the  
2 context otherwise requires,

3           (1) "burial plot" means a parcel of real estate used for  
4 burial of human remains and which is located within an area designated  
5 for cemetery purposes by the state or a general law or home rule  
6 municipality;

7           (2) "debt" means a legally enforceable monetary obligation or  
8 liability of an individual, whether arising out of contract, tort, or  
9 otherwise;

10          (3) "dependent" means an individual who derives support  
11 primarily from another individual;

12          (4) "earnings" means money received by the individual for  
13 personal services and denominated as wages, salary, commissions, or  
14 otherwise;

15          (5) "exempt" means protected, and "exemption" means pro-  
16 tection, from subjection to process or a proceeding to collect an  
17 unsecured debt;

18          (6) "household goods" includes those items that make a  
19 residence habitable according to modern standards;

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

23          (8) "levy" means the seizure of property under a writ of  
24 attachment, garnishment, execution, or any similar legal or equitable  
25 process issued for the purpose of collecting an unsecured debt;

26          (9) "lien" means a security interest, or a judicial  
27 statutory, or common-law lien, or any other interest in property  
28 securing payment of a debt or performance of an obligation;  
29

1 (10) "principal residence" means the actual dwelling place  
2 of the individual or his dependents and includes real and personal  
3 property;

4 (11) "security interest" means an interest in property  
5 created by contract to secure payment or performance of an obligation;

6 (12) "serve notice" means to give the person to be served a  
7 written personal notice in the same manner a summons in a civil action  
8 is served, or to mail the notice to the person's last known address by  
9 first-class mail and by using a form of mail requiring a signed  
10 receipt;

11 (13) "statutory lien" means a lien arising by force of a  
12 statute under specified circumstances or conditions, but does not  
13 include a security interest;

14 (14) "value" means fair market value of an individual's  
15 interest in property, exclusive of liens of record;

16 (15) "wearing apparel" means clothing and garments intended  
17 and adapted to be worn on the person to protect the person against the  
18 elements or to provide personal comfort or decency, or serving to  
19 ornament the person but does not include jewelry.  
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## COMMENT

### Sec. 09.38.020. 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 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); Rules of Bankruptcy Procedure 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).

1           Sec. 09.38.030. HOMESTEAD EXEMPTION. (a) An individual is  
2 entitled to an exemption as a homestead of his interest in property in  
3 this state used as the principal residence of that individual or his  
4 dependents, but the value of the homestead exemption may not exceed  
5 \$19,000.

6           (b) If property owned by the entirety or in common, is used by  
7 one or more individual owners or their dependents as their principal  
8 residence, each owner is entitled to a homestead exemption of his  
9 interest in the property as provided in (a) of this section. The  
10 aggregate value of multiple homestead exemptions allowable with  
11 respect to a single living unit may not exceed \$28,000. If there are  
12 multiple owners of property exempt as a homestead, the value of the  
13 exemption of each individual owner may not exceed his pro rata portion  
14 of \$28,000.

15           (c) If property that includes a homestead is sold under an  
16 execution, the sale becomes effective upon confirmation by order of  
17 the court. The court shall enter the order of confirmation unless,  
18 within 60 days after the sale, the individual repurchases the property  
19 under this section or the court extends the time for confirmation upon  
20 the filing of a timely motion by a party in interest. The individual  
21 may repurchase property, including his homestead, at a sale on exe-  
22 cution before confirmation by paying into court the costs of the sale  
23 plus the lesser of either (1) the difference between the highest bid  
24 and the amount of the exemption in the property, or (2) the amount of  
25 the creditor's claim. If the individual does not exercise his re-  
26 purchase right under this subsection, the clerk of the court shall  
27 first remit an amount determined to be exempt to him from the proceeds  
28 of sale and the balance less the cost of the sale to the creditor.  
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1 For the purpose of collecting an amount remaining unpaid on his  
2 judgment after repurchase of property by an individual under this  
3 subsection, the creditor or his assignee may not make another levy on  
4 the property repurchased.

5 (d) Upon entry of the order of confirmation under (c) of this  
6 section and expiration of the time period for repurchase, the clerk  
7 may execute a deed to the property and when delivered it shall be  
8 sufficient to convey all title of the individual in the premises sold  
9 to the purchaser at the sale.  
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## 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.

1           Sec. 09.38.040. PROPERTY EXEMPT WITHOUT LIMITATION. (a) An  
2 individual is entitled to exemption of the following property:

3           (1) a burial plot for the individual and his family;

4           (2) health aids reasonably necessary to enable the indi-  
5 vidual or a dependent to work or to sustain health;

6           (3) benefits paid or payable for medical, surgical, or  
7 hospital care to the extent they are or will be used to pay for the  
8 care;

9           (4) an award under AS 18.67 (Violent Crimes Compensation  
10 Board) or a crime victim's reparations Act of another jurisdiction;

11           (5) benefits paid or payable as a longevity bonus under  
12 AS 47.45;

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

15           (b) Except as provided in sec. 120 of this chapter, a person is  
16 entitled to exemption of the following transferable business rights:

17           (1) liquor licenses granted under AS 04;

18           (2) limited entry permits granted under AS 16.43.

19           (c) The right to benefits held by the state on behalf of an  
20 individual which may become payable by reason of disability, unemploy-  
21 ment or illness, amounts held in the teachers' or public employees'  
22 retirement system, and child support colleccions made by the child  
23 support enforcement agency are exempt.

24           (d) Property of the state, a general law or home rule municipality  
25 the Alaska State Housing Authority, the Alaska Municipal Bond Bank  
26 Authority, or other state public corporation is exempt.

