

S B

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Alaska State Legislature

Senate

Official Business

SENATOR PAUL FISCHER

Pouch V
State Capitol
Juneau, Alaska 99811

To: All Senate Judiciary Members

From: Senator Paul Fischer *PF*

Date: March 4, 1986

Subject: Spc Substitute for Senate Bill 421

This legislative bill is proposed to untangle, what is in many instances, an unmanageable administrative process which prevents the intent of AS 43.23.065 from being fully carried out.

Attached is an analysis of the bill done by the Division of Legal Services.

STATE OF ALASKA
THE LEGISLATURE

POLICY STATE CAPITAL
BUREAU ALASKA 998
907 465 2800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 4, 1986

SUBJECT: Sectional Analysis of SSSB 421
TO: Senator Paul Fischer
FROM: Tamara Brandt Cook *TBC*
Director
Division of Legal Services

Section 1. The statute dealing with exemption of permanent fund dividends from levy, execution, garnishment, attachment or other remedies for the collection of debt is amended. Under existing law the exemption is not available for dividends taken to satisfy child support obligations, a debt owed to an agency, or a court ordered restitution under certain statutes. Under this bill, for these types of non-exempt situations, AS 09.38 (Alaska Exemptions Act) does not apply. Execution is not accomplished under the general chapter on executions (AS 09.35) but rather, it is accomplished by serving a certified copy of the judgment on the commissioner of revenue. In addition, a voluntary assignment of a dividend to satisfy one of the debts of a type that is not exempt under existing law is to be granted the same priority as would be granted under existing law for an involuntary attachment.

Sec. 2. The Act has an immediate effective date.

TBC:mkr
m3/118



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State Capitol
Juneau, Alaska 99811

TO: senate Judiciary Committee

FROM: Senator Paul Fischer *PF*

DATE: February 21, 1984

SUBJECT: Senate Bill 421, permanent fund dividend attachment.

This measure, if enacted, would facilitate the attachment of an individual's permanent fund dividend for payment of child support, court ordered restitution, or debts to the state.

By making SB 421 law, we would be streamlining procedures to accomplish the purposes of prioritized debts under AS 43.23.065.

Procedural hurdles established to protect property rights that should not apply when an individual owes prioritized debt would be eliminated.

Whether the debt is child support, victim restitution, criminal court fine, attorney fees for the public defender agency or other debts to the state, this will eliminate some procedural mazes which effectively prevent use of permanent funds for satisfaction of that debt. This legislation does that while still protecting the rights of the debtor.

attachment

This bill is intended to facilitate the attachment of an individual's permanent fund dividend for the payment of child support, court ordered restitution, or debts to the state.

Currently there exists a legal dispute as to whether a permanent fund dividend is subject to the exemption procedures in the Alaska Exemption Act, AS 09.38, when the permanent fund dividend is being sought for a debt prioritized under AS 43.23.C (1-3). While arguments as to the applicability of AS 09.38 can be made, this legislation directs that when a judgment is rendered by a court for child support, victim restitution or a debt to the state, then the individual cannot claim that the permanent fund dividend is exempt from attachment.

Additionally, the execution procedures existing in AS 09.35 would no longer be applicable to attachment of a dividend for a prioritized debt. This change would not foreclose due process for dividend receipts, rather the legislation directs the Department of Revenue to adopt procedures whereby a recipient receives notice of the attachment and the opportunity to raise a defense to it, e.g., the debt has been paid, or this is the debt of this particular dividend recipient. Of course these debts have already been reduced to judgments in other forums, so that substantive defenses are precluded.

The final provision in this bill would recognize situations where individuals, having incurred a prioritized debt, cooperate and voluntarily assign their dividends to satisfy that debt. Currently, a voluntarily assigned dividend for a prioritized debt, is given no greater priority than any other involuntary attachment for an unprioritized purpose. Rather, it is strictly a matter of which is filed first, thus belying the purposes of priorities set out in AS 43.23.065.

