

SB

4 7 4

1 IN THE SENATE

BY HALFORD, FAIKS, UEHLING,
FANNING, SZYMANSKI, KERTTULA
AND ABOOD

2 SENATE BILL NO. 474

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act increasing property exemptions."

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

8 * Section 1. AS 09.38.010(a) is amended to read:

9 (a) An individual is entitled to an exemption as a homestead of
10 the individual's interest in property in this state used as the
11 principal residence of the [THAT] individual or the dependents of the
12 [THAT] individual, but the value of the homestead exemption may not
13 exceed \$54,000 [\$27,000].

14 * Sec. 2. AS 09.38.010(b) is amended to read:

15 (b) If property owned by the entirety or in common is used by
16 one or more individual owners or their dependents as their principal
17 residence, each owner is entitled to a homestead exemption of that
18 owner's interest in the property as provided in (a) of this section.
19 The aggregate value of multiple homestead exemptions allowable with
20 respect to a single living unit may not exceed \$54,000 [\$27,000]. If
21 there are multiple owners of property exempt as a homestead, the value
22 of the exemption of each individual owner may not exceed the [THAT]
23 individual owner's pro rata portion of \$54,000 [\$27,000].

24 * Sec. 3. AS 09.38.020 is amended to read:

25 Sec. 09.38.020. EXEMPTIONS OF PERSONAL PROPERTY SUBJECT TO VALUE
26 LIMITATIONS. (a) An individual is entitled to an exemption in prop-
27 erty not to exceed an aggregate value of \$3,000 [\$1,500] chosen by the
28 individual from the following categories of property:

29 (1) household goods and wearing apparei reasonably
S

1 necessary for one household;

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

4 (3) family portraits and heirlooms of particular senti-
5 mental value to the individual.

6 (b) An individual is entitled to exemption of jewelry, not
7 exceeding \$1,000 [\$500] in aggregate value, if held for the personal
8 use of the individual or a dependent.

9 (c) An individual is entitled to exemption, not exceeding \$2,800
10 [\$1,400] in aggregate value, of implements, professional books, and
11 tools of the trade.

12 (d) An individual is entitled to the exemption of pets to the
13 extent of a value not exceeding \$1,000 [\$500].

14 (e) An individual is entitled to an exemption of one motor
15 vehicle to the extent of a value not exceeding \$3,000 [\$1,500] if the
16 full value of the motor vehicle does not exceed \$20,000 [\$10,000].

17 * Sec. 4. AS 09.38.025(a) is amended to read:

18 (a) Except as provided in this section, an individual is enti-
19 tled to exemption of unmatured life insurance and annuity contracts
20 owned by the individual. If the contracts have accrued dividends and
21 loan values available to the individual aggregating more than \$10,000
22 [\$5,000], a creditor may obtain a court order requiring the individual
23 debtor to pay the creditor, and authorizing the creditor on the
24 debtor's behalf to obtain payment of, the amount of the accrued divi-
25 dends and loan values in excess of \$10,000 [\$5,000] or the amount of
26 the creditor's claim, whichever is less.

27 * Sec. 5. AS 09.38.030(a) is amended to read:

28 (a) Except as provided in (b) and (c) of this section and
29 AS 09.38.050, an individual debtor is entitled to an exemption of the

1 individual debtor's weekly net earnings not to exceed \$350 [\$175].
2 The weekly net earnings of an individual are determined by subtracting
3 from the weekly gross earnings all sums required by law or court order
4 to be withheld. The weekly net earnings of an individual paid on a
5 monthly basis are determined by subtracting from the monthly gross
6 earnings of the individual all sums required by law or court order to
7 be withheld and dividing the remainder by 4.3. The weekly net earn-
8 ings of an individual paid on a semi-monthly basis are determined by
9 subtracting from the semi-monthly gross earnings all sums required by
10 law or court order to be withheld and dividing the remainder by 2.17.

11 * Sec. 6. AS 09.38.030(b) is amended to read:

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 \$1,400 [\$700], except as provided in AS 09.38.050. The term
16 "liquid assets" includes deposits, securities, notes, drafts, accrued
17 vacation pay, refunds, prepayments, and receivables.

18 * Sec. 7. AS 09.38.050(b) is amended to read:

19 (b) The exemption amounts under AS 09.38.030 may be increased
20 when the individual submits an affidavit, under penalty of perjury,
21 stating that the individual's earnings alone support the individual's
22 household; by so doing, the maximum part of the individual's aggregate
23 disposable earnings for any week subject to execution may not exceed
24 the amount by which the individual's disposable earnings for that week
25 exceed \$550 [\$275], or, if the individual is claiming an exemption for
26 cash or other liquid assets under AS 09.38.030(b), a maximum amount of
27 \$2,200 [\$1,100] available in a [ANY] month is exempt.
28
29

ALASKA STATE LEGISLATURE

. 15th . Legislature 2nd . . . Session

SENATE . . . **BILL** NO. 474 . .

By . **HALFORD, . FALKS, . UEHLING, . . .**
FANNING, SZYMANSKI,
KERTTULA AND ABOOD

"An Act increasing property exemptions."

Introduced in the Senate **2/16** , 1988

HISTORY IN THE SENATE

19 **88** Read first time and referred to Committee on

2 16 FINANCE
 Reported back with recommendation that

Read second time and

Read third time and

| | |
|---------------|----------------|
| PASSED | Effective Date |
| Yeas | Yeas |
| Nays | Nays |
| Excused | Excused |
| Absent | Absent |

Reconsideration
 Reconsideration not taken up

| | |
|---------------|----------------|
| PASSED | Effective Date |
| Yeas | Yeas |
| Nays | Nays |
| Excused | Excused |
| Absent | Absent |

Reported correctly engrossed
 Signed by President
 Sent to House

SECRETARY OF THE SENATE

HISTORY IN THE HOUSE

19 Read first time and referred to Committee on

Reported back with recommendation that

Read second time and

Read third time and

| | |
|---------------|----------------|
| PASSED | Effective Date |
| Yeas | Yeas |
| Nays | Nays |
| Excused | Excused |
| Absent | Absent |

Reconsideration
 Reconsideration not taken up

| | |
|---------------|----------------|
| PASSED | Effective Date |
| Yeas | Yeas |
| Nays | Nays |
| Excused | Excused |
| Absent | Absent |

Reported correctly engrossed
 Signed by Speaker
 Returned to Senate

CHIEF CLERK OF THE HOUSE

HISTORY IN THE SENATE

19 Received from House

To enrolling

Reported correctly enrolled

Sent to Governor

..... by Governor

Chapter No.

Filed with Lt. Governor

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act increasing property
exemptions."
Sponsor: Senator Halford
Requestor: Senate Finance

Agency Affected: Department of Law
BRU: Legal Services
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | | -0- | -0- | -0- | -0- | -0- |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director

Phone: 465-3672

Division: Administrative Services

Date: February 19, 1988

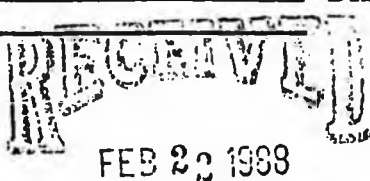
Approved by Commissioner: Grace Berg Schaible, Atty. Gen.

Date: February 19, 1988

Agency: Department of Law

Distribution (by preparer):

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



CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 474

This bill amends the Alaska Exemption Act, AS 09.38, by doubling the monetary value of exemptions granted to an individual that are protected from garnishment, attachment, levy, execution, or similar proceedings. Because this bill deals with transactions between creditors and debtors it will not have a direct fiscal impact on the Department of Law. To the extent that some state agencies' duties involve those of a creditor there may be some impact for such agencies.

NOTES

Property Exemptions in Bankruptcy

- * Per conversation with Terry Bannister, LAA Legal Services, the language in Sec. 09.38.080 (3) is unclear if "necessary wearing apparel" is included in the \$200 exemption.
- 1. New subsection added by C.45, s 2, SLA 1974 which reads in part, "maximum aggregate disposable income of individual for any week may not exceed (A) 25% of his disposable income for that week or (B) the amount by which his disposable income for that week exceeds \$114, whichever is less."
- 2. Combined value including household goods, furniture, wearing apparel, books, portraits, and heirlooms.
- 3. To be exempt, the total value of the automobile may not exceed \$11,000.
- 4. Sec. 09.38.010 reads in part, "(a) exemption for homestead as principle residence for individual or dependents may not exceed \$27,000." "(b) aggregate value of multiple homestead exemptions allowable with respect to a single living unit may not exceed \$27,000."
- 5. If cash surrender value does not exceed \$5,000.
- 6. To be exempt, the total value of the automobile may not exceed \$11,000.
- 7. If cash surrender value does not exceed \$5,500.
- 8. Combined aggregate value to include household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments for personal, family or household use. May not exceed \$200 in value in any particular item.
- 9. Paragraph 8, 11 USC s 522 reads in part, "aggregate interest, not to exceed in value \$4,000, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent." In addition, Paragraph 7, USC s 522 reads, "Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract", may be exempted.
- 10. Subsection (a), 15 USC s 1673 reads in part, "maximum part of aggregate disposable earnings for any work week may not exceed (1) 25% of disposable earnings for a week, or (2) the amount by which disposable earnings for that week exceed 30 times the federal minimum hour wage at time earnings are payable, whichever is less."

**PART 7.
ADMINISTRATIVE SERVICES DIVISION**

Chapter

95. Adjustments to Alaska Exemptions Act
(8 AAC 95.010-8 AAC 95.990)

**CHAPTER 95.
ADJUSTMENTS TO ALASKA
EXEMPTIONS ACT**

Section

10. Statement of purpose
20. Determination of changes in the
Consumer Price Index
30. Adjustments to exemptions
990. Definitions

8 AAC 95.010. STATEMENT OF PURPOSE.
This chapter adjusts the dollar amounts set out
in the Alaska Exemptions Act (AS 09.38), in
response to changes in the Consumer Price
Index. (Eff. 7/1/86, Reg. 98)

Authority: AS 09.38.115

**8 AAC 95.020. DETERMINATION OF
CHANGES IN THE CONSUMER PRICE
INDEX.** The department has determined that
the November 1985 Consumer Price Index re-
flects a 13.39 percent increase over the January
1982 base index used for the purpose of adjust-
ing the dollar amounts set out in the Alaska
Exemptions Act. Under AS 09.38.115(b)(1),
this percent increase is rounded to 10 percent.
(Eff. 7/1/86, Reg. 98)

Authority: AS 09.38.115

**8 AAC 95.030. ADJUSTMENTS TO EXEMP-
TIONS.** (a) The \$27,000 homestead exemption
provided in AS 09.38.010(a) and (b) is increased
to \$29,700.

(b) The personal property exemptions pro-
vided in AS 09.38.020 are increased as follows:

(1) the \$1,500 aggregate exemption for
personal property, set out in AS 09.38.020(a),
is increased to \$1,650:

(2) the \$500 exemption for jewelry, set out
in AS 09.38.020(b), is increased to \$550;

(3) the \$1,400 exemption for implements,

professional books, and tools of the trade, set
out in AS 09.38.020(c), is increased to \$1,540:

(4) the \$500 exemption for pets, set out in
AS 09.38.020(d), is increased to \$550; and

(5) the \$1,500 exemption for a motor
vehicle, set out in AS 09.38.020(e), is increased
to \$1,650 and the \$10,000 value limitation for
the motor vehicle, set out in AS 09.30.020(e),
is increased to \$11,000.

(c) The \$5,000 exemption for accrued divi-
dends and loan values on life insurance and
annuity contracts, in AS 09.38.025(a), is in-
creased to \$5,500.

(d) The exemptions for earnings and liquid
assets, in AS 09.38.030, are increased as follows:

(1) the \$175 exemption for weekly net earn-
ings, set out in AS 09.38.030(a), is increased to
\$192.50; and

(2) the \$700 exemption for cash and other
liquid assets, set out in AS 09.38.030(b), is in-
creased to \$770.