27           (e) Real property held by a cemetery association established  
28 under AS 10.30 for the purpose of a ceretery and not exceeding 80 acres  
29 is exempt.

## 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 09.35.80(a)(6) (property of a public or municipal corporation), AS 44.13.340 (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.

1           Sec. 09.38.050. EXEMPTIONS OF PERSONAL PROPERTY SUBJECT TO VALUE  
2 LIMITATIONS. (a) An individual is entitled to an exemption in proper  
3 not to exceed an aggregate value of \$1,500 chosen by him from the fol-  
4 lowing categories of property:

5           (1) household goods and wearing apparel reasonably necessar  
6 for one household;

7           (2) if reasonably held for the personal use of the indi-  
8 vidual or a dependent, books and musical instruments; and

9           (3) family portraits and heirlooms of particular sentimenta  
10 value to the individual.

11           (b) An individual is entitled to exemption of jewelry, not ex-  
12 ceeding \$500 in aggregate value, if held for the personal use of the  
13 individual or a dependent.

14           (c) An individual is entitled to exemption, not exceeding \$1,000  
15 in aggregate value, of implements, professional books, and tools of th  
16 trade.

17           (d) An individual is entitled to the exemption of pets to the  
18 extent of a value not exceeding \$3,000.

19           (e) An individual is entitled to an exemption of one motor  
20 vehicle to the extent of a value not exceeding \$1,500 if the full value  
21 of the motor vehicle does not exceed \$10,000.  
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## 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 the term "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. 2nd, 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.

1           Sec. 09.38.060. EXEMPTION OF UNMATURED LIFE INSURANCE AND ANNUITY  
2 CONTRACTS. (a) Except as provided in this section, an individual is  
3 entitled to exemption of unmatured life insurance and annuity contracts  
4 owned by him. If the contracts have accrued dividends and loan values  
5 available to the individual aggregating more than \$5,000, a creditor  
6 may obtain a court order requiring the individual debtor to pay the  
7 creditor, and authorizing the creditor on the debtor's behalf to obtain  
8 payment of, the amount of the accrued dividends and loan values in  
9 excess of \$5,000 or the amount of the creditor's claim, whichever is  
10 less.

11           (b) A judgment creditor or other claimant of an insurer may not  
12 levy upon any of the assets or securities held in this state as a  
13 deposit for the protection of the insurer's policyholders or policy-  
14 holders and creditors. Deposits under AS 21.09.270 may be levied upon  
15 if provided in the order of the director of insurance, Department of  
16 Commerce and Economic Development, under which the deposit is made.  
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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 unmatured 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 en-

dowment 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.

1           Sec. 09.38.070. EXEMPTION OF EARNINGS AND LIQUID ASSETS. (a)

2 Except as provided in (b) and (c) of this section and sec. 110 of this  
3 chapter, an individual debtor is entitled to an exemption of his weekly  
4 net earnings not to exceed \$125. The weekly net earnings of an in-  
5 dividual are determined by subtracting from the weekly gross earnings  
6 all sums required by law or court order to be withheld. The weekly net  
7 earnings of an individual paid on a monthly basis are determined by  
8 subtracting from the monthly gross earnings of the individual all sums  
9 required by law or court order to be withheld and dividing the remainder  
10 by 4.3. The weekly net earnings of an individual paid on a semi-monthly  
11 basis are determined by subtracting from the semi-monthly gross earnings  
12 all sums required by law or court order to be withheld and dividing the  
13 remainder by 2.17.

14           (b) An individual who does not receive earnings either weekly,  
15 semi-monthly or monthly is entitled to a maximum exemption for the  
16 aggregate value of cash and other liquid assets available in any month  
17 of \$500, except as provided in sec. 110 of this chapter. The term  
18 "liquid assets" includes deposits, securities, notes, drafts, accrued  
19 vacation pay, refunds, prepayments, and receivables.

20           (c) A creditor may levy upon earnings exempt under (a) and (b) of  
21 this section if his claim is

22               (1) enforceable against exempt property under sec. 140(a)(1)  
23 of this section; or . .

24               (2) enforceable under an order of a court of bankruptcy under  
25 chapter XIII of the Bankruptcy Act (11 U.S.C., sec. 1001 et seq.).

26           (d) If the individual debtor is a nonresident, the limitations on  
27 garnishment imposed under 15 U.S.C. 1673 shall apply.  
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1 (e) The following property, unless exempt without limitation under  
2 sec. 40 of this chapter, upon receipt by and while it is in the pos-  
3 session of the individual, shall be treated as earnings, income, cash,  
4 or other liquid assets under this section:

5 (1) benefits paid by reason of disability, illness, or  
6 unemployment;

7 (2) money or property received for alimony, support, or  
8 separate maintenance;

9 (3) proceeds of insurance, a judgment, or a settlement, or  
10 other rights accruing as a result of bodily injury of the individual or  
11 of the wrongful death or bodily injury of another individual of whom the  
12 individual was or is a dependent;

13 (4) proceeds or benefits paid or payable on the death of an  
14 insured, if the individual was the spouse or a dependent of the insured;  
15 and

16 (5) amounts paid under a stock bonus, pension, profit-  
17 sharing, annuity, or similar plan or contract, providing benefits by  
18 reason of age, illness, disability, or length of service.  
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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 assistance benefits, support payments, insurance proceeds or settlements, death benefits, and retirement or disability benefits 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 determines 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).