With passage of this legislation, we would be streamlining procedures to accomplish the purposes of prioritized debts under this statute. By dispensing with procedural hurdles established to protect property rights that should not apply when an individual owes a prioritized debt, we facilitate use of permanent fund dividends for a greater purpose. For whether the debt is child support, victim restitution, criminal court fines, attorney fees for the public defender agency, or other debts to the state, we should eliminate procedural mazes which effectively prevent use of a permanent fund dividend for satisfaction. And this legislation does that while still protecting rights of the debtor.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No: SSSB 421
 Title: An act relating to attachment and assignment of Permanent Fund Dividends
 Sponsor: P. Fischer and DeVries
 Requestor: Senate Judiciary
 Date of Request: 3/3/86

FISCAL DETAIL

Agency Affected: Revenue
 BRU: Permanent Fund Dividend
 Components: Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

See attached

Prepared By: Ervin B. Jones
 Division: Administrative Services

Phone: 465-2313
 Date: 4/17/86

Approved by Commissioner: [Signature]
 Agency: Revenue

Date: 4/17/86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Department of Revenue
Administrative Services Division
Fiscal Note Analysis
SSSB 421

Assumptions:

1. It is assumed that the substance of AS 09.38, related regulations and the volume of court history, interpreting those laws would not apply to attachments for Child Support Enforcement, debts to state agencies, or court ordered restitution and cannot be relied upon as a basis for such attachments.
2. It is assumed that all attachments which arise from a court judgment will be served as a certified copy of judgment and that attachments arising from administrative decisions (e.g. tax liabilities, child support orders) will continue to be served in the existing way.
3. It is assumed that AS 09.40.010 will apply to all prejudgment attachments.

Program Summary:

AS 43.23.065 was originally enacted to offer protection to 50% of an applicant's dividend from the standard remedies for collection of debts - levy, execution, garnishment, and attachment. These attachments arise from either court orders or from administrative remedies found in federal and state law.

This protection is specifically not offered in three cases:

- 1) child support obligations required by court order or decision of the Child Support Enforcement Division;
- 2) debts owed to a state agency, where appeals have been exhausted; and
- 3) court ordered restitution

In these cases, 100% of the dividend is subject to attachment.

In 1985, the Department of Revenue received and processed 15,008 attachment orders, of which 12,123 were accepted. Of these, the above three categories accounted for the following number of attachments:

- 1) CSED - 1,297
- 2) State debts - 1,286
- 3) Restitution orders - 3

The attachments can be served as Writs of Execution, arising from a court judgment or as an Order to Withhold arising from an administrative decision. The attachments are served either on paper or by magnetic tape. The paper attachments are manually entered into the PFD system, identifying the person's record as one to be attached upon payment. The magnetic tape match does basically the same thing. Because of the huge volume of attachments, and because there is only one employee to process them, the Department of Revenue has been encouraging tape matches for those creditors who are large and sophisticated enough to handle it (e.g. Child Support Enforcement, IRS, Department of Labor). Those serving the

Program Summary (con't)

department with attachments may release the attachment up until the time the dividend is paid. This occurs when the debtor has satisfied the debt by other means. Releases are all done manually by entering a status change in the file. The PFD system includes a "garnishment" subsystem which processes payments in priority order once an attached dividend comes up for payment. In cases where a residual amount is due the applicant, the subsystem also produces that warrant.

In each case where an individual's dividend is attached, in whole or in part, the Department of Revenue sends the applicant a notice indicating how much was taken, and by whom. This notice also provides a telephone number at which the process server can be contacted.

The changes proposed would require the Document Processing section of Administrative Services - PFD to do the following:

- 1) modify the voluntary assignment to explain the changes;
- 2) review all voluntary assignments to determine those falling under AS 43.23.065(d) as proposed;
- 3) modify the Attachment sub-system of the PFD system to recognize the new priority of such voluntary assignments.

1. Positions: None

2. Other Expenditures: None

Funding: N/A

Section Cost Analysis: N/A

Computations: N/A

Impact on Local Government: N/A

Attachments: None

Suggested Revisions: None