(e) The increased exemption amounts pro-
vided in AS 09.38.050(b) are increased as
follows:

(1) the \$275 amount regarding weekly dis-
posable earnings is increased to \$302.50; and

(2) the \$1,100 maximum monthly exemp-
tion for cash and other liquid assets is in-
creased to \$1,210. (Eff. 7/1/86, Reg. 98)

Authority: AS 09.38.115

8 AAC 95.990. DEFINITIONS. In this chapter,

(1) "Consumer Price Index" means the Con-
sumer Price Index for all Urban Consumers for
the Anchorage Metropolitan Area compiled by
the Bureau of Labor Statistics, United States
Department of Labor; and

(2) "department" means the Department of
Labor. (Eff. 7/1/86, Reg. 98)

Authority: AS 09.38.115

STATE PROPERTY EXEMPTIONS IN BANKRUPTCY

| | <u>1962</u> | <u>1971</u> | <u>1972</u> | <u>1974</u> | <u>1976</u> | <u>1982</u> | <u>1986</u> | <u>FEDERAL EXEMPTION</u> |
|--|-------------|-------------|---|----------------------|-------------|---------------------|--------------------|--------------------------|
| <u>LIMITED VALUE EXEMPTION</u> | | | | | | | | |
| Books | 300 | | | | | 1,500 ² | 1,650 ² | 4,000 ⁸ |
| Pictures | | | | | | | | |
| Musical Instruments | | | | | | | | |
| Wearing Apparel * | | | | | | | | 4,000 ⁸ |
| Watches & Jewelry | 200 | | | | | 500 | 550 | 500 |
| Articles for Trade/Profession | 1,800 | 2,500 | | | | 1,400 | 1,540 | 750 |
| Household Goods | 1,200 | | | | | 1,500 ² | 1,650 ² | 4,000 ⁸ |
| Furniture | | | | | | | | |
| Pets | | | | | | | | |
| Automobile | | | (Exempt under Trade/Profession) | | | 1,500 ³ | 1,650 ⁶ | 1,200 |
| Heirlooms | | | | | | 1,500 ² | 1,650 ² | |
| Earnings (within 30 days) | | | 350 (Head of Household) 200 (Single Man) | | | | | |
| Weekly Net Earnings | | | | 25%/114 ¹ | | 175 | 193 | 25%/ ¹⁰ |
| Cash & Other Liquid Assets | | | | | | 700 | 770 | |
| Weekly Disposable Income | | | | | | 275 | 303 | Not |
| Increased Cash & Liquid Assets | | | | | | 1,100 | 1,210 | Specified |
| <u>HOMESTEAD EXEMPTION</u> | | | | | | | | |
| Debtor's Dwelling (Realty) | 8,000 | | 12,000 | | 19,000 | 27,000 ⁴ | 29,700 | 7,500 |
| Debtor's Dwelling (Mobile Home) | | | 8,000 | | 12,000 | | | |
| <u>PROPERTY EXEMPTION W/O LIMITATION</u> | | | | | | | | |
| Unmatured Life Insurance & Annuity Contracts | | | | | | 5,000 ⁵ | 5,500 ⁷ | 4,000 ⁹ |

UNITED STATES CODE

1982 EDITION

SUPPLEMENT IV

CONTAINING THE GENERAL AND PERMANENT LAWS OF
THE UNITED STATES, ENACTED DURING THE
98TH CONGRESS AND 99TH CONGRESS

Prepared and published under authority of Title 2, U.S. Code, Section 285b,
by the Office of the Law Revision Counsel of the House of Representatives



JANUARY 15, 1983, TO JANUARY 5, 1987

VOLUME TWO

TITLE 11—BANKRUPTCY

TO

TITLE 18—CRIMES AND CRIMINAL PROCEDURE

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1987

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 523, 554, 704, 707, 1106, 1111, 1112, 1307 of this title.

§ 522. Exemptions

(a) In this section—

(1) "dependent" includes spouse, whether or not actually dependent; and

(2) "value" means fair market value as of the date of the filing of the petition or, with respect to property that becomes property of the estate after such date, as of the date such property becomes property of the estate.

(b) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (1) or, in the alternative, paragraph (2) of this subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Bankruptcy Rules, one debtor may not elect to exempt property listed in paragraph (1) and the other debtor elect to exempt property listed in paragraph (2) of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (1), where such election is permitted under the law of the jurisdiction where the case is filed. Such property is—

[See main edition for text of (1) and (2)]

(c) Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except—

(1) a debt of a kind specified in section 523(a)(1) or 523(a)(5) of this title; or

(2) a debt secured by a lien that is—

(A)(i) not avoided under subsection (f) or (g) of this section or under section 544, 545, 547, 548, 549, or 724(a) of this title; and

(ii) not void under section 508(d) of this title; or

(B) a tax lien, notice of which is properly filed.

(d) The following property may be exempted under subsection (b)(1) of this section:

[See main edition for text of (1) and (2)]

(3) The debtor's interest, not to exceed \$200 in value in any particular item or \$4,000 in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

[See main edition for text of (4)]

(5) The debtor's aggregate interest in any property, not to exceed in value \$400 plus up to \$3,750 of any unused amount of the exemption provided under paragraph (1) of this subsection.

[See main edition for text of (6) to (9)]

(10) The debtor's right to receive—

[See main edition for text of (A) to (D)]

(E) a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless—

[See main edition for text of (i) and (ii)]

(iii) such plan or contract does not qualify under section 401(a), 403(a), 403(b), 408, or 409¹ of the Internal Revenue Code of 1986 (26 U.S.C. 401(a), 403(a), 403(b), 408, or 409).

[See main edition for text of (11)]

(e) A waiver of an exemption executed in favor of a creditor that holds an unsecured claim against the debtor is unenforceable in a case under this title with respect to such claim against property that the debtor may exempt under subsection (b) of this section. A waiver by the debtor of a power under subsection (f) or (h) of this section to avoid a transfer, under subsection (g) or (i) of this section to exempt property, or under subsection (i) of this section to recover property or to preserve a transfer, is unenforceable in a case under this title.

[See main edition for text of (f) and (g)]

(h) The debtor may avoid a transfer of property of the debtor or recover a setoff to the extent that the debtor could have exempted such property under subsection (g)(1) of this section if the trustee had avoided such transfer, if—

(1) such transfer is avoidable by the trustee under section 544, 545, 547, 548, 549, or 724(a) of this title or recoverable by the trustee under section 553 of this title; and

(2) the trustee does not attempt to avoid such transfer.

(1) [See main edition for text of (1)]

(2) Notwithstanding section 551 of this title, a transfer avoided under section 544, 545, 547, 548, 549, or 724(a) of this title, under subsection (f) or (h) of this section, or property recovered under section 553 of this title, may be preserved for the benefit of the debtor to the extent that the debtor may exempt such property under subsection (g) of this section or paragraph (1) of this subsection.

[See main edition for text of (j) to (l)]

(m) Subject to the limitation in subsection (b), this section shall apply separately with respect to each debtor in a joint case.

(As amended Pub. L. 98-553, title III, §§ 308, 453, July 10, 1984, 98 Stat. 353, 375; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L.

¹ See References in Text note below.

99-554, title I 3117.)

The Bankrup set out in the Section 409 of 409), referred ed to retirem 98-369, div. A. 848, and sectio (26 U.S.C. 409 tax credit emp igned section

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401(a), 403(a), 403(b),
nternal Revenue Code
401(a), 403(a), 403(b),

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53, title III, §§ 306,
353, 375; Pub. L.
0 Stat. 2095; Pub. L.

99-554, title II, § 283(i), Oct. 27, 1986, 100 Stat.
2117.)

REFERENCES IN TEXT

The Bankruptcy Rules, referred to in subsec. (b), are set out in the Appendix to this title.

Section 409 of the Internal Revenue Code (26 U.S.C. 409), referred to in subsec. (d)(10)(EXIII), which related to retirement bonds, was repealed by Pub. L. 98-369, div. A, title IV, § 491(b), July 18, 1984, 98 Stat. 948, and section 409A of the Internal Revenue Code (26 U.S.C. 409A), which related to qualifications for tax credit employee stock ownership plans, was redesignated section 409.

AMENDMENTS

1986—Subsec. (d)(10)(EXIII). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (h)(1). Pub. L. 99-554, § 283(i)(1), substituted "553 of this title" for "553 of this title".

Subsec. (i)(2). Pub. L. 99-554, § 283(i)(2), substituted "this" for "his" after "subsection (g) of".

1984—Subsec. (a)(2). Pub. L. 98-353, § 453(a), inserted "or, with respect to property that becomes property of an estate after such date, as of the date such property becomes property of the estate".

Subsec. (b). Pub. L. 98-353, § 306(a), added provision that in joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Bankruptcy Rules, one debtor may not elect to exempt property listed in paragraph (1) and the other debtor elect to exempt property listed in paragraph (2) of this subsection, but that if the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (1), where such election is permitted under the law of the jurisdiction where the case is filed.

Subsec. (c). Pub. L. 98-353, § 453(b), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such claim had arisen before the commencement of the case, except—

"(1) a debt of a kind specified in section 523(a)(1) or section 523(a)(5) of this title; or

"(2) a lien that is—

"(A) not avoided under section 544, 545, 547, 548, 549, or 724(a) of this title;

"(B) not voided under section 506(d) of this title;

or

"(CXI) a tax lien, notice of which is properly filed; and

"(ii) avoided under section 545(2) of this title."

Subsec. (d)(3). Pub. L. 98-353, § 306(b), inserted "or \$4,000 in aggregate value."

Subsec. (d)(5). Pub. L. 98-353, § 306(c), amended par. (5) generally. Prior to amendment, par. (5) read as follows: "The debtor's aggregate interest, not to exceed in value \$400 plus any unused amount of the exemption provided under paragraph (1) of this subsection, in any property."

Subsec. (e). Pub. L. 98-353, § 453(c), substituted "an exemption" for "exemptions".

Subsec. (m). Pub. L. 98-353, § 306(d), substituted "Subject to the limitation in subsection (b), this section shall apply separately with respect to each debtor in a joint case" for "This section shall apply separately with respect to each debtor in a joint case".

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-554 effective 30 days after Oct. 27, 1986, see section 302(a) of Pub. L. 99-554, set out as an Effective Date note under section 581 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 349, 502, 542, 551, 552, 722, 1123 of this title; title 28 sections 1017, 1398; title 29 section 1405.

§ 523. Exceptions to discharge

(a) A discharge under section 727, 1141,¹² 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

(1) for a tax or a customs duty—

(A) of the kind and for the periods specified in section 507(a)(2) or 507(a)(7) of this title, whether or not a claim for such tax was filed or allowed;

[See main edition for text of (B) and (C)]

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;

(B) use of a statement in writing—

(i) that is materially false;

(ii) respecting the debtor's or an insider's financial condition;

(iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and

(iv) that the debtor caused to be made or published with intent to deceive; or

(C) for purposes of subparagraph (A) of this paragraph, consumer debts owed to a single creditor and aggregating more than \$500 for "luxury goods or services" incurred by an individual debtor on or within forty days before the order for relief under this title, or cash advances aggregating more than \$1,000 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within twenty days before the order for relief under this title, are presumed to be nondischargeable; "luxury goods or services" do not include goods or services reasonably acquired for the support or maintenance of the debtor or a dependent of the debtor; an extension of consumer credit under an open end credit plan is to be defined for purposes of this subparagraph as it is defined in the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.);

[See main edition for text of (3) and (4)]

(5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or

¹²So in original.

UNITED STATES CODE

1982 EDITION

CONTAINING THE GENERAL AND PERMANENT LAWS
OF THE UNITED STATES, IN FORCE
ON JANUARY 14, 1983

Prepared and published under authority of Title 2, U.S. Code, Section 285b
by the Office of the Law Revision Counsel of the House of Representatives



VOLUME FOUR

TITLE 11—BANKRUPTCY
AND
TITLE 12—BANKS AND BANKING

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1983

(A) a social security benefit, unemployment compensation, or a local public assistance benefit;

(B) a veterans' benefit;

(C) a disability, illness, or unemployment benefit;

(D) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(E) a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless—

(i) such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose;

(ii) such payment is on account of age or length of service; and

(iii) such plan or contract does not qualify under section 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue Code of 1954 (26 U.S.C. 401(a), 403(a), 403(b), 408, or 409).

(11) The debtor's right to receive, or property that is traceable to—

(A) an award under a crime victim's reparation law;

(B) a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(C) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(D) a payment, not to exceed \$7,500, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or

(E) a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(e) A waiver of exemptions executed in favor of a creditor that holds an unsecured claim against the debtor is unenforceable in a case under this title with respect to such claim against property that the debtor may exempt under subsection (b) of this section. A waiver by the debtor of a power under subsection (f) or (h) of this section to avoid a transfer, under subsection (g) or (i) of this section to exempt property, or under subsection (l) of this section to recover property or to preserve a transfer, is unenforceable in a case under this title.

(f) Notwithstanding any waiver of exemptions, the debtor may avoid the fixing of a lien

on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—

(1) a judicial lien; or

(2) a nonpossessory, nonpurchase-money security interest in any—

(A) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

(B) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or

(C) professionally prescribed health aids for the debtor or a dependent of the debtor.

(g) Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the trustee recovers under section 510(c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if—

(1)(A) such transfer was not a voluntary transfer of such property by the debtor; and

(B) the debtor did not conceal such property; or

(2) the debtor could have avoided such transfer under subsection (f)(2) of this section.

(h) The debtor may avoid a transfer of property of the debtor or recover a setoff to the extent that the debtor could have exempted such property under subsection (g)(1) of this section if the trustee had avoided such transfer, if—

(1) such transfer is avoidable by the trustee under section 544, 545, 547, 548, 549, or 724(a) of this title or recoverable by the trustee under section 553 of this title; and

(2) the trustee does not attempt to avoid such transfer.