1           Sec 09.38.080. CONTINUING LIEN ON WAGES. (a) In the case of a  
2 garnishment of earnings, when the garnishee's answer reflects that the  
3 defendant is employed by him, the judgment or balance due as reflected  
4 on the writ of garnishment shall become a lien on earnings due at the  
5 time of service of the writ to the extent that they are not exempt from  
6 garnishment, and that lien shall continue as to subsequent nonexempt  
7 earnings until the total subject to the lien equals the amount stated on  
8 the writ of garnishment, except that the lien on subsequent earnings  
9 shall terminate sooner if the employment relationship is terminated, if  
10 the underlying judgment is vacated, modified, or satisfied in full, or  
11 if the writ is dismissed.

12           (b) A garnishee shall pay into court all nonexempt earnings of the  
13 defendant subject to the continuing lien under (a) of this section.  
14 Accrued interest on the judgment or balance due as reflected on the writ  
15 of attachment may be garnished under a supplemental writ of garnishment  
16 after the principal amount stated on the original writ of garnishment  
17 has been paid.  
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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.

1           Sec. 09.38.090. PRIORITIES BETWEEN CONTINUING LIENS. A lien  
2 obtained under sec. 80 of this chapter shall have priority over any  
3 subsequent garnishment lien or wage assignment. Any writ creating a  
4 continuing lien served upon an employer while a continuing lien imposed  
5 by a previous writ is still in effect shall be answered by the employer  
6 with a statement that he is holding no funds and with a further state-  
7 ment stating when all previous liens are expected to terminate. The  
8 subsequent writ shall have full effect from the termination of all  
9 prior liens or until it is otherwise terminated under sec. 80 of this  
10 chapter; however, a subsequent writ is not effective if a writ in the  
11 same cause of action is pending at the time of service of garnishment.  
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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.

1           Sec. 09.38.100. EFFECTIVE DATE OF CONTINUING LIEN. The effective  
2 date of a writ creating a continuing lien is the date of service upon  
3 the garnishee; however, if there are, on that date, liens by virtue of  
4 previous writs, the effective date is the date all previous writs  
5 terminate.  
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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.

1           Sec. 09.38.110. INCREASED EXEMPTION AMOUNT. (a) An individual  
2 debtor who is in possession of money which was obtained as payment for  
3 an injury or disability may request the court to order an increase in  
4 the exemption amounts under sec. 70 of this chapter. The individual  
5 debtor shall submit affidavits or offer testimony in support of his  
6 request as required by the court. The court shall determine the ex-  
7 emption amount after consideration of the individual's responsibilities  
8 and all the present and anticipated property and income of the indi-  
9 vidual, including that which is exempt.

10           (b) The exemption amounts under sec. 70 of this chapter may be  
11 increased when the individual submits an affidavit, under penalty of  
12 perjury, stating that his earnings alone support his household; by so  
13 doing, the maximum part of his aggregate disposable earnings for any  
14 week subject to execution may not exceed the amount by which his dis-  
15 posable earnings for that week exceed \$200, or, if the individual is  
16 claiming an exemption for cash or other liquid assets under sec. 70(b)  
17 of this chapter, a maximum amount of \$800 available in any month is  
18 exempt.  
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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.

1           Sec. 09.38.120. BANKRUPTCY PROCEEDINGS. In a proceeding under  
2 the Bankruptcy Act (11 U.S.C.) only the exemptions under secs. 30,  
3 40(a), 50, 60, and 70 of this chapter apply. The exemption of certain  
4 permits, licenses, and certificates provided in sec. 40(b) of this  
5 chapter does not apply in a proceeding under chapter VII of the  
6 Bankruptcy Act (11 U.S.C.).  
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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.

1           Sec. 09.38.130. TRACING EXEMPT PROPERTY. (a) If property, or a  
2 part of it, that could have been claimed as an exempt homestead under  
3 sec. 30 of this chapter, a burial plot under sec. 40(1) of this chapter  
4 a health aid under sec. 40(2) of this chapter, or personal property  
5 subject to a value limitation under sec. 50(a)(1), (2) or (c) of this  
6 chapter, has been taken or sold by condemnation, or has been lost,  
7 damaged, or destroyed and the owner has been indemnified for it, the  
8 individual is entitled to an exemption of proceeds that are traceable  
9 for 12 months after the proceeds are received. An individual is  
10 entitled to an exemption of proceeds from the voluntary sale of an  
11 exempt homestead under sec. 30 of this chapter that are traceable for  
12 three months after the proceeds are received. The exemption of proceeds  
13 under this subsection does not entitle the individual to claim an  
14 aggregate exemption in excess of the value limitation otherwise  
15 allowable under sec. 30 or 50 of this chapter.

16           (b) Money or other property and proceeds exempt under this  
17 chapter are traceable under this section by application of the prin-  
18 ciple of first-in first-out, last-in first-out, or any other reasonable  
19 basis for tracing selected by the individual claiming the exemption.  
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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. 2nd 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).

1           Sec. 09.38.140. CLAIMS ENFORCEABLE AGAINST EXEMPT PROPERTY. (a)  
2 Notwithstanding other provisions of this chapter,

3           (1) a creditor may make a levy against exempt property of  
4 any kind to enforce a claim for

5                   (A) alimony, support, or separate maintenance;

6                   (B) unpaid earnings of up to one month's compensation  
7 or the full-time equivalent of one month's compensation for personal  
8 services of an employee; or

9                   (C) state or local taxes; and

10           (2) a creditor may make a levy against exempt property to  
11 enforce a claim for

12                   (A) the purchase price of the property or a loan made  
13 for the express purpose of enabling an individual to purchase the  
14 property and used for that purpose;

15                   (B) labor or materials furnished to make, repair,  
16 improve, preserve, store, or transport the property; and

17                   (C) a special assessment imposed to defray costs of a  
18 public improvement benefiting the property.

