

S B

508

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY
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May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. JUD. 5-8-88 1:30 m.

Patrick M. Rodey
Senator

Alaska State Legislature



Senate

3111 C. Sr., Suite 510
Anchorage, Alaska 99503
(907) 561-7618

During Session:
P.O. Box V
Juneau, Alaska 99811
(907) 465-3793

DATE: May 6, 1988

TO : Representative John Sund, Chair
House Judiciary Committee

FROM: Senator Patrick M. Rodey

RE : CS for SB 508 (Finance) - legislation relating to property exemptions for homesteads, for certain retirement plan interests and payments, and for other property.

The above-referenced bill passed the Senate unanimously and has been referred to the House Labor & Commerce Committee as well as your committee for further consideration.

This bill was sponsored and reviewed by the Senate Judiciary Committee and was also considered in the Finance Committee for purposes of adding language which doubles the existing homestead and personal property exemptions.

The bill adds a new presumption (based on Kansas law) which would allow a person in bankruptcy to exclude certain qualifying pension funds by treating those plans as spendthrift trusts. By excluding these plans, bankruptcy creditors would not have access to the funds. It also doubles the current homestead and personal property exemptions.

Several states have recently adopted similar legislation. I believe it is a timely issue, particularly in view of the anticipated increase in bankruptcies combined with the painful realization that even more Alaskans are being financially squeezed out of the state. This proposal would go a long way to protect the "future nest egg" of many Alaskans, particularly those who are concerned about losing it all as a result of the economic down-turn.

The proposal is scheduled for a hearing in House Labor and Commerce Committee on May 7th, and I am hopeful it will be passed out. In view of the strong support for this bill, the zero fiscal impact, and considering it will be reviewed by three committees, I would sincerely appreciate your consideration to waive the Judiciary Committee referral.

Thank you for your assistance in this request.

SB. 508

Patrick M. Rodey
Senator

Alaska State Legislature



Senate

3111 C. St., Suite 510
Anchorage, Alaska 99503
(907) 561-7618

During Session:
P.O. Box V
Juneau, Alaska 99811
(907) 465-3793

DATE: April 7, 1988

TO : Senator Jay Kerttula, Chair
Senate Judiciary Committee

FROM: Senator Patrick Rodey

Pat

RE : Drafted legislation relating to property exemptions for certain retirement plan interests and payments.

I recently sent you a copy of drafted legislation which I am interested in having introduced as a Senate Judiciary Committee bill relating to property exemptions for certain retirement plan interests and payments.

Since forwarding the first draft to you last week, I have made some revisions in the proposal and am enclosing a copy of the most current draft. Essentially, this version adds a new presumption (based on Kansas law) which would allow a person in bankruptcy to exclude certain qualifying pension funds by treating those plans as spendthrift trusts. By excluding these plans, bankruptcy creditors would not have access to the funds. I believe this approach is considerably tighter than the former version.

Attached is a memo from the legislative drafting attorney and a copy of the current draft for your information. I would appreciate your consideration of introducing this as a Committee Bill and if you have any questions, please feel free to discuss this with me.

Attachments

SB. 508

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
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907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 5, 1988

SUBJECT: Creating spendthrift trust presumption
(Work Order No. 5-2123)

TO: Senator Pat Rodey

FROM: Theresa L. Bannister *tb*
Legislative Counsel

This memo accompanies the most recent version of W.O. 5-2123 and includes a presumption that certain pension plans are spendthrift trusts. The language of the presumption is taken from a Kansas statute and is found in AS 09.38.017(d), added by sec. 1 of this bill.

The new presumption is intended to enable a person in bankruptcy to exclude certain qualifying pension funds from the person's bankruptcy estate under 11 U.S.C. 541(c)(2). If the plans are excluded, bankruptcy creditors will not have access to the funds. Since the proposed new section would apply to individual retirement accounts, which would not normally qualify as spendthrift trusts, the section is attempting to obtain the benefits of sec. 541(c)(2) merely by labelling the plan as a spendthrift trust. Based on my limited research in this area, I believe there is a question whether AS 09.38.017(d) would achieve its intended purpose. sec. 541(c)(2) has been interpreted to exempt from the estate only those spendthrift trusts traditionally beyond the reach of creditors under state law. Goff v. Taylor, 706 F.2d 574, 582 (1983). The presumption created under AS 09.38.017(d) may not satisfy the criteria in Goff because at least one type of included plan, an IRA, would not usually be considered a spendthrift trust under traditional spendthrift law.

I have deleted the reference to common law from AS 09.38.017(d), because statutes do not establish the common law of the state. Statutes may change or supplement the

Senator Pat Rodey
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common law, but statutory law does not determine the common law. See AS 01.10.010.

If I may be of further assistance, please advise.

Enclosure

TLB:gc
WKG2:096

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: SB 508
Publish Date: April 21, 1988

REQUEST: _____

Revision Date: _____
Title: Property exemptions for certain retirement plan interests/payments.
Sponsor: Senate Judiciary
Requestor: _____

Agency Affected: _____
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Senate Judiciary Committee
Division: _____

Phone: 465-3717
Date: April 21, 1988

Approved by ~~Commissioner~~ Senator Jay Kerttula, Chair
Agency: Senate Judiciary Committee

Date: April 21, 1988

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