(i)(1) If the debtor avoids a transfer or recovers a setoff under subsection (f) or (h) of this section, the debtor may recover in the manner prescribed by, and subject to the limitations of, section 550 of this title, the same as if the trustee had avoided such transfer, and may exempt any property so recovered under subsection (b) of this section.

(2) Notwithstanding section 551 of this title, a transfer avoided under section 544, 545, 547, 548, 549, or 724(a) of this title, under subsection (f) or (h) of this section, or property recovered under section 553 of this title, may be preserved for the benefit of the debtor to the extent that the debtor may exempt such property under subsection (g) of this section or paragraph (1) of this subsection.

¹So in original.

²So in original. Probably should be "this".

(j) Notwithstanding this section, the same kind of property of this section that the debtor has exempted under subsection (k) of this section is not exempt from the administrative expenses of the debtor's estate that is attributable to the value of such property transferred under this section, or section (i) has not paid.

(1) The debtor's right to receive, or property that is traceable to—

(A) an award under a crime victim's reparation law;

(B) a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(C) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(D) a payment, not to exceed \$7,500, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or

(E) a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(e) A waiver of exemptions executed in favor of a creditor that holds an unsecured claim against the debtor is unenforceable in a case under this title with respect to such claim against property that the debtor may exempt under subsection (b) of this section. A waiver by the debtor of a power under subsection (f) or (h) of this section to avoid a transfer, under subsection (g) or (i) of this section to exempt property, or under subsection (l) of this section to recover property or to preserve a transfer, is unenforceable in a case under this title.

(f) Notwithstanding any waiver of exemptions, the debtor may avoid the fixing of a lien

on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—

(1) a judicial lien; or

(2) a nonpossessory, nonpurchase-money security interest in any—

(A) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

(B) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or

(C) professionally prescribed health aids for the debtor or a dependent of the debtor.

(g) Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the trustee recovers under section 510(c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if—

(1)(A) such transfer was not a voluntary transfer of such property by the debtor; and

(B) the debtor did not conceal such property; or

(2) the debtor could have avoided such transfer under subsection (f)(2) of this section.

(h) The debtor may avoid a transfer of property of the debtor or recover a setoff to the extent that the debtor could have exempted such property under subsection (g)(1) of this section if the trustee had avoided such transfer, if—

(1) such transfer is avoidable by the trustee under section 544, 545, 547, 548, 549, or 724(a) of this title or recoverable by the trustee under section 553 of this title; and

(2) the trustee does not attempt to avoid such transfer.

(i)(1) If the debtor avoids a transfer or recovers a setoff under subsection (f) or (h) of this section, the debtor may recover in the manner prescribed by, and subject to the limitations of, section 550 of this title, the same as if the trustee had avoided such transfer, and may exempt any property so recovered under subsection (b) of this section.

(2) Notwithstanding section 551 of this title, a transfer avoided under section 544, 545, 547, 548, 549, or 724(a) of this title, under subsection (f) or (h) of this section, or property recovered under section 553 of this title, may be preserved for the benefit of the debtor to the extent that the debtor may exempt such property under subsection (g) of this section or paragraph (1) of this subsection.

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debtor in property to the extent that the debtor has been entitled to an exemption under this section, if such lien is not a nonpurchase-money security interest in such property.

nonpurchase-money security interest in such property, including—
(1) household furnishings, household appliances, books, records, musical instruments, or jewelry, primarily for the personal, family, or household use of the debtor or the debtor's dependent;
(2) professional books, or tools, equipment, or other personal property of the debtor; or
(3) prescribed health aids for the debtor or the debtor's dependent.

Sections 550 and 551 of this title, and section 541(c)(2), 542, 543, and 547, to the extent that they permit the debtor to exempt such property from the estate under this section if such property was not a voluntary transfer of property by the debtor; and to the extent that they permit the debtor to conceal such property from the creditors.

Section 541(c)(2) of this section.

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Section 541(c)(2) of this section.

(j) Notwithstanding subsections (g) and (i) of this section, the debtor may exempt a particular kind of property under subsections (g) and (i) of this section only to the extent that the debtor has exempted less property in value of such kind than that to which the debtor is entitled under subsection (b) of this section.

(k) Property that the debtor exempts under this section is not liable for payment of any administrative expense except—

(1) the aliquot share of the costs and expenses of avoiding a transfer of property that the debtor exempts under subsection (g) of this section, or of recovery of such property, that is attributable to the value of the portion of such property exempted in relation to the value of the property recovered; and

(2) any costs and expenses of avoiding a transfer under subsection (f) or (h) of this section, or of recovery of property under subsection (i)(1) of this section, that the debtor has not paid.

(l) The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. If the debtor does not file such a list, a dependent of the debtor may file such a list, or may claim property as exempt from property of the estate on behalf of the debtor. Unless a party in interest objects, the property claimed as exempt on such list is exempt.

(m) This section shall apply separately with respect to each debtor in a joint case.

Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2586.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 522 of the House amendment represents a compromise on the issue of exemptions between the position taken in the House bill, and that taken in the Senate amendment. Dollar amounts specified in section 522(d) of the House bill have been reduced from amounts as contained in H.R. 8200 as passed by the House. The States may, by passing a law, determine whether the Federal exemptions will apply as an alternative to State exemptions in bankruptcy cases.

Section 522(c)(1) tracks the House bill and provides that dischargeable tax claims may not be collected out of exempt property.

Section 522(f)(2) is derived from the Senate amendment restricting the debtor to avoidance of nonpossessory, nonpurchase money security interests.

Exemptions: Section 522(c)(1) of the House amendment adopts a provision contained in the House bill that dischargeable taxes cannot be collected from exempt assets. This changes present law, which allows collection of dischargeable taxes from exempt property, a rule followed in the Senate amendment. Nondischargeable taxes, however, will continue to the [be] collectible out of exempt property. It is anticipated that in the next session Congress will review the exemptions from levy currently contained in the Internal Revenue Code [title 26] with a view to increasing the exemptions to more realistic levels.

SENATE REPORT NO. 95-989

Subsection (a) of this section defines two terms: "dependent" includes the debtor's spouse, whether or not actually dependent; and "value" means fair market value as of the date of the filing of the petition.

Subsection (b) tracks current law. It permits a debtor the exemptions to which he is entitled under other Federal law and the law of the State of his dom-

icile. Some of the items that may be exempted under Federal laws other than title 11 include:

- Foreign Service Retirement and Disability payments, 22 U.S.C. 1104; ¹
- Social security payments, 42 U.S.C. 407;
- Injury or death compensation payments from war risk hazards, 42 U.S.C. 1717;
- Wages of fishermen, seamen, and apprentices, 46 U.S.C. 601;
- Civil service retirement benefits, 5 U.S.C. 729, 2285; ²
- Longshoremen's and Harbor Workers' Compensation Act death and disability benefits, 33 U.S.C. 918;
- Railroad Retirement Act annuities and pensions, 45 U.S.C. 228(L); ³
- Veterans benefits, 45 U.S.C. 352(E); ⁴
- Special pensions paid to winners of the Congressional Medal of Honor, 38 U.S.C. 3101; ⁵ and
- Federal homestead lands on debts contracted before issuance of the patent, 43 U.S.C. 175.

He may also exempt an interest in property in which the debtor had an interest as a tenant by the entirety or joint tenant to the extent that interest would have been exempt from process under applicable nonbankruptcy law.

Under proposed section 541, all property of the debtor becomes property of the estate, but the debtor is permitted to exempt certain property from property of the estate under this section. Property may be exempted even if it is subject to a lien, but only the unencumbered portion of the property is to be counted in computing the "value" of the property for the purposes of exemption.

As under current law, the debtor will be permitted to convert nonexempt property into exempt property before filing a bankruptcy petition. The practice is not fraudulent as to creditors, and permits the debtor to make full use of the exemptions to which he is entitled under the law.

Subsection (c) insulates exempt property from prepetition claims other than tax claims (whether or not dischargeable), and other than alimony, maintenance, or support claims that are excepted from discharge. The bankruptcy discharge does not prevent enforcement of valid liens. The rule of *Long v. Bullard*, 117 U.S. 617 (1886), is accepted with respect to the enforcement of valid liens on nonexempt property as well as on exempt property. Cf. *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 583 (1935).

Subsection (c)(3) permits the collection of dischargeable taxes from exempt assets. Only assets exempted from levy under Section 6334 of the Internal Revenue Code [title 26] or under applicable state or local tax law cannot be applied to satisfy these tax claims. This rule applies to prepetition tax claims against the debtor regardless of whether the claims do or do not receive priority and whether they are dischargeable or nondischargeable. Thus, even if a tax is dischargeable vis-a-vis the debtor's after-acquired assets, it may nevertheless be collectible from exempt property held by the estate. (Taxes incurred by the debtor's estate which are collectible as first priority administrative expenses are not collectible from the debtor's estate which are collectible as first priority administrative expenses are not collectible from the debtor's exempt assets.)

Subsection (d) protects the debtor's exemptions, either Federal or State, by making unenforceable in a bankruptcy case a waiver of exemptions or a waiver of the debtor's avoiding powers under the following subsections.

¹ Replaced by 22 U.S.C. 4060(c).
² Replaced by 5 U.S.C. 8346.
³ Replaced by 45 U.S.C. 231m.
⁴ Railroad unemployment benefits are covered by 45 U.S.C. 352(e).
⁵ Veterans benefits generally are covered by 38 U.S.C. 3101.

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(j) Notwithstanding subsections (g) and (i) of this section, the debtor may exempt a particular kind of property under subsections (g) and (i) of this section only to the extent that the debtor has exempted less property in value of such kind than that to which the debtor is entitled under subsection (b) of this section.

(k) Property that the debtor exempts under this section is not liable for payment of any administrative expense except—

(1) the aliquot share of the costs and expenses of avoiding a transfer of property that the debtor exempts under subsection (g) of this section, or of recovery of such property, that is attributable to the value of the portion of such property exempted in relation to the value of the property recovered; and

(2) any costs and expenses of avoiding a transfer under subsection (f) or (h) of this section, or of recovery of property under subsection (i)(1) of this section, that the debtor has not paid.

(l) The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. If the debtor does not file such a list, a dependent of the debtor may file such a list, or may claim property as exempt from property of the estate on behalf of the debtor. Unless a party in interest objects, the property claimed as exempt on such list is exempt.

(m) This section shall apply separately with respect to each debtor in a joint case.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2586.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 522 of the House amendment represents a compromise on the issue of exemptions between the position taken in the House bill, and that taken in the Senate amendment. Dollar amounts specified in section 522(d) of the House bill have been reduced from amounts as contained in H.R. 8200 as passed by the House. The States may, by passing a law, determine whether the Federal exemptions will apply as an alternative to State exemptions in bankruptcy cases.

Section 522(c)(1) tracks the House bill and provides that dischargeable tax claims may not be collected out of exempt property.

Section 522(f)(2) is derived from the Senate amendment restricting the debtor to avoidance of nonpossessory nonpurchase money security interests.

Exemptions: Section 522(c)(1) of the House amendment adopts a provision contained in the House bill that dischargeable taxes cannot be collected from exempt assets. This changes present law, which allows collection of dischargeable taxes from exempt property, a rule followed in the Senate amendment. Nondischargeable taxes, however, will continue to the [be] collectable out of exempt property. It is anticipated that in the next session Congress will review the exemptions from levy currently contained in the Internal Revenue Code (title 26) with a view to increasing the exemptions to more realistic levels.

SENATE REPORT NO. 95-989

Subsection (a) of this section defines two terms: “dependent” includes the debtor’s spouse, whether or not actually dependent; and “value” means fair market value as of the date of the filing of the petition.

Subsection (b) tracks current law. It permits a debtor the exemptions to which he is entitled under other Federal law and the law of the State of his dom-

icile. Some of the items that may be exempted under Federal laws other than title 11 include:

Foreign Service Retirement and Disability payments, 22 U.S.C. 1104; *

Social security payments, 42 U.S.C. 407;

Injury or death compensation payments from war risk hazards, 42 U.S.C. 1717;

Wages of fishermen, seamen, and apprentices, 46 U.S.C. 601;

Civil service retirement benefits, 5 U.S.C. 729, 2265; *

Longshoremen’s and Harbor Workers’ Compensation Act death and disability benefits, 33 U.S.C. 916;

Railroad Retirement Act annuities and pensions, 45 U.S.C. 228(L); *

Veterans benefits, 45 U.S.C. 352(E); *

Special pensions paid to winners of the Congressional Medal of Honor, 38 U.S.C. 3101; * and

Federal homestead lands on debts contracted before issuance of the patent, 43 U.S.C. 175.

He may also exempt an interest in property in which the debtor had an interest as a tenant by the entirety or joint tenant to the extent that interest would have been exempt from process under applicable nonbankruptcy law.