19           (b) Except as provided in sec. 150 of this chapter, limiting the  
20 enforcement of certain security interests, this chapter does not  
21 affect any statutory lien or security interest in exempt property.

22           (c) A creditor having a claim enforceable under (a) of this  
23 section against exempt property, before, at the time of, or a reason-  
24 able time after making a levy on property of an individual, shall  
25 serve on the individual a notice of the levy and of the basis for the  
26 creditor's right to make a levy on exempt property.  
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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.

1           Sec. 09.38.150. LIMITATION ON ENFORCEMENT OF CERTAIN SECURITY  
2 INTERESTS IN EXEMPT GOODS. (a) This section applies to a security  
3 interest, except a purchase-money security interest, or a security  
4 interest in a motor vehicle, in an item of goods (1) possessed by an  
5 individual, (2) being used by him or a dependent, and (3) exempt under  
6 sec. 50(a) - (d) of this chapter.

7           (b) Unless the individual, after written notice to him of his  
8 rights under this section, voluntarily surrenders to the secured  
9 creditor possession of an item of goods to which this section applies,  
10 the creditor may not take possession of the item or otherwise enforce  
11 the security interest according to its terms without an order or  
12 process of court.

13           (c) The court may order or authorize process respecting any item  
14 of goods to which this section applies only after a hearing, upon  
15 notice to the individual of the hearing and of his rights at it. The  
16 notice shall be as directed by the court. The order or authorization  
17 may prescribe appropriate conditions as to payments upon the debt  
18 secured or otherwise. The court may not order or authorize process  
19 respecting the item if it finds upon the hearing both that the indi-  
20 vidual lacks the means to pay all or part of the debt secured and that  
21 continued possession or use of the item is necessary to avoid undue  
22 hardship for the individual or a dependent.

23           (d) The court, upon application of the creditor or the indi-  
24 vidual and notice to the other and after a hearing and finding of  
25 changed circumstances, may vacate or modify an order or authorization  
26 under this section.  
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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.

1           Sec. 09.38.160. SPECIAL PROCEDURES RELATING TO LIMITED VALUE  
2 EXEMPTIONS. (a) If he is seeking collection of a claim enforceable  
3 against exempt property under sec. 140 of this chapter, a creditor  
4 may obtain a levy on an individual's property of a kind listed in  
5 sec. 50 of this chapter only by complying with this section. Before  
6 levy, the creditor shall file with the court out of which the process  
7 issues

8           (1) an affidavit stating that he has reason to believe the  
9 individual has property of a kind listed in sec. 50 of this chapter  
10 that is not exempt, identifying the property, setting out facts con-  
11 stituting the basis for believing the property is not exempt; and

12           (2) a request for an order by the court notifying the  
13 individual

14                   (A) of the creditor's claim of a right to levy on the  
15 property identified as nonexempt,

16                   (B) of the individual's right to contest the creditor's  
17 claim of a right to levy by filing with the clerk of the court, on  
18 or before a date fixed by the court, but not exceeding 15 days  
19 after the issuance of the order, a written objection to the pro-  
20 posed levy and a statement of the grounds for the objection and of  
21 his right to describe the property in lieu of setting its value,  
22 and

23                   (C) of the possible consequences of failure to respond  
24 to the notice as provided in (c) of this section.

25           (b) Notice of an order issued in accordance with a request under  
26 (a) of this section, together with the creditor's affidavit, shall be  
27 served on the individual. The order shall restrain the individual from  
28 removing, encumbering, damaging, or disposing of any property of the  
29 kind listed in sec. 50 of this chapter for 30 days after receipt of the

1 order, unless the court reduces, extends, or otherwise modifies the  
2 restraining order during the 30-day period.

3 (c) If exemption of property identified in a notice served on an  
4 individual under (b) of this section depends on its value, the indi-  
5 vidual may describe the property in his responsive statement and indi-  
6 cate the amount of any indebtedness chargeable against it. If the  
7 individual, within the time allowed by the order of the court, fails to  
8 respond to a notice served under (b) of this section that the creditor  
9 believes the debtor has nonexempt property of a kind listed under  
10 sec. 50 of this chapter, the court may order the individual to appear  
11 and disclose the description, location, and value of his property. If  
12 the individual fails to appear and disclose the information specified  
13 in the order, he waives objection to the creditor's levy on property of  
14 that kind.

15 (d) Except to the extent the procedure is prescribed by this  
16 section, sec. 170(e) of this chapter governs a proceeding for the  
17 determination of a contest in respect to a claim to exemption of  
18 property under sec. 50 of this chapter.

19 (e) Costs incurred in making, or proposing to make, a levy on  
20 property of a kind listed in sec. 50 of this chapter shall be paid out  
21 of the proceeds of a sale of property of that kind. If the proceeds of  
22 a sale of the property are insufficient to cover the costs incurred in  
23 proceedings commenced under this section, the creditor shall pay the  
24 costs and may not recover them from the individual, notwithstanding an  
25 agreement of the parties to the contrary.

26 (f) The burden of proving the validity of an exemption by a  
27 preponderance of the evidence is upon the individual claiming the  
28 exemption.  
29

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].