Under proposed section 541, all property of the debtor becomes property of the estate, but the debtor is permitted to exempt certain property from property of the estate under this section. Property may be exempted even if it is subject to a lien, but only the unencumbered portion of the property is to be counted in computing the “value” of the property for the purposes of exemption.

As under current law, the debtor will be permitted to convert nonexempt property into exempt property before filing a bankruptcy petition. The practice is not fraudulent as to creditors, and permits the debtor to make full use of the exemptions to which he is entitled under the law.

Subsection (c) insulates exempt property from prepetition claims other than tax claims (whether or not dischargeable), and other than alimony, maintenance, or support claims that are excepted from discharge. The bankruptcy discharge does not prevent enforcement of valid liens. The rule of *Long v. Bullard*, 117 U.S. 617 (1886), is accepted with respect to the enforcement of valid liens on nonexempt property as well as on exempt property. Cf. *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 583 (1935).

Subsection (c)(3) permits the collection of dischargeable taxes from exempt assets. Only assets exempted from levy under Section 6334 of the Internal Revenue Code (title 26) or under applicable state or local tax law cannot be applied to satisfy these tax claims. This rule applies to prepetition tax claims against the debtor regardless of whether the claims do or do not receive priority and whether they are dischargeable or nondischargeable. Thus, even if a tax is dischargeable vis-a-vis the debtor’s after-acquired assets, it may nevertheless be collectible from exempt property held by the estate. (Taxes incurred by the debtor’s estate which are collectible as first priority administrative expenses are not collectible from the debtor’s estate which are collectible as first priority administrative expenses are not collectible from the debtor’s exempt assets.)

Subsection (d) protects the debtor’s exemptions, either Federal or State, by making unenforceable in a bankruptcy case a waiver of exemptions or a waiver of the debtor’s avoiding powers under the following subsections.

* Replaced by 22 U.S.C. 4060(c).

* Replaced by 5 U.S.C. 8346.

* Replaced by 45 U.S.C. 231m.

* Railroad unemployment benefits are covered by 45 U.S.C. 352(e).

* Veterans benefits generally are covered by 38 U.S.C. 3101.

Subsection (e) protects the debtor's exemptions, his discharge, and thus his fresh start by permitting him to avoid certain liens on exempt property. The debtor may avoid a judicial lien on any property to the extent that the property could have been exempted in the absence of the lien, and may similarly avoid a nonpurchase-money security interest in certain household and personal goods. The avoiding power is independent of any waiver of exemptions.

Subsection (f) gives the debtor the ability to exempt property that the trustee recovers under one of the trustee's avoiding powers if the property was involuntarily transferred away from the debtor (such as by the fixing of a judicial lien) and if the debtor did not conceal the property. The debtor is also permitted to exempt property that the trustee recovers as the result of the avoiding of the fixing of certain security interests to the extent that the debtor could otherwise have exempted the property.

Subsection (g) provides that if the trustee does not exercise an avoiding power to recover a transfer of property that would be exempt, the debtor may exercise it and exempt the property. If the transfer was involuntary and the debtor did not conceal the property. If the debtor wishes to preserve his right to pursue any action under this provision, then he must intervene in any action brought by the trustee based on the same cause of action. It is not intended that the debtor be given an additional opportunity to avoid a transfer or that the transferee should have to defend the same action twice. Rather, the section is primarily designed to give the debtor the rights the trustee could have, but has not, pursued. The debtor is given no greater rights under this provision than the trustee, and thus, the debtor's avoiding powers under proposed sections 544, 545, 547, and 548, are subject to proposed 546, as are the trustee's powers.

These subsections are cumulative. The debtor is not required to choose which he will use to gain an exemption. Instead, he may use more than one in any particular instance, just as the trustee's avoiding powers are cumulative.

Subsection (h) permits recovery by the debtor of property transferred by an avoided transfer from either the initial or subsequent transferees. It also permits preserving a transfer for the benefit of the debtor. In either event, the debtor may exempt the property recovered or preserved.

Subsection (i) makes clear that the debtor may exempt property under the avoiding subsections (f) and (h) only to the extent he has exempted less property than allowed under subsection (b).

Subsection (j) makes clear that the liability of the debtor's exempt property is limited to the debtor's aliquot share of the costs and expenses recovery of property that the trustee recovers and the debtor later exempts, and any costs and expenses of avoiding a transfer by the debtor that the debtor has not already paid.

Subsection (k) requires the debtor to file a list of property that he claims as exempt from property of the estate. Absent an objection to the list, the property is exempted. A dependent of the debtor may file it and thus be protected if the debtor fails to file the list.

Subsection (l) provides the rule for a joint case.

HOUSE REPORT NO. 95-595

Subsection (a) of this section defines two terms: "dependent" includes the debtor's spouse, whether or not actually dependent; and "value" means fair market value as of the date of the filing of the petition.

Subsection (b), the operative subsection of this section, is a significant departure from present law. It permits an individual debtor in a bankruptcy case a choice between exemption systems. The debtor may choose the Federal exemptions prescribed in subsection (d), or he may choose the exemptions to which he is entitled under other Federal law and the law of the State of his domicile. If the debtor chooses the latter, some of the items that may be exempted under other Federal laws include:

- Foreign Service Retirement and Disability payments, 22 U.S.C. 1104;*
- Social security payments, 42 U.S.C. 407;
- Injury or death compensation payments from war risk hazards, 42 U.S.C. 1717;
- Wages of fishermen, seamen, and apprentices, 46 U.S.C. 601;
- Civil service retirement benefits, 5 U.S.C. 729, 2285;*
- Longshoremen's and Harbor Workers' Compensation Act death and disability benefits, 33 U.S.C. 918;
- Railroad Retirement Act annuities and pensions, 45 U.S.C. 228(l);**
- Veterans benefits, 45 U.S.C. 352(E);**
- Special pensions paid to winners of the Congressional Medal of Honor, 38 U.S.C. 3101;*** and
- Federal homestead lands on debts contracted before issuance of the patent, 43 U.S.C. 175.

He may also exempt an interest in property in which the debtor had an interest as a tenant by the entirety or joint tenant to the extent that interest would have been exempt from process under applicable nonbankruptcy law. The Rules will provide for the situation where the debtor's choice of exemption, Federal or State, was improvident and should be changed, for example, where the court has ruled against the debtor with respect to a major exemption.

Under proposed 11 U.S.C. 541, all property of the debtor becomes property of the estate, but the debtor is permitted to exempt certain property from property of the estate under this section. Property may be exempted even if it is subject to a lien, but only the unencumbered portion of the property is to be counted in computing the "value" of the property for the purposes of exemption. Thus, for example, a residence worth \$30,000 with a mortgage of \$25,000 will be exemptable to the extent of \$5,000. This follows current law. The remaining value of the property will be dealt with in the bankruptcy case as is any interest in property that is subject to a lien.

As under current law, the debtor will be permitted to convert nonexempt property into exempt property before filing a bankruptcy petition. See Hearings, pt. 3, at 1355-58. The practice is not fraudulent as to creditors and permits the debtor to make full use of the exemptions to which he is entitled under the law.

Subsection (c) insulates exempt property from prepetition claims, except tax and alimony, maintenance, or support claims that are excepted from discharge. The bankruptcy discharge will not prevent enforcement of valid liens. The rule of *Long v. Bullard*, 117 U.S. 617 (1886) (6 S.Ct. 917, 29 L.Ed. 1004), is accepted with respect to the enforcement of valid liens on nonexempt property as well as on exempt property. Cf. *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 583 (1935) (55 S.Ct. 854).

Subsection (d) specifies the Federal exemptions to which the debtor is entitled. They are derived in large part from the Uniform Exemptions Act, promulgated by the Commissioners of Uniform State Laws in August, 1976. Eleven categories of property are exempted. First is a homestead to the extent of \$10,000, which may be claimed in real or personal property that the debtor or a dependent of the debtor uses as a residence. Second, the debtor may exempt a motor vehicle to the extent of \$1500. Third, the debtor may exempt household goods, furnishings, clothing, and similar household items, held primarily for the personal, family, or household use of the debtor or a dependent of the debtor. "Animals" includes all animals, such as pets, livestock, poultry, and fish, if they

*Replaced by 22 U.S.C. 4060(c).

**Replaced by 5 U.S.C. 8346.

***Replaced by 45 U.S.C. 231m.

**Railroad unemployment benefits are covered by 45 U.S.C. 352(e).

***Veterans benefits generally are covered by 38 U.S.C. 3101.

are held primarily use. The limitation any particular item to \$750 of personal Paragraph (5) p any unused amou any property, in o nonhomeowner. P \$1000 in impleme the trade of the d exempts a life ins life insurance co paragraph refers. It does not encom tract, such as th Because of this p der a life insurac of the debtor if Paragraph (8) p \$5000 in loan va the debtor under whom the debt: exemption prov (7) will also inc surance certifi: vidual of whom the debtor ha exempted) or : collect the ent policy owned b First, however, policies under The \$5000 fig automatic pre the filing of t graph (9) ex: aids.

Paragraph akin to futur social security assistance be ness, or uner: separate ma ably necessa dependents (tain stock b similar plan length of se: exempt cert: crime victir benefits (wi tation), life pension f suffering (\$ ings payme subparagraph: compensati of a limb, a costs that: ments, pai items are l

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CHAPTER 42. PERSONAL PROPERTY

Section

- 42.001. Personal Property Exemption.
- 42.002. Personal Property Eligible for Exemption.
- 42.003. Designation of Exempt Property.
- 42.004. Transfer of Nonexempt Property.

Library References

Exemptions \Leftrightarrow 12, 31 to 61, 79.
C.J.S. Exemptions \S 7, 26 to 69, 93 et
seq.

Section 42.001. Personal Property Exemption

(a) Eligible personal property that is owned by a family and that has an aggregate fair market value of not more than \$30,000 is exempt from attachment, execution, and seizure for the satisfaction of debts, except for encumbrances properly fixed on the property.

(b) Eligible personal property that is owned by a single adult who is not a member of a family and that has an aggregate fair market value of not more than \$15,000 is exempt from attachment, execution, and seizure for the satisfaction of debts, except for encumbrances properly fixed on the property.

(c) The exemption provided in this section does not apply to a debt that is secured by a lien on the property or that is due for rents or advances from a landlord to the landlord's tenant.

Historical Note

| | |
|--|--|
| Prior Law: | Rev.Civ.St.1895, arts. 2395, 2398, 2402. |
| Acts 1858, p. 210. | Rev.Civ.St.1911, arts. 3785, 3789, 3793. |
| P.D. 3802, 6003, 6834. | Acts 1935, 44th Leg., p. 384, ch. 145, \S 1. |
| Acts 1870, p. 12. | Acts 1973, 63rd Leg., p. 1628, ch. 588, |
| Acts 1874, pp. 55, 137. | \S 3. |
| Rev.Civ.St.1879, arts. 2335, 2338, 2342. | Acts 1979, 66th Leg., p. 688, ch. 302, art. |
| G.L. vol. 4, p. 1082. | 5, \S 2. |
| G.L. vol. 6, p. 301. | Vernon's Ann.Civ.St. arts. 3822, 3836(a), |
| G.L. vol. 8, pp. 57, 138. | 3840. |

Cross References

Landlord's lien, see \S 54.001 et seq.

Law Review Commentaries

| | |
|---|---|
| Annual survey of Texas law: | Donald R. Rector, 37 Southwestern |
| Creditor and consumer rights—exempt property. Charles R. Gibbs, David W. Elmquist, Andrew E. Jillson, and | L.J. (Tex.) 207 (1983). |
| | Family law—Homestead exemption in bankruptcy and exempt personalty. |

§ 42.002. Personal Property Eligible for Exemption

The following personal property is eligible for the exemption:

- (1) home furnishings, including family heirlooms;
- (2) provisions for consumption;
- (3) if reasonably necessary for the family or single adult:
 - (A) farming or ranching implements;
 - (B) tools, equipment, books, and apparatus, including a boat, used in a trade or profession;
 - (C) clothing;
 - (D) two firearms; and
 - (E) athletic and sporting equipment;
- (4) if not held or used for production of income, passenger cars and light trucks as defined by Section 2, Uniform Act Regulating Traffic on Highways, as amended (Article 6701d, Vernon's Texas Civil Statutes), or, whether or not held for the production of income, two of the following categories of means of travel:
 - (A) two animals from the following kinds with a saddle and bridle for each:
 - (i) horses;
 - (ii) colts;
 - (iii) mules; and
 - (iv) donkeys;
 - (B) a bicycle or motorcycle;
 - (C) a wagon, cart, or dray, with reasonably necessary harness;
 - (D) an automobile;
 - (E) a truck cab;
 - (F) a truck trailer;
 - (G) a camper truck;
 - (H) a truck; and
 - (I) a pickup truck;
- (5) the following animals and forage on hand reasonably necessary for their consumption:
 - (A) 5 cows and their calves;
 - (B) 1 breeding age bull;
 - (C) 20 each of hogs, sheep, and goats;
 - (D) 50 chickens; and
 - (E) 30 each of turkeys, ducks, geese, and guineas;
- (6) household pets;

- (7) the cash surrender value of any life insurance policy in force for more than two years to the extent that a member of the insured person's family or a dependent of the single person claiming the exemption is a beneficiary of the policy; and
- (8) current wages for personal services.

Historical Note

Prior Law:

- | | |
|------------------------------------|---|
| Acts 1858, p. 210. | G.L. vol. 8, p. 138. |
| P.D. 3802, 6003, 6834. | Rev.Civ.St.1895, arts. 2395, 2398. |
| Acts 1870, p. 127. | Rev.Civ.St.1911, arts. 3785, 3789. |
| Acts 1874, p. 137. | Acts 1935, 44th Leg., p. 384, ch. 145, § 1. |
| Rev.Civ.St.1879, arts. 2335, 2338. | Acts 1973, 63rd Leg., p. 1628, ch. 588, § 3. |
| G.L. vol. 4, p. 1082. | Acts 1979, 66th Leg., p. 688, ch. 302, art. 5, § 2. |
| G.L. vol. 6, p. 301. | Vernon's Ann.Civ.St. arts. 3882, 3836(a). |

Notes of Decisions

- In general 1
- Automobiles 10
- Clothing 7
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- Life insurance 11
- Mules 8
- Partnership, tools and apparatus of trade or profession 6
- Pensions 13
- Restaurants, tools and apparatus of trade or profession 5
- Tools and apparatus of trade or professions 4-6
 - In general 4
 - Partnerships 6
 - Restaurants 5
- Vehicles 9, 10
 - In general 9
 - Automobiles 10
- Waiver 14

While piano purchased on installments is exempt from execution for purchaser's general debts, it is not exempt from sale to satisfy the unpaid installments secured by a mortgage. *Westchester Fire Ins. Co. v. Thomas Goggan & Bro. (Civ.App.1918)* 203 S.W. 163.

2. Law governing

In Missouri garnishment proceeding, judgment debtor, who was resident of Texas, could not, as matter of right, claim exemption under Texas law of all current wages. *Beneficial Finance Co. of Houston, Tex. v. Yellow Transit Freight Lines, Inc. (Mo.App.1969)* 450 S.W.2d 222.

Where both judgment debtor and creditor were residents of Texas and where underlying policy of both Texas and Missouri statutes exempting judgment debtor's wages from execution was to protect families of debtors from deprivation of support, Texas statute should be given effect, on principles of comity, in Missouri garnishment proceeding notwithstanding that amounts exempted by each state were different. *Id.*

3. Household and kitchen furniture

Vernon's Ann.Civ.St. art. 3836 (repealed; see, now, this chapter) providing that personal property is exempt from every type of seizure for satisfaction of liabilities except for encumbrances properly fixed thereon, is to be construed to mean that encumbered household goods and furnishings may not be exempt. *In re Evans (Bkrtcy.1982)* 25 B.R. 105.

1. In general

Personal property which falls into one of the categories listed under Vernon's Ann. Civ.St. art. 3836 (repealed; see, now, this chapter) is exempt as to all persons except for any person whose status is secured by validly perfected mortgage, lien or other encumbrance. *In re Evans (Bkrtcy.1982)* 25 B.R. 105.

Where debtor's dental and orthodontic tools and equipment and cash value of his life policies were encumbered for more than their value, they were not exempt. *In re Evans (Bkrtcy.1982)* 25 B.R. 105.

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12. Current wages

Proceeds of a claim under an accident insurance policy for loss of wages by the insured while he was incapacitated from illness were not "current wages," exempt from garnishment by Const. Art. 16, § 28, and Rev.Civ.St.1911, arts. 3785 and 3788 (see, now, this section), though the premiums on the policy were paid by exempt wages. *Mitchell v. Western Casualty & Guaranty Ins. Co.* (Civ.App.1914) 163 S.W. 630.

Sum due original contractor for construction of building is not exempt in bankruptcy. *McQuerry v. Glenn* (Civ.App.1928) 1 S.W.2d 339.

"Current wages" are compensation for personal services to be paid periodically or from time to time. *J.M. Radford Grocery Co. v. McKean* (Civ.App.1931) 41 S.W.2d 639.

Bonus or commission payable to salesman at end of year additional to salary was exempt to salesman as "current wages for personal services." *Id.*

Commissions on sale of gasoline and oil, payable monthly to station operator were exempt from garnishment as "current wages for personal services." *Alemite Co. of North Texas v. Magnolia Petroleum Co.* (Civ.App.1932) 50 S.W.2d 369.

One selling corporation's oil field tanks and separators for commission on price of goods sold on orders sent by him and ac-

cepted by corporation, which did not tell him when or where to work or whom to see, was not agent or servant, but independent contractor, whose compensation was not exempt from garnishment. *Shahan v. Biggs & Co.* (Civ.App.1939) 123 S.W.2d 686.

Authorization for deduction from employees' wages to pay dues to hospital association was not unconstitutional as enforced execution or garnishment of exempt current wages or invalid waiver of exemption. *Moseley v. Texas & N.O.R. Co.* (Civ.App. 1961) 346 S.W.2d 636, ref. n.r.e.

13. Pensions

Debtor's pension plan was includable as property of the estate and was not exempt under any Texas exemption provision. *In re Waters* (Bkrcty.1982) 22 B.R. 387.

14. Waiver

Contract authorizing lessors to distrain for rents due on any property of lessee, did not authorize them to seize exempt tools and apparatus belonging to lessee's trade as baker. *Lopez v. Naegelin* (Civ.App.1933) 50 S.W.2d 844.

Person entitled to claim exemption of property as tools of trade from landlord's lien may waive such claim by express declaration or by failing to plead exemption as a defense. *McNabb v. Terminal Bldg. Corporation of Dallas* (Civ.App.1936) 93 S.W.2d 189.

§ 42.003. Designation of Exempt Property

(a) If a family or a single adult who is not a member of a family owns more of a kind of personal property than is eligible for exemption, the head of the family or the single adult may designate the portion of that kind of property to be levied on.

(b) If a defendant in execution can be found in the county, the officer holding the execution shall ask the head of the family or the single adult to designate the personal property to be levied on. If the defendant cannot be found in the county or if the proper person fails to make a designation within a reasonable time after the officer's request, the officer may make the designation.

Historical Note

Prior Law:

Rev.Civ.St.1879, art. 2367.
Rev.Civ.St.1995, art. 2427.

Rev.Civ.St.1911, art. 3818.
Vernon's Ann.Civ.St. art. 3859.

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Notes of Decisions

In general 1
Designation after levy 2
Marshaling assets 3

excess property. *Coghlan v. Sullivan* (Civ. App. 1972) 480 S.W.2d 229.

2. Designation after levy

Where officer levying attachment does not request defendant to select exemptions, the latter may do so at the trial. *Hall v. Miller* (1899) 21 Civ.App. 336, 51 S.W. 36.

3. Marshaling assets

Where a chattel mortgage covering exempt and nonexempt property has been recorded, the mortgagor can require the mortgagee, in foreclosing, to first exhaust the nonexempt property. *Baughn v. Allen* (Civ. App. 1902) 68 S.W. 207; *Pugh v. Whitsitt & Guerry* (Civ. App. 1914) 161 S.W. 953.

1. In general

The defendant in execution, in possession of a larger number of horses than exempt, has a right to designate those upon which the execution may be levied. *Yancy v. Felker* (1887) 3 App.C.C. 5 249.

By failing to designate which property not exempt from levy of execution should be levied on to satisfy judgments judgment debtor waived his right to so designate the

§ 42.004. Transfer of Nonexempt Property

(a) If a person uses property not exempt under this chapter to acquire eligible personal property or an interest in eligible personal property or to make improvements or pay indebtedness on eligible personal property, with the intent to defraud, delay, or hinder an interested person from obtaining that to which the interested person is or may be entitled, the property, interest, or improvement acquired is not exempt from seizure for the satisfaction of liabilities. If the property, interest, or improvement is acquired by discharging an encumbrance held by a third person, a person defrauded, delayed, or hindered is subrogated to the rights of the third person.

(b) A creditor may not assert a claim under this section more than four years after the transaction from which the claim arises. A person with a claim that is unliquidated or contingent at the time of the transaction may not assert a claim under this section more than one year after the claim is reduced to judgment.

Historical Note

Prior Law:
Acts 1858, p. 210.
P.D. 380?
Rev.Civ.St.1879, art. 2338.
G.L. vol. 4, p. 1082.

Rev.Civ.St.1895, art. 2398.
Rev.Civ.St.1911, art. 3789.
Acts 1973, 63rd Leg., p. 1628, ch. 588,
§ 3.
Vernon's Ann.Civ.St. art. 3836(b) to (d).

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either party, when exceptions to it or any item thereof have been filed before the hearing, but not otherwise. After the hearing, or if there is no hearing requested, the court shall designate the homestead as deemed appropriate and order sale of the excess.

(c) The commissioner, a surveyor, and others appointed to assist the commissioner are entitled to such fees and expenses as are deemed reasonable by the court. The court shall tax these fees and expenses against the judgment debtor as part of the costs of execution.

Amended by Acts 1985, 69th Leg., ch. 840, § 1, eff. June 15, 1985; Acts 1987, 70th Leg., ch. 727, § 3, eff. Aug. 31, 1987.

1987 Legislation
The 1987 amendment in the first sentence of subsec. (a) inserted "who has not made a voluntary designation of a homestead under Section 41.005".

§ 41.024. Sale of Excess

An officer holding an execution sale of property of a judgment debtor whose homestead has been designated under this chapter may sell the excess of the judgment debtor's interest in land not included in the homestead.

Amended by Acts 1985, 69th Leg., ch. 840, § 1, eff. June 15, 1985; Acts 1987, 70th Leg., ch. 727, § 4, eff. Aug. 31, 1987.

1987 Legislation
The 1987 amendment substituted "chapter" for "subchapter".

CHAPTER 42. PERSONAL PROPERTY

Section
42.0021. Additional Exemption for Retirement Plan. [New]

WESTLAW Electronic Research
See WESTLAW guide following the Explanation of this supplement.

§ 42.001. Personal Property Exemption

Cross References
Retirement plans, additional exemptions, see § 42.0021.

cash value under Texas family exemption as member of family unit. In re Tillerson, Bkrcty. Tex.1984, 49 B.R. 11.

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7. Fraud on creditors
In re Reed (Bkrcty.1981) 11 B.R. 683 [main volume] appeal decided 700 F.2d 986.

1/2. Validity
Subsection (a) of this section, which set personal property exemption at \$30,000, was invalid when applied to exemption of current wages from garnishment provided under State Constitution. Sloan v. Douglass (App. 2 Dist.1986) 713 S.W.2d 436, ref. n.r.e.

10. Bankruptcy and bankruptcy proceedings
Under Vernon's Ann.Civ.St. Title 110B, § 31.005, specific fund which was created by debtor under optional retirement program for university faculty member, was intended to be exempt property, and, therefore, exemption so created was supplemental and in addition to personal property exemptions claimed by debtor under V.T.C.A. Property Code, § 42.001, and was not subject to \$30,000 limitation. In re Roper, Bkrcty.Tex.1984, 49 B.R. 4.

6. Insurance proceeds
Where wife was member of insured's family and was named beneficiary of policy, despite her election to exempt portion of cash surrender value under federal exemption she was entitled to benefit from husband's exemption on part of

Debtors were not entitled to utilize lien avoidance provisions of 11 U.S.C.A. § 522(f), allowing debtor to avoid nonpossessory, nonpurchase money lien, to avoid creditor/bank's lien where debtors elected to claim state law exemptions, one of which prohibited exemption in property

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which was encumbered by properly filed liens. In re Wolfe, Bkrcty.Tex.1985, 51 B.R. 900.

11. Farm equipment

Chapter 7 debtor's farm equipment was not exempt from bankruptcy estate under this section, so that debtor could not avoid lien on prop-

LIENS AND EXEMPT PROPERTY

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erty pursuant to Bankruptcy Code provision permitting debtor to avoid lien on exempt property to extent that lien impairs exemption to which debtor would otherwise be entitled, declining to follow *In re Hall*, 752 F.2d 582 (11th Cir.), *In re Thompson*, 59 B.R. 690 (Bkrcty., W.D.Tex.), *In re Rodgers*, N.D.Tex.1986, 68 B.R. 17.

§ 42.002. Personal Property Eligible for Exemption

Notes of Decisions

Athletic and sporting equipment 7.3

Farm equipment 15

7.3. Athletic and sporting equipment

Power boat that debtors used for recreational purposes did not qualify as "athletic and sporting equipment" under subsec. (3)(E) of this section. In re Gibson, Bkrcty.N.D.Tex.1987, 69 B.R. 534.