1           Sec. 09.38.170. PROCEDURES APPLICABLE TO A LEVY ON PROPERTY OF AN  
2 INDIVIDUAL. (a) Except in a proceeding under sec. 140 of this chapter  
3 a creditor shall comply with this section in obtaining a levy on  
4 property of an individual. In a proceeding to levy on personal property  
5 of a kind listed in sec. 50 of this chapter, a creditor shall comply  
6 with this section and sec. 160 of this chapter.

7           (b) Before, at the time of, or within three days after levy  
8 against property of an individual, the creditor shall file with the  
9 court from which the process issued an affidavit stating that he has  
10 reason to believe the individual has property that is not exempt,  
11 identifying the property, and stating facts constituting the basis for  
12 that belief.

13           (c) Before, at the time of, or within three days after levy, the  
14 creditor shall serve on the individual a notice under sec. 180 of this  
15 chapter, including a copy of the affidavit filed under (b) of this  
16 section.

17           (d) A bid for property that is less than the amount of the exempt  
18 value is not acceptable at a sale of property under a levy. If in-  
19 debtedness secured by a valid lien is chargeable against the proceeds  
20 of the sale, the bid must exceed the amount of the indebtedness secured  
21 plus the amount of the exempt value. If a sufficient bid is not  
22 received, the officer shall file a notation of the fact with the clerk  
23 of the court and return the property to the individual. The costs  
24 incurred during levy, offering the property for sale, and returning  
25 the property shall be assessed against the creditor and are not recover-  
26 able from the individual, notwithstanding any agreement of the parties  
27 to the contrary.

28           (e) If any question arises as to the rights of an individual  
29 entitled to an exemption under this chapter, an interested person may

1 file with the clerk of the court from which the process issued a  
2 statement of the claim of exemptions and the question raised. The  
3 statement shall be referred to the court as soon as practicable  
4 thereafter. The court shall order that notice of a hearing be given.  
5 After hearing the matter, the court shall make findings and issue an  
6 appropriate order. The court may award to the prevailing party costs  
7 of a proceeding under this subsection.

8 (f) An objection to levy on the ground that the property seized  
9 is exempt must be filed with the clerk of the court within 15 days  
10 after the levy. The burden of proving the validity of an exemption by  
11 a preponderance of the evidence is upon the individual claiming the  
12 exemption. Failure to file a timely objection may be held to be a  
13 waiver of a claim to exemption in the property, unless for cause shown  
14 the court excuses the failure.  
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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.

1           Sec. 09.38.180. CONTENTS OF NOTICE. (a) The notice required by  
2 sec. 170(c) of this chapter shall include the following information:

3           (1) the amount and date of the judgment to be enforced by  
4 levy and sale or other mode of appropriating the individual's prop-  
5 erty;

6           (2) the name and address of the clerk of the court with  
7 whom objections must be filed;

8           (3) the name and address of the creditor and of his at-  
9 torney, if any;

10           (4) a copy of the affidavit filed under sec. 170(b) of this  
11 chapter;

12           (5) a summary statement in lay terminology of the exemptions  
13 provided by the laws of this state;

14           (6) a summary statement in lay terminology of the pro-  
15 cedures for claiming exemptions, objecting to a levy on exempt property  
16 and exercising the right to repurchase homestead property from a sale  
17 before its confirmation; and

18           (7) a statement in lay terminology of the rights of persons  
19 other than the individual as provided in sec. 190 of this chapter.

20           (b) The supreme court may prescribe forms to be used by creditors,  
21 debtors and court officers under this chapter. A notice substantially  
22 complying with this section is effective even though the notice  
23 contains errors that do not result in substantial prejudice to the  
24 rights of the individual debtor or his dependents.  
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## 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.

1           Sec. 09.38.190. ASSERTION OF RIGHTS BY ANOTHER. If an individual  
2 fails to select property entitled to be claimed as exempt or to object  
3 to a levy on the property or to assert any other right under this  
4 chapter, the spouse or a dependent of the individual or any other  
5 person authorized by law may make the claim or objection or assert the  
6 rights provided by this chapter.  
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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).

1           Sec. 09.38.200. JUDICIAL RELIEF. (a) An individual or the  
2 spouse, a dependent of the individual, or any other person authorized  
3 by law is entitled to injunctive relief, damages, or both, against a  
4 creditor or other person to prevent or redress a violation of this  
5 chapter as provided in the Alaska Rules of Civil Procedure. A court  
6 may award costs and reasonable attorney fees to a party entitled to  
7 injunctive relief or damages.

8           (b) For cause shown the court may relieve a person from the  
9 consequences of failing to take timely action to assert rights under  
10 this chapter.  
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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.

1           Sec. 09.38.210. DEBTOR'S PROPERTY OWNED WITH ANOTHER. (a) If an  
2 individual and another own property in this state as tenants in common  
3 or tenants by the entirety, a creditor of the individual, subject to  
4 the individual's right to claim an exemption under this chapter, may  
5 obtain a levy on and sale of the interest of the individual in the  
6 property. A creditor who has obtained a levy, or a purchaser who has  
7 purchased the individual's interest at the sale, may have the property  
8 partitioned or the individual's interest severed.

9           (b) A partner's right in specific partnership property is exempt  
10 except on a claim against the partnership; when partnership property is  
11 attached for a partnership debt, the partners or any of them or the  
12 representatives of a deceased partner may not claim an exemption for  
13 that property under this chapter.  
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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. Alaska, 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 which represents the Alaska version of the Uniform Partnership Act which was inserted here to consolidate the exemption laws of the state.

1           Sec. 09.38.220. WAIVER OF EXEMPTION. A waiver of exemption  
2 executed in favor of an unsecured creditor before levy on an indi-  
3 vidual's property is unenforceable, but a valid security interest may  
4 be given in exempt property.  
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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., 24 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.