"Athletic and sporting equipment," for purpose of subsec. (3)(E) of this section, consists only of small items for individual use. In re Gibson, Bkrcty.N.D.Tex.1987, 69 B.R. 534.

9. Vehicles—In general

Term "camper truck" as used in subd. (4)(G) of this section was generic term intended to indicate use or purpose of vehicle, and did not refer to definition commonly used within any particular industry, including recreational vehicle industry. *Stephenson v. Wixom* (App. 2 Dist.1987) 727 S.W.2d 747.

Debtor's vehicle with Chevrolet chassis upon which self-contained unit containing bunk beds

had been welded was designed to be used as recreational vehicle, and thus was "camper truck" within subd. (4)(G) of this section. *Stephenson v. Wixom* (App. 2 Dist.1987) 727 S.W.2d 747.

10. Automobiles

Unmotorized car trailer did not qualify as "passenger car or light truck" under this section. In re Gibson, Bkrcty.N.D.Tex.1987, 69 B.R. 534.

15. Farm equipment

Chapter 7 debtors' farm equipment subject to nonjudicial, nonpossessory, nonpurchase money security interest could not be claimed as exempt under this section, and debtors selecting Texas exemptions could not convert secured property to exempt property by use of Bankr. Code, 11 U.S.C.A. § 522(f), permitting avoidance of lien on interest of debtors and property to extent that lien impairs exemption to which debtors would have otherwise been entitled, even under 1984 amendments to Bankruptcy Code which prohibit one spouse from selecting federal exemptions while other selects the state exemptions. In re Bessent, N.D.Tex.1987, 74 B.R. 436.

§ 42.0021. Additional Exemption for Retirement Plan

(a) In addition to the exemption prescribed by Section 42.001, a person's right to the assets held in or to receive payments, whether vested or not, under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract, including a retirement plan for self-employed individuals, or under an individual retirement account or an individual retirement annuity, including a simplified employee pension plan, is exempt from attachment, execution, and seizure for the satisfaction of debts unless the plan, contract, or account does not qualify under the applicable provisions of the Internal Revenue Code of 1986.¹ A person's right to the assets held in or to receive payments, whether vested or not, under a government or church plan or contract is also exempt unless the plan or contract does not qualify under the definition of a government or church plan under the applicable provisions of the federal Employee Retirement Income Security Act of 1974.²

(b) Contributions to an individual retirement account that exceed the amounts deductible under the applicable provisions of the Internal Revenue Code of 1986 and any accrued earnings on such contributions are not exempt under this section unless otherwise exempt by law.

Added by Acts 1987, 70th Leg., ch. 376, § 1, eff. Sept. 1, 1987.

¹ 26 U.S.C.A. § 1 et seq.

² 29 U.S.C.A. § 1001 et seq.

1987 Legislation

Section 2 of the 1987 Act provides:

"The exemption prescribed by this Act does not apply to property that is, as of the effective date of this Act, subject to a voluntary bankrupt-

cy proceeding or to valid claims of a holder of a final judgment who has, by levy, garnishment, or other legal process, obtained rights superior to those that otherwise would be held by a

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trustee in bankruptcy if a bankruptcy petition
were then pending against the debtor."

INDEX TO PROPERTY CODE

See volume containing end of Property Code

Texas

TITLE 5. LIENS AND EXEMPT PROPERTY

Tables

Disposition and Derivation Tables are provided at the front of this volume, providing a means of tracing repealed subject matter into the Code and, on the other hand, of searching out the source of the new Code sections.

SUBTITLE A. EXEMPT PROPERTY

CHAPTER 41. HOMESTEAD

SUBCHAPTER A. NATURE OF EXEMPTION

Section

- 41.001. Homestead.
- 41.002. Homestead and Sepulcher Exemption.

[Sections 41.003 to 41.020 reserved for expansion]

SUBCHAPTER B. DESIGNATION AND EXCESS

- 41.021. Effect of Homestead Designation.
- 41.022. Voluntary Designation of Rural Homestead.
- 41.023. Notice to Designate.
- 41.024. Designation by Homestead Claimant After Notice.
- 41.025. Designation by Commissioners.
- 41.026. Form and Effect of Designation by Commissioners.
- 41.027. Fees and Expenses.
- 41.028. Sheriff's Return.
- 41.029. Sale of Excess.
- 41.030. Change of Designation.

SUBCHAPTER A. NATURE OF EXEMPTION

Library References

Homestead § 1 et seq.
C.J.S. Homesteads § 1 et seq.

See Supplemental

Section 41.001. Homestead

(a) To be a homestead property must be used by a homestead claimant as a home or as a place to exercise the calling or business to provide for

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a family or a single adult who is not a member of a family. The homestead consists of:

(1) one or more parcels of real property, including improvements, that is not in a city, town, or village and that totals not more than 200 acres for a family or not more than 100 acres for a single adult who is not a member of a family; or

(2) one or more lots in a city, town, or village, amounting to not more than one acre of land, together with any improvements on the land.

(b) Temporary renting of a homestead does not change its homestead character if the homestead claimant has not acquired another homestead.

(c) The exemptions provided to homesteads under this section apply to all homesteads in this state regardless of the date they were created.

Amended by Acts 1984, 68th Leg., 2nd C.S., p. 216, ch. 18, § 2(b), eff. Oct. 2, 1984.

Historical Note

The 1984 amendment, to conform to the amendment of Vernon's Ann.Civ.St. art. 3833 by Acts 1983, 68th Leg., p. 5309, ch. 976, §§ 1, 2, in subd. (a)(2) substituted "amounting to not more than one acre of land, together with any" for "having a total value of \$10,000, not including" and "on the land" for ", at the time the property is designated as a homestead" and added subsec. (c).

Prior Law:

Rev.Civ.St.1879, art. 2336.

Rev.Civ.St.1895, art. 2396.

Acts 1897, p. 131.

G.L. vol. 10, p. 1185.

Rev.Civ.St.1911, art. 3786.

Acts 1969, 61st Leg., p. 2518, ch. 841, § 1.

Acts 1973, 63rd Leg., p. 1627, ch. 588, § 1.

Acts 1983, 68th Leg., p. 5309, ch. 976, §§ 1, 2.

Acts 1984, 68th Leg., 2nd C.S., p. 217, ch. 18, § 2(c).

Vernon's Ann.Civ.St. art. 3833.

Constitutional Provisions

Article 16, § 51, provides:

"The homestead, not in a town or city, shall consist of not more than two hundred acres of land, which may be in one or more parcels, with the improvements thereon; the homestead in a city, town or village, shall consist of lot or lots amounting to not more than one acre of land, together with any improvements on the land; provided,

that the same shall be used for the purposes of a home, or as a place to exercise the calling or business of the homestead claimant, whether a single adult person, or the head of a family; provided also, that any temporary renting of the homestead shall not change the character of the same, when no other homestead has been acquired."

Cross References

Descent and distribution of homestead, see Const. Art. 16, § 52.

Homestead rights of surviving spouse, see V.A.T.S. Probate Code, § 283.

Judgment liens, see § 52.001 et seq.

Mechanics' lien on homesteads, see § 53.059.

Partitioning homestead, see V.A.T.S. Probate Code, §§ 284, 285.

Setting apart homestead and other exempt property and fixing the family allowance, see V.A.T.S. Probate Code, § 270 et seq.

§ 41.001

Note 494

es on which garage, remodeled for purposes, was located, presented of fact for jury. Walker-Smith Co. v. Stanley (Civ.App.1945) 185 S.W.2d 614.

Issue whether there has been abandonment of a homestead is generally a question for the jury. R.S. Spencer & Co. v. Green (Civ.App.1947) 203 S.W.2d 957.

Whether property has lost its homestead character is generally a question of fact. Lewis v. Brown (Civ.App.1959) 321 S.W.2d 313; ref. n.r.e.

In action by property owners to have certain realty declared to be their homestead and to cancel an abstract of judgment lien held by a bank in so far as lien applied to such property, evidence presented a question of fact as to whether property owners ever had a present, definite and permanent intent to cease the use of their property as a homestead until the time of the sale, notwithstanding fact that they moved out of the home and took up residence in another state. West Tex. State Bank of Snyder v. Helms (Civ.App.1959) 326 S.W.2d 47.

Question as to whether or not surviving spouse had abandoned her homestead rights is usually question of fact. Day v. Day (Civ.App.1967) 421 S.W.2d 703.

495. Questions of law

Testimony supporting plea of estoppel to assert title to homestead by record in

EXEMPT PROPERTY

Title 5

bank's suit to foreclose vendor's lien would not make issue for jury, effect of record being for court. Chapman v. Clark (Civ. App.1924) 262 S.W. 161.

496. Instructions

Instruction that one lost his homestead if he ceased to use or ceased to occupy the property as a homestead is erroneous; either use or occupancy being sufficient to maintain it. Edwards v. Clemmons (Civ. App.1916) 181 S.W. 840.

497. Judgments

Where defendants alleged that "the south 200 acres" of 320 acre tract involved constituted their homestead, judgment decreeing that defendants should recover "the north 200 acres" of 320 acre tract as their homestead was fundamental error. Hughes v. Stovall (Civ.App.1940) 135 S.W.2d 603.

498. Review

Where plaintiff sought to foreclose a judgment lien on realty and to cancel a deed thereof on ground it was a simulated conveyance in fraud of plaintiff's rights after abandonment of the realty as a homestead by defendant grantors, appellate court was not authorized to disturb fact finding that the property had not been abandoned as a homestead where such finding had been made upon sufficient evidence. Hughes v. Farmer (Civ.App.1942) 164 S.W.2d 576.

§ 41.002. Homestead and Sepulcher Exemption

(a) A homestead and one or more lots held for use as a sepulcher of a family or a single adult who is not a member of a family are exempt from attachment, execution, and forced sale for the payment of debts, except for encumbrances properly fixed on the property.

(b) The proceeds of a voluntary sale of a homestead are not subject to garnishment or forced sale before six months after the date of the sale.

(c) The homestead exemption provided in this section does not apply if the debt is for:

(1) all or part of the purchase money of the homestead;

(2) taxes on the homestead; or

(3) work and material used in constructing improvements on the homestead, if the work and material have been contracted for in writing and, in the case of a family homestead, if both spouses have

HOMESTEAD
Ch. 41

§ 41.002

given consent in the manner required by law for the conveyance of the homestead.

Revisor's Note

Subsection (c)(3) of the revised law refers to consent of both spouses rather than consent of just the wife, as in the source law, because Article XVI, Section 50, of the Texas Constitution, on which the source law is based, refers to "both spouses."

Historical Note

Prior Law:

Acts 1870, p. 127.
P.D. 6834.
Rev.Civ.St.1879, arts. 2336, 2337, 2341.
G.L. vol. 6, p. 301.
G.L. vol. 10, p. 1185.

Rev.Civ.St.1895, arts. 2396, 2397, 2401.
Acts 1897, p. 131.
Rev.Civ.St.1911, arts. 3787, 3788, 3792.
Acts 1973, 63rd Leg., p. 1628, ch. 588,
§ 2.
Vernon's Ann.Civ.St. arts. 3834, 3835,
3839.

Constitutional Provisions

Article 16, § 50 provides:

"The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for the purchase money thereof, or a part of such purchase money, the taxes due thereon, or for work and material used in constructing improvements thereon, and in this last case only when the work and material are contracted for in writing, with the consent of both spouses, in the case of a family homestead, given in the same manner as is required in making a sale and conveyance of the homestead; nor may the owner or claimant of the property claimed as homestead, if married, sell or

abandon the homestead without the consent of the other spouse, given in such manner as may be prescribed by law. No mortgage, trust deed, or other lien on the homestead shall ever be valid, except for the purchase money therefor, or improvements made thereon, as hereinbefore provided, whether such mortgage, or trust deed, or other lien, shall have been created by the owner alone, or together with his or her spouse, in case the owner is married. All pretended sales of the homestead involving any condition of defeasance shall be void. This amendment shall become effective upon its adoption."

Cross References

Cemetery lots exempt from forced sale, see V.T.C.A. Tax Code, § 11.17
Conveyance of homestead, see V.T.C.A. Family Code, § 5.81
Garnishment, see Vernon's Ann.Civ.St. art. 4076 et seq.; Vernon's Ann. Rules Civ.Proc., rule 657 et seq.
Mechanics' liens on homesteads, see § 53.059.

Law Review Commentaries

Annual survey of Texas law:

Family law—Homestead exemption in bankruptcy and exempt personality. Joseph W. McKnight, 37 Southwestern L.J. (Tex.) 85 (1983).
Husband and wife. Joseph W. McKnight, 36 Southwestern L.J. (Tex.) 97 (1982).

Changing homestead: When city meets farm. Everett M. Urech, 18 South Texas L.J. 145 (1977).

Modernization of Texas debtor-exemption statutes. Joseph W. McKnight, 35 Texas Bar J. 1137 (1972).

New Bankruptcy Code: Comparison of Texas and federal exemptions. 17 Houston L.Rev. 373 (1980).