1           Sec. 09.38.230. FEDERAL REQUIREMENTS. If a federal department  
2 or agency issues a formal ruling that any section of this chapter  
3 relating to public assistance cannot be given effect without causing  
4 this state's plan for the delivery of services or benefits to be out  
5 of conformity with federal requirements, the section shall become  
6 inoperative to the extent that it is not in conformity with federal  
7 requirements.  
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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.

1           Sec. 09.38.240. ADJUSTMENT OF DOLLAR AMOUNTS. (a) The dollar  
2 amounts in this chapter change, as provided in this section, according  
3 to and to the extent of changes in the Consumer Price Index for the  
4 Anchorage Metropolitan Area Consumer Price Index compiled by the Bureau  
5 of Labor Statistics, United States Department of Labor (the index).  
6 The index for November of the year preceding the year in which this  
7 section becomes effective is the reference base index.

8           (b) The dollar amounts change on July 1 of each even-numbered  
9 year if the percentage of change, calculated to the nearest whole  
10 percentage point, between the index for December of the preceding year  
11 and the reference base index, is 10 per cent or more, but

12           (1) the portion of the percentage change in the index in  
13 excess of a multiple of 10 per cent is disregarded and the dollar  
14 amounts change only in multiples of 10 per cent of the amounts appear-  
15 ing in this chapter on the effective date of this chapter; and

16           (2) the dollar amounts do not change if the amounts required  
17 by this section are those currently in effect as a result of earlier  
18 application of this section.

19           (c) If the index is revised, the percentage of change is calculated  
20 on the basis of the revised index. If a revision of the index changes  
21 the reference base index, a revised reference base index is determined  
22 by multiplying the reference base index applicable by the rebasing  
23 factor furnished by the United States Bureau of Labor Statistics.  
24 If the index is superseded, the index referred to in this section is  
25 the one represented by the Bureau of Labor Statistics as reflecting  
26 most accurately changes in the purchasing power of the dollar for  
27 Alaskan consumers.

28           (d) The Department of Labor shall adopt a regulation announcing  
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1 (1) on or before April 30 of each year in which dollar  
2 amounts are to change, the changes in dollar amounts required by (b)  
3 of this section; and

4 (2) promptly after the changes occur, changes in the index  
5 required by (c) of this section, including, if applicable, the numeri-  
6 cal equivalent of the reference base index under a revised reference  
7 base index and the designation or title of any index superseding the  
8 index.

9 (e) The Department of Labor shall also provide notification of a  
10 change in exemption amounts required under (c) of this section to the  
11 clerks of court in each judicial district of the state.  
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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.

1           Sec. 09.38.250. PROTECTION OF PROPERTY OF RESIDENTS AND NON-  
2 RESIDENTS. (a) Residents of this state are entitled to the exemptions  
3 provided under this chapter. Nonresidents are entitled to the ex-  
4 emptions provided by the law of the jurisdiction of their residence.

5           (b) The term "resident" means an individual who is physically  
6 present in the state and who intends to maintain his permanent home in  
7 Alaska.

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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".

1 \* Sec. 3. AS 14.25.200 is amended to read:

2 Sec. 14.25.200. EXEMPTION FROM TAXATION AND PROCESS. (a)

3 Teachers' retirement salaries and other amounts held in the retirement  
4 fund on behalf of the teachers are exempt from state and municipal taxes  
5 and are not subject to anticipation, alienation, sale, transfer, assign-  
6 ment, pledge, encumbrance, or charge [, GARNISHMENT, EXECUTION OR LEVY]  
7 of any kind, either voluntary or involuntary, before they are received  
8 by the person entitled to the amount under the terms of the system, and  
9 any attempt to anticipate, alienate, sell, transfer, assign, pledge,  
10 encumber, charge, or otherwise dispose of any right to amounts accrued  
11 in the retirement fund shall be void.

12 (b) Teachers' retirement salaries and other amounts held in the  
13 retirement fund on behalf of the members are exempt from garnishment,  
14 execution or levy as provided in AS 09.38 (exemptions).

15 \* Sec. 4. AS 23.20.405 is amended by adding a new subsection to read:

16 (e) Benefits paid or payable under this chapter are exempt from  
17 levy to enforce the collection of a debt as provided in AS 09.38  
18 (exemptions).

19 \* Sec. 5. AS 23.30.160 is amended to read:

20 Sec. 23.30.160. ASSIGNMENT AND EXEMPTION FROM CLAIMS OF CREDITORS.

21 (a) No assignment, release, or commutation of compensation or benefits  
22 due or payable under this chapter, except as provided by this chapter,  
23 is valid [, AND THE COMPENSATION AND BENEFITS ARE EXEMPT FROM ALL CLAIMS  
24 OF CREDITORS AND FROM LEVY, EXECUTION, AND ATTACHMENT OR OTHER REMEDY  
25 FOR RECOVERY OR COLLECTION OF A DEBT]. This exemption may not be  
26 waived.

27 (b) Benefits payable under this chapter are exempt from levy to  
28 enforce the collection of a debt as provided in AS 09.38 (exemptions).  
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1 \* Sec. 6. AS 34.15.140(b) is repealed and re-enacted to read:

2 (b) A homestead held by tenants by the entirety is exempt from  
3 execution on a debt to the value specified under AS 09.38.030(b) and may  
4 be liable for the debts of either tenant after partition of the tenancy  
5 under AS 09.38.210.

6 \* Sec. 7. AS 39.35.500 is amended to read:

7 Sec. 39.35.500. SAFEGUARD OF EMPLOYEE FUNDS HELD BY THE SYSTEM.

8 (a) Employee contributions and other amounts held in the pension fund  
9 are exempt from Alaska state and local taxes. Amounts held on behalf  
10 of, or payable to, any employee or other person who is or may become  
11 eligible for benefits under the system are not subject to anticipation,  
12 alienation, sale, transfer, assignment, pledge, encumbrance, or charge  
13 [, GARNISHMENT, EXECUTION, OR LEVY] of any kind, either voluntary or  
14 involuntary, before being received by the person entitled to the amount  
15 under the terms of the system. An attempt to anticipate, alienate,  
16 sell, transfer, assign, pledge, encumber, charge, or otherwise dispose  
17 of a right to amounts held under the system is void.

18 (b) Employee contributions and other amounts held in the pension  
19 fund and retirement benefits payable under this chapter are exempt from  
20 levy to enforce the collection of a debt as provided in AS 09.38  
21 (exemptions).

22 \* Sec. 8. AS 47.25.210 is amended to read:

23 Sec. 47.25.210. ALIENATION AND ATTACHMENT. Assistance granted  
24 under secs. 120 - 300 of this chapter is inalienable by assignment or  
25 transfer and is exempt from garnishment, levy, or execution as provided  
26 in AS 09.38 (exemptions) [UNDER THE LAWS OF THIS STATE].

27 \* Sec. 9. AS 47.25.395 is amended to read:

28 Sec. 47.25.395. ALIENATION AND ATTACHMENT. Assistance granted  
29 under secs. 310 - 420 of this chapter is inalienable by assignment or

1 transfer and is exempt from garnishment, levy, or execution as provide  
2 in AS 09.38 (exemptions) [UNDER THE LAWS OF THIS STATE].

3 \* Sec. 10. AS 47.25.550 is amended to read:

4 Sec. 47.25.550. ALIENATION AND ATTACHMENT. Assistance granted  
5 under secs. 430 - 610 of this chapter is inalienable by an assignment  
6 transfer and is exempt from garnishment, levy, or execution as provide  
7 in AS 09.38 (exemptions) [UNDER THE LAWS OF THIS STATE].

8 \* Sec. 11. AS 47.25.710 is amended to read:

9 Sec. 47.25.710. ALIENATION AND ATTACHMENT. Assistance granted  
10 under secs. 620 - 780 of this chapter is inalienable by assignment or  
11 transfer and is exempt from garnishment, levy, or execution as provide  
12 in AS 09.38 (exemptions) [UNDER THE LAWS OF THE STATE].

13 \* Sec. 12. AS 47.25.880 is amended to read:

14 Sec. 47.25.880. ALIENATION AND ATTACHMENT. Assistance granted  
15 under secs. 790 - 970 of this chapter is inalienable by assignment or  
16 transfer and is exempt from garnishment, levy, or execution as provide  
17 in AS 09.38 (exemptions) [UNDER THE LAWS OF THIS STATE].

18 \* Sec. 13. AS 47.45.120 is amended to read:

19 Sec. 47.45.120. EXEMPTION FROM TAXATION AND PROCESS. (a) Bonu  
20 received under this chapter are exempt from all state and political  
21 subdivision taxes except sales and use taxes [AND ARE NOT SUBJECT TO  
22 EXECUTION, ATTACHMENT, GARNISHMENT OR OTHER PROCESS]. No bonus receiv  
23 under this chapter may be exempt from a federal tax requirement.

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

## 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 amendments contained in these sections are intended to reorganize the style and form of the statutes but are not intended to cause a substantive change in the law. 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 capitalized. Set out below is a list of the amending sections and the subjects to which they relate:

- |             |  |
|-------------|--|
| Section 3:  | teachers retirement benefits (see also the comment to AS 09.38.070 on page 24 for the status of retirement benefits paid to a retired teacher or member);            |
| Section 4:  | unemployment compensation benefits;  |
| Section 5:  | workmen's compensator benefits;  |
| Section 6:  | tenancies by the entirety  |
| Section 7:  | public employee retirement benefits (see also the comment to AS 09.38.070 on page 24 for the status of retirement benefits paid to a retired former public employee; |
| Section 8:  | general relief assistance bene. its;   |
| 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.   |

1 . \* Sec. 14. AS 09.35.035, 09.35.040, 09.35.050, 09.35.080 - 09.35.090,  
2 09.35.120; AS 21.24.110; AS 21.42.320 - 21.42.350; AS 23.20.405(b) and (c);  
3 and AS 32.05.200(b)(3) are repealed.

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1 \* Sec. 15. All writs of execution, claims of exemption, sales, confirma-  
2 tions of sales, rights of redemption and priorities of redemption issued or  
3 filed under any law repealed by this Act and in full force and effect on the  
4 effective date of this Act, shall remain in full force and effect for the  
5 term issued or until revoked, vacated, or modified under the provisions of  
6 this Act.

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APPENDIX

This appendix sets out a comparison of the Act with existing state law and the exemptions provided under the laws of Washington and Oregon.

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.....	)	2/.....	)	\$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.

<u>Limited Value Exemption</u>	<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 (Printer - 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 .....				
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	"Keepakes" - 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 <u>liquid assets</u>	

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.

Homestead Exemptions (cont.)

Alaska

Oregon

Wash.