Code, § 41.002 now, this section. Op.Atty.Gen. 1986, No. JM-612.

§ 41.002. Definition of Homestead

(a) If used for the purposes of an urban home or as a place to exercise a calling or business in the same urban area, the homestead of a family or a single, adult person, not otherwise entitled to a homestead, shall consist of not more than one acre of land which may be in one or more lots, together with any improvements thereon.

(b) If used for the purposes of a rural home, the homestead shall consist of:

(1) for a family, not more than 200 acres, which may be in one or more parcels, with the improvements thereon; or

(2) for a single, adult person, not otherwise entitled to a homestead, not more than 100 acres, which may be in one or more parcels, with the improvements thereon.

(c) The definition of a homestead as provided in this section applies to all homesteads in this state whenever created.

Amended by Acts 1985, 69th Leg., ch. 840, § 1, eff. June 15, 1985.

Cross References

Highways, contract by counties for improvement, assessments, issuance of certificates of obligation or liens not allowed, homestead under subsec. (a)(2) of this section, see Vernon's Ann. Civ.St. art. 6812i, § 5(b).

Law Review Commentaries

Annual survey of Texas law: Family law—Husband and wife. Joseph W. McKnight, 38 Southwestern L.J. (Tex.) 131 (1984).

inflation and increased market demands. In re Barnhart, Bkrcty.Tex.1985, 47 B.R. 277.

5. Due process

Texas legislature's decision to permit retroactive application of 1983 homestead law amendments [Vernon's Ann.Texas Const. Art. 16, § 51; V.T.C.A., Property Code, § 41.001 now, this section] did not violate due process. In re Starns, D.C.Tex.1985, 52 B.R. 405.

20. — Validity of lien, purchase money

Notwithstanding need for uniformity with regard to Federal Deposit Insurance Corporation and frustrating effects state laws might have on goals served by FDIC, FDIC's lien on Texas homestead, to extent it was not based on purchase money or improvement loan or taxes, was invalid, where asset merely secured and did not create obligation, debtors' open and continued possession of property would have constituted notice of its homestead character to purchaser, requiring purchaser to inquire as to true facts which would have led to discovery that lien was not valid in hands of FDIC's predecessor, and Texas law considered homestead exemption inalienable constitutional right. In re Howard, Bkrcty. W.D.Tex.1986, 65 B.R. 498.

Notes of Decisions

For basic development, see Notes of Decisions under § 41.001 in main volume

Corporations 47

Due process 5

Validity ½

Voluntary sale of homestead 46

I. IN GENERAL

½. Validity

Texas' retroactive application of one acre exemption to all homesteads, regardless of dates they were created, does not run afoul of contract clause of the United States Constitution, considering that such application protects vital interests of citizens of state, is remedial in nature, has broad basis of underlying public policy, and is consistent with tradition of liberal construction of Texas exemption laws. In re Barnhart, Bkrcty.Tex.1985, 47 B.R. 277.

4. Purpose of law

Remedial purpose of amendments to this section, including changing \$10,000 exemption provision for urban homesteads to one acre exemption, and authorizing application of exemption to all homesteads regardless of dates they were created, was to increase protections avoided to all homestead claimants as a result of effects of

II. NATURE AND ACQUISITION

81. — Leasehold interest to sustain homestead, nature and acquisition

Where mortgagor had another homestead at time he purchased mortgaged property and leased entire mortgaged property to his corporation for business purposes, initial character of property was as rental property, and permission by corporation for mortgagor to use one of its buildings for living quarters did not alter property's character so as to qualify it for homestead exemption against foreclosure. Texas Commerce Bank—Irving v. McCreary (App. 5 Dist. 1984) 677 S.W.2d 643.

§ 41.002
Note 171

III. EXTENT AND VALUE

171. Extent and value, generally

Debtors' execution of homestead designation and affidavit designating ten acres of 91.93-acre tract as their homestead in connection with mortgage did not estop debtors from claiming full rural homestead, where debtors had actual, open and exclusive possession of entire 91.93 acres upon which mortgage and renewal of mortgage were granted, and property was in law and fact rural homestead of debtors at all times and that was known or should have been known to mortgagee. In re Skinner, Bkrcty.N.D.Tex.1987, 74 B.R. 571.

181. Excess, extent and value

Any failure by creditor to produce evidence that would permit court to designate which acre of 3.26 acre tract was debtor's urban homestead did not preclude a finding that amount of the 2.26 acres in excess of the one-acre homestead exemption under Texas law [V.T.C.A., Property Code § 41.001 now, this section] was not exempt and therefore subject to creditor's judgment lien. Although designation of homestead was an issue to be addressed by state court before allowing foreclosure it did not need to be resolved by district court to determine that some portion of the property claimed as exempt was in fact nonexempt.—In re Starns (D.C.Tex.1985) 52 B.R. 405.

§ 41.003. Temporary Renting of a Homestead

Temporary renting of a homestead does not change its homestead character if the homestead does not change its homestead character if the homestead claimant has not acquired another homestead.

Amended by Acts 1985, 69th Leg., ch. 840, § 1, eff. June 15, 1985.

§ 41.004. Abandonment of a Homestead

If a homestead claimant is married, a homestead cannot be abandoned without the consent of the claimant's spouse.

Added by Acts 1985, 69th Leg., ch. 840, § 1, eff. June 15, 1985.

§ 41.005. Home Improvement Contract

Text of section as added by Acts 1987, 70th Leg., ch. 116, § 1

(a) A contract described by Section 41.001(b)(3) must contain the following warning conspicuously printed, stamped, or typed in a size equal to at least 10-point bold type or computer equivalent, next to the owner's signature line on each instrument creating an encumbrance on homestead property:

"IMPORTANT NOTICE: You and your contractor are responsible for meeting the terms and conditions of this contract. If you sign this contract and you fail to meet the terms and conditions of this contract, you may lose your legal ownership rights in your home. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW."

(b) A violation of Subsection (a) of this section is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under the provisions of the Deceptive Trade

LIENS AND EXEMPT PROPERTY
Title 1

VI. ABANDONMENT, WAIVER
AND ESTOPPEL

407. Divorce as affecting homestead rights
abandonment, waiver and estoppel

Wife was not entitled to homestead exemption with respect to property she occupied and claimed as homestead after divorce from her previous husband and before her remarriage, in absence of evidence that property was homestead of new family created by remarriage; moreover, wife could not show existence of homestead for new family by showing existence of prior homestead she claimed as a single adult person. Matter of Clafin, C.A.5 (Tex.) 1985, 761 F.2d 1088.

VII. ACTIONS AND PROCEEDINGS

472. Bankruptcy, actions and proceedings

Debtors were in contempt in effecting sale of their residence, which was claimed as exempt property, less than 30 days after conclusion of creditors' meeting without approval of trustee so that sale occurred while residence was still property of the estate. In re Kasishke (Bkrcty.1984) 40 B.R. 712.

Debtors' contempt arising out of sale of their residence within 30 days of creditors' meeting and without trustee's approval did not provide basis to deny discharge where trustee never filed written objections to exemptions. In re Kasishke (Bkrcty.1984) 40 B.R. 712.

Vernon's
ANNOTATED
CONSTITUTION
OF THE
STATE OF TEXAS

Volume 1
CONSTITUTION
Article
1
§§ 1 to 12

INTERPRETIVE COMMENTARIES

By
PROF. A. J. THOMAS, JR.
Southern Methodist University
and
ANN VAN WYNEN THOMAS

ST. PAUL, MINN.
WEST PUBLISHING CO.

§ 44. County treasurer and county surveyor

Sec. 44. (a) Except as provided by Subsection (b) of this section, the Legislature shall prescribe the duties and provide for the election by the qualified voters of each county in this State, of a County Treasurer and a County Surveyor, who shall have an office at the county seat, and hold their office for four years, and until their successors are qualified; and shall have such compensation as may be provided by law.

(b) The office of County Treasurer in the counties of Tarrant and Bee is abolished and all the powers, duties, and functions of the office in each of these counties are transferred to the County Auditor or to the officer who succeeds to the auditor's functions.

(c) Provided however, that the office of County Treasurer shall be abolished in the above counties only after a local election has been held in each county and the proposition "to abolish the elective office of county treasurer" has passed by a majority of those persons voting in said election.

Amended Nov. 2, 1954; Nov. 2, 1982.

§§ 45, 46. Repealed. Aug. 5, 1969

§ 47. Conscientious scruples as to bearing arms

Sec. 47. Any person who conscientiously scruples to bear arms, shall not be compelled to do so, but shall pay an equivalent for personal service.

§ 48. Existing laws to continue in force

Sec. 48. All laws and parts of laws now in force in the State of Texas, which are not repugnant to the Constitution of the United States, or to this Constitution, shall continue and remain in force as the laws of this State, until they expire by their own limitation or shall be amended or repealed by the Legislature.

§ 49. Protection of personal property from forced sale

Sec. 49. The Legislature shall have power, and it shall be its duty, to protect by law from forced sale a certain portion of the personal property of all heads of families, and also of unmarried adults, male and female.

§ 50. Homestead; protection from forced sale; mortgages, trust deeds and liens

Sec. 50. The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all

Index

Const.

REPEALED BY ACTS 1969
 HOUSE BILL NO. 1000
 1969

debts except for the purchase money thereof, or a part of such purchase money, the taxes due thereon, or for work and material used in constructing improvements thereon, and in this last case only when the work and material are contracted for in writing, with the consent of both spouses, in the case of a family homestead, given in the same manner as is required in making a sale and conveyance of the homestead; nor may the owner or claimant of the property claimed as homestead, if married, sell or abandon the homestead without the consent of the other spouse, given in such manner as may be prescribed by law. No mortgage, trust deed, or other lien on the homestead shall ever be valid, except for the purchase money therefor, or improvements made thereon, as hereinbefore provided, whether such mortgage, or trust deed, or other lien, shall have been created by the owner alone, or together with his or her spouse, in case the owner is married. All pretended sales of the homestead involving any condition of defeasance shall be void. This amendment shall become effective upon its adoption.

Amended Nov. 6, 1973.

§ 51. Amount and value of homestead; uses

Sec. 51. The homestead, not in a town or city, shall consist of not more than two hundred acres of land, which may be in one or more parcels, with the improvements thereon; the homestead in a city, town or village, shall consist of lot or lots amounting to not more than one acre of land, together with any improvements on the land; provided, that the same shall be used for the purposes of a home, or as a place to exercise the calling or business of the homestead claimant, whether a single adult person, or the head of a family; provided also, that any temporary renting of the homestead shall not change the character of the same, when no other homestead has been acquired.

Amended Nov. 3, 1970; Nov. 6, 1973; Nov. 8, 1983.

§ 52. Descent and distribution of homestead; restrictions on partition

Sec. 52. On the death of the husband or wife, or both, the homestead shall descend and vest in like manner as other real property of the deceased, and shall be governed by the same laws of descent and distribution, but it shall not be partitioned among the heirs of the deceased during the lifetime of the surviving husband or wife, or so long as the survivor may elect to use or occupy the same as a homestead, or so long as the guardian of the minor children of the deceased may be permitted, under the order of the proper court having the jurisdiction, to use and occupy the same.

S B

4 7 5

4/12/88
3 (Res)
Fin

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CS SB 475 (Res)
PUBLISH DATE: SENATE 4/19/88 B

FISCAL NOTE

REQUEST:

Revision Date: 2/16/88
Title: An Act establishing the Tugidak
Island critical habitat area.
Sponsor: Zharoff
Requestor: Seante Resources

Agency Affected: DNR
BRU: Land & Water Management
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | 0 | 0 | 0 | 0 | 0 | 0 |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | | | | | | |

| | | | | | | |
|---------|---|---|---|---|---|---|
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
|---------|---|---|---|---|---|---|

| | | | | | | |
|---------|---|---|---|---|---|---|
| REVENUE | 0 | 0 | 0 | 0 | 0 | 0 |
|---------|---|---|---|---|---|---|

FUNDING: (Thousands of Dollars)

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

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : (Attach a separate page if necessary)

The Department of Natural Resources anticipates no fiscal impact with respect to this legislation.

Prepared by: Lawrence Z. Ostrovsky Phone: 465-2400
Division: Commissioner Office Date: 4/11/88

Approved by Commissioner Judith M. Brady Date: 4/11/88
Agency: Department of Natrual Resources

- Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

RECEIVED
APR 12 1988

LEGISLATIVE FINANCE

58 105

3/29/88 S/Ret

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: SB 475
PUBLISH DATE: 2/16/88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Tugidak Island Critical
Habitat Area
Sponsor: Zharoff
Requestor: _____

Agency Affected: Dept. of Fish and Game
BRU: Habitat
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | 62.8 | | | |
| TRAVEL | | | 2.0 | | | |
| CONTRACTUAL | | | 7.7 | | | |
| SUPPLIES | | | 2.0 | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | | | 74.5 | | | |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|--|--|------|--|--|--|
| GENERAL FUND | | | 74.5 | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | | 74.5 | | | |

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : (Attach a separate page if necessary)

Preparation of the Tugidak Island Critical Habitat Area Management Plan.

Prepared by: Bruce H. Baker, Acting Director Phone: 465-4105
Division: Habitat Date: 2/26/88

Approved by Commissioner: [Signature] Date: 3/23/88
Agency: Department of Fish and Game

Distribution (by preparer): *Amount required only if two plans are prepared currently. If the existing schedule of one plan per year is adhered to, the operating budget would be adequate and this fiscal note would not be necessary.
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

MAR 25 1988

SB 475

Tugidak Island Critical Habitat Area

-Preparation of the Tugidak Island Critical Habitat Area Management Plan will take one year to complete and require the following expenses (in thousands):

Personnel

| | | | | |
|-------------------|-------|-----------|-----------|---------------|
| Habitat Biologist | (18c) | 10 months | 4.5/month | 45.0 |
| Game Biologist | (16c) | 3 months | 4.0/month | 12.0 |
| Drafting Tech. | (14d) | 1 month | 3.5/month | 3.5 |
| Clerk/Typist | (8a) | 1 month | 2.3/month | 2.3 |
| | | | | <u>\$62.8</u> |

Travel

| | | | | |
|------------------------|--|--|--|-----|
| staff travel to Kodiak | | | | 2.0 |
|------------------------|--|--|--|-----|

Contractual

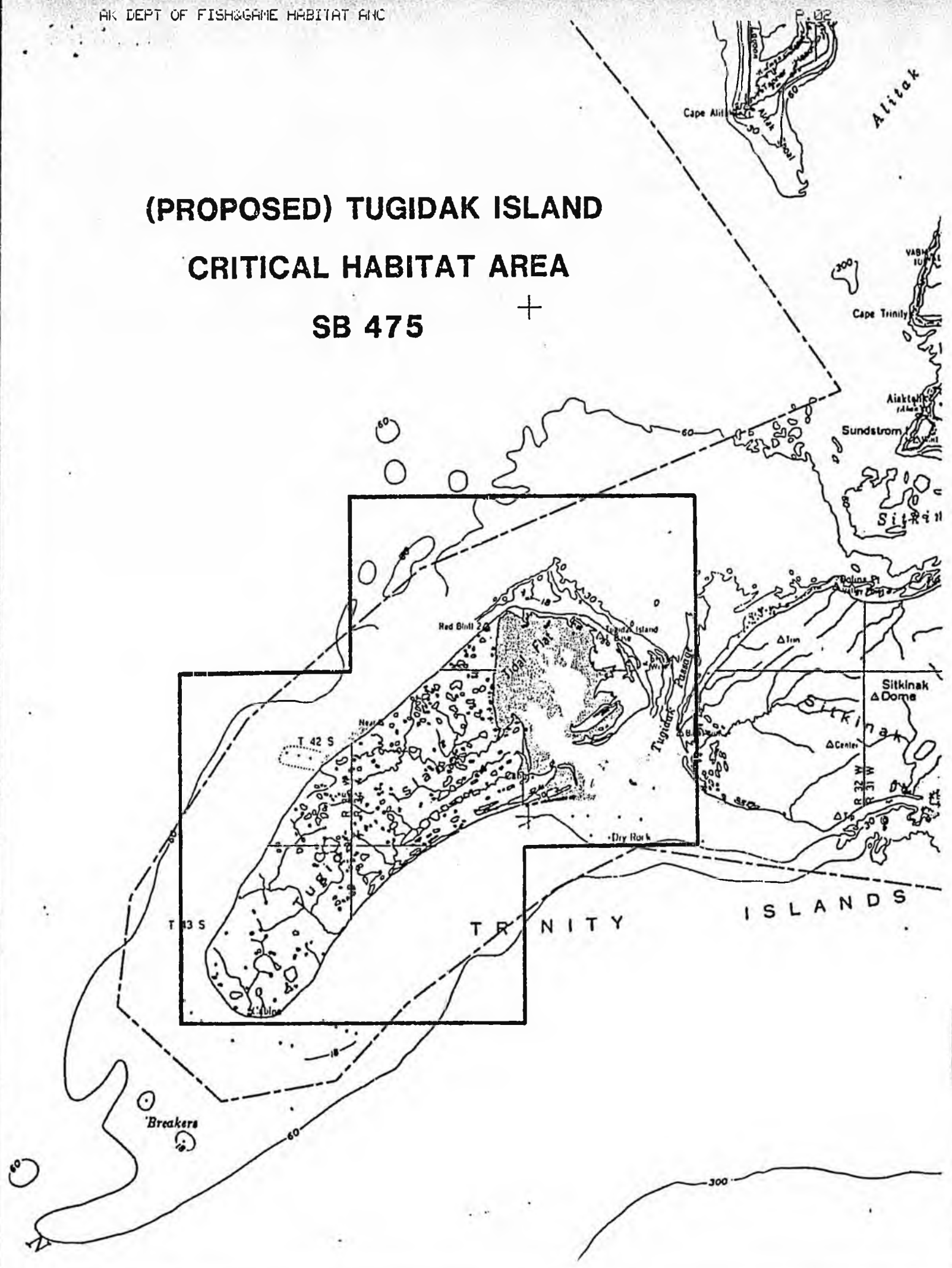
| | | | | |
|--------------------------------------|--|----------------------|--|---------------|
| telephone | | 75/month x 12 months | | 0.9 |
| photocopy | | 10/month x 12 months | | 0.1 |
| advertising /public notices | | | | 1.0 |
| aerial photography | | | | 0.7 |
| printing/ photographic/ blueprinting | | | | 5.0 |
| | | | | <u>\$ 7.7</u> |

Supplies

| | | | | |
|-----------------|--|--|--|-----|
| office supplies | | | | 2.0 |
|-----------------|--|--|--|-----|

| | | | | |
|-------|--|--|--|--------|
| TOTAL | | | | \$74.5 |
|-------|--|--|--|--------|

(PROPOSED) TUGIDAK ISLAND
CRITICAL HABITAT AREA
SB 475





STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

| | | | |
|---|---------------------|--|--------------------|
| DEPARTMENT Fish and Game | DIVISION Habitat | BILL NUMBER SB475 | SPONSOR Zharoff |
| SHORT TITLE OF BILL Tugidak Island Critical Habitat Area | | | |
| DEPARTMENT POSITION Support | | | |
| PREPARED BY Bruce Baker, Hab. Actg. Dir. | DATE 2/26/88 | COMMISSIONER'S SIGNATURE <i>[Signature]</i> | DATE |

SUMMARY

| | |
|--|---|
| OTHER AGENCIES AFFECTED BY BILL Department of Natural Resources / | CONSTITUENT GROUP(S) AFFECTED BY BILL Hunting and fishing groups, recreationalists Kodiak area residents |
| ORGANIZATIONAL SUPPORT FOR BILL Commercial fishing interests Environmental organizations | ORGANIZATIONAL OPPOSITION TO BILL None known |

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT
The purpose of establishing Tugidak Island Critical Habitat Area is to provide:

1. Protection and enhancement for fish and wildlife habitat and populations.
2. Continued opportunity for hunting and fishing.
3. Public use and enjoyment of the area in a high quality environment.

ANALYSIS OF BILL/PROGRAM EFFECTS

1. Establishes Tugidak Island Critical Habitat Area.
2. Identifies the purpose for which the area is established.
3. Provides for the management of Tugidak Island Critical Habitat Area including development of a management plan.
4. Allows existing cabins to remain.
5. Allows present subsistence, recreational and commercial activities to continue in a manner compatible with the establishment of the critical habitat area.

AMENDMENTS PROPOSED

The purpose statement should appear in statute, therefore, it should have a statute number, probably AS 16.20.610(b).

AS 16.20.610(a) should be amended to exclude Sections 12, 13, and 24 of Township 42 South, Range 33 West, Seward Meridian. Portions of these sections include the southern tip of Sitkinak Island.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Establish Tugidak Island
Critical Habitat Area
Sponsor: Senator Zharoff
Requestor: Senate Finance Committee

Agency Affected: Dept of Fish & Game
BRU: Habitat
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: _____
Division: Senator Rick Halford, Co-chairman
Senate Finance Committee

Phone: 465-4958
Date: April 30, 1988

Approved by Commissioner: _____
Agency: _____

Date: _____

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Requestor
Office of Management and Budget
Impacted Agency(ies)

Original sponsor: Zharoff

1 IN THE SENATE BY THE RESOURCES COMMITTEE
2 CS FOR SENATE BILL NO. 475 (Resources)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - SECOND SESSION
5 A BILL
6 For an Act entitled: "An Act establishing the Tugidak Island Critical
7 Habitat Area; and providing for an effective date."
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
9 * Section 1. PURPOSE. The Tugidak Island Critical Habitat Area is
10 established to ensure the protection and enhancement of fish and wildlife
11 habitat and populations, especially marine mammals, birds, fish and shell-
12 fish; the continuation of fish and wildlife harvest; and public use and
13 enjoyment of the area in a high quality environment.
14 * Sec. 2. AS 16.20 is amended by adding a new section to read:
15 Sec. 16.20.610. TUGIDAK ISLAND CRITICAL HABITAT AREA. (a) The
16 state land above the mean high tide line within the following de-
17 scribed area is established as the Tugidak Island Critical Habitat
18 Area:
19 (1) Township 41 South, Ranges 33 - 34 West, Seward Meridian
20 (2) Township 42 South, Range 33 West, Seward Meridian
21 Sections 1 - 11
22 Sections 14 - 23
23 Sections 25 - 36
24 (3) Township 42 South, Ranges 34 - 35 West, Seward Meridian
25 (4) Township 43 South, Ranges 34 - 35 West, Seward Meridian
26 (b) In addition to the area described in (a) of this section,
27 the water and the land below the mean high tide line in the lagoon at
28 the northeast end of Tugidak Island are included within the Tugidak
29 Island Critical Habitat Area.

1 (c) The Tugidak Island Critical Habitat Area described in (a)
2 and (b) of this section shall be managed under a management plan
3 prepared by the department.

4 (d) The department shall permit existing cabins to remain,
5 subsistence and recreational uses to continue, and commercial uses
6 such as seal hunting and placer mining to continue, if appropriate
7 under the management plan adopted under (c) of this section to the
8 extent that the activities are compatible with the establishment of
9 the Tugidak Island Critical Habitat Area.

10 (e) The department shall permit entry within the Tugidak Island
11 Critical Habitat Area for the exploration and development of oil and
12 gas resources when compatible with the purposes for which the critical
13 habitat area was established. An oil and gas lease of state land
14 within the Tugidak Island Critical Habitat Area is valid and continues
15 in full force according to its terms.

16 * Sec. 3. After completion of plans for the area including the Tugidak
17 Island Critical Habitat Area as enacted in sec. 2 of this Act, the commis-
18 sioners of natural resources and fish and game may recommend an adjustment
19 in the boundaries of the critical habitat area to the legislature.

20 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

1 IN THE SENATE

BY ZHAROFF

2

SENATE BILL NO. 475

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

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20 (3) Township 43 South, Ranges 34 - 35 West, Seward Meridian

21 (b) The Tugidak Island Critical Habitat Area described in (a) of
22 this section shall be managed under a management plan prepared by the
23 department.

24 (c) The department shall permit existing cabins to remain,
25 present subsistence and recreational uses to continue, and present
26 commercial uses such as seal hunting and placer mining to continue, if
27 appropriate under the management plan adopted under (b) of this sec-
28 tion to the extent that the activities are compatible with the estab-
29 lishment of the Tugidak Island Critical Habitat Area.

1 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P.O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

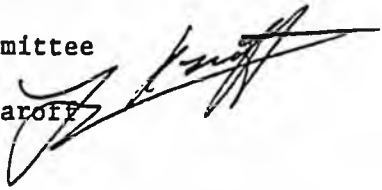
P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 485-3473 • 485-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Senator Rick Halford
Co-Chairman
Senate Finance Committee

FROM: Senator Fred F. Zharoff 

DATE: April 22, 1988

RE: Senate Bill 475 - "An Act establishing the Tugidak Island Critical Habitat Area; and providing for an effective date."

SB 475 establishes the Tugidak Island Critical Habitat Area on a state-owned 84,480 acre island approximately 16 miles southwest of Kodiak Island. The bill carries a zero fiscal note. The intent of the bill is that the Division of Habitat not prepare two critical habitat area management plans concurrently, but instead adhere to its existing schedule of one plan per year and take up Tugidak Island when the plans for the previously-created critical habitat areas are completed.

I respectfully request the Finance Committee referral be waived for SB 475.

Attached are the Department of Fish and Game and the Department of Natural Resources fiscal notes, Tugidak Island maps, and a general description of the island's habitat. Thank you for your consideration of this request.

Road System