Alaska Exemptions Act

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 date .....	1 year from sale, destruction, or compensation
	removal or absence	of voluntary sale		
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 .....	.....	nonexempt**
TRS benefits .....	exempt* .....	exempt (all pensions) .....	exempt (all pensions) .....	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

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

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

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

March 3, 1982

The Honorable Patrick M. Rodey  
Chairman  
Senate Judiciary Committee  
Room 125 - Capitol Building  
Juneau, Alaska

Re: CS for House Bill No. 74 (Rules) am

Dear Senator Rodey:

On April 29, 1982, Senator Mulcahy, Chairman of the Labor and Commerce Committee moved and asked unanimous consent that the Labor and Commerce Committee referral on CS for House Bill No. 74 (Rules) am, be waived.

Without objection, it was so ordered and the bill was referred to the Senate Judiciary Committee.

For the consideration of the Senate Judiciary Committee, I am enclosing copies of Fiscal Notes prepared by Mr. Dan R. Copeland, Director, Child Support Enforcement Division, Anchorage and Ms. Marilla L. Gemmer, Director, Enforcement Division of the Department of Revenue concerning the Committee Substitute.

Sincerely,



R. D. Stevenson  
Special Assistant

Enclosures

cc: Joseph K. Donohue  
Deputy Commissioner  
Department of Revenue

Dan R. Copeland, Director  
Child Support Enforcement  
Department of Revenue

Marilla L. Gemmer, Director  
Enforcement Division  
Department of Revenue

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST  
 Bill/Resolution No. CSHB 74 (Rules) am  
 Title Act relating to the rights of debtors and creditors  
 Requested by Senate Labor and Commerce Date 4/10/82

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

FUNDING (Thousands of Dollars)

NONE	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

NONE	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)

IV. DATE April 19, 1982 PREPARED BY Marilla L. Gemmer, Director  
 AGENCY Department of Revenue - Enforcement Division  
 Original: Legislative Finance PHONE 465-2366  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/81)

# MEMORANDUM


# State of Alaska

TO: Joseph K. Donohue  
Deputy Commissioner, Taxation

DATE: April 30, 1982

FILE NO:

TELEPHONE NO:

FROM: Marilla Gemmer   
Director, Enforcement Division

SUBJECT: CSHB 74 (Rules) am  
Requested Amendments

Dan Copeland, Director of Child Support Enforcement, Division and this writer request that the following three amendments be added to CSHB 74 am:

No. 1.

AS 09.65.132 is amended to read:

Sec. 09.65.132 (g) An income assignment under this section has priority over all other attachments, executions, garnishments, or other assignments unless otherwise ordered by the court. An income assignment is not limited to the wages of an obligor but may include all money owed to the obligor not otherwise exempt by law. The exemptions from execution by judgment debtors under AS 09.38 [AS 09.35.080 (A) AND THE RESTRICTIONS FROM EXECUTION BY JUDGEMENT DEBTORS UNDER AS 09.35.080 (b)(1)] do not apply to income assignments under this section; however, 50 percent of the gross wages of the obligor or \$100 a week, whichever is less, is exempt from execution under this section.

No. 2.

AS 43.20.270 is amended to read:

Sec. 43.20.270. DISTRAINT ON PROPERTY. (b) Notwithstanding the provisions of AS 09.35.070, 09.38.010-09.38.020 (-09.35.090) 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:

No. 3.

As.47.23.250 is amended to read:

Sec. 47.23.250.(i) The exemptions from execution by judgment debtors under AS 09.38 [AS 09.35.080(b)(1)] do not apply to proceeding to enforce the payment of child support under AS 47.23.230 - 47.23.270; however, 50 percent of the gross wages of the obligor or \$100 a week whichever is less, is exempt from execution under AS 47.23.230 - 47.23.270. (29 ch 126 SLA 1977; am 8 ch 96 SLA 1981)

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST  
 Bill/Resolution No. CSHB 74 (Rls) am  
 Title "An Act relating to the Rights of debtors and creditors"  
 Requested by Home Rules Date 4/21/82

II. FISCAL DETAIL  
 Agency Affected Department of Revenue  
 Program Category Affected Revenue Collection and Management  
 BRU, Program, Or Subprogram(s) Affected Child Support 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)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL None						

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
None						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME						
PART TIME						
TEMPORARY						
None						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)  
 Statutes affecting child support enforcement AS 09.65.132(g) and AS 47.23.250(i) include reference to sections of current law AS 09.35 which section 14 of HB 74 moves to repeal. These references exempt certain child support enforcement actions from the restrictions from execution by judgment debtors under AS 09.35 and impose specific restrictions for child support actions. Language in HB 74 under AS 09.38.065 presents every indication that child support enforcement should continue to maintain this exemption.

With the reference changes from AS 09.35 to AS 09.38 in both AS 09.65.132(g) and AS 47.23.250(i), the child support agency and the obligor should experience the benefits of the procedures for execution on judgments. Without the reference changes the child support agency would experience additional legal expense in executing on judgments where two sets of requirements and restrictions are in effect.

IV. DATE 4/21/82 PREPARED BY Dan R Copeland  
 AGENCY Child Support Enforcement - Dept. of Revenue  
 Original: Legislative Finance PHONE 276-3441  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/81)

THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Committee Substitute for House Bill 74 (Rules)

Title "An Act relating to the rights of debtors and creditors."

Requested by: Senate Labor and Commerce

Date 4/15/82

II. FISCAL DETAIL

Agency Affected Labor

Program Category Affected Social Services

BRU, Program, or Subprogram(s) Affected Administrative Services

(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						
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						
TEMPORARY						

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

The information required is already available.

IV. DATE 4/15/82

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AGENCY Department of Labor

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Original: Legislative Finance

cc: Budget and Management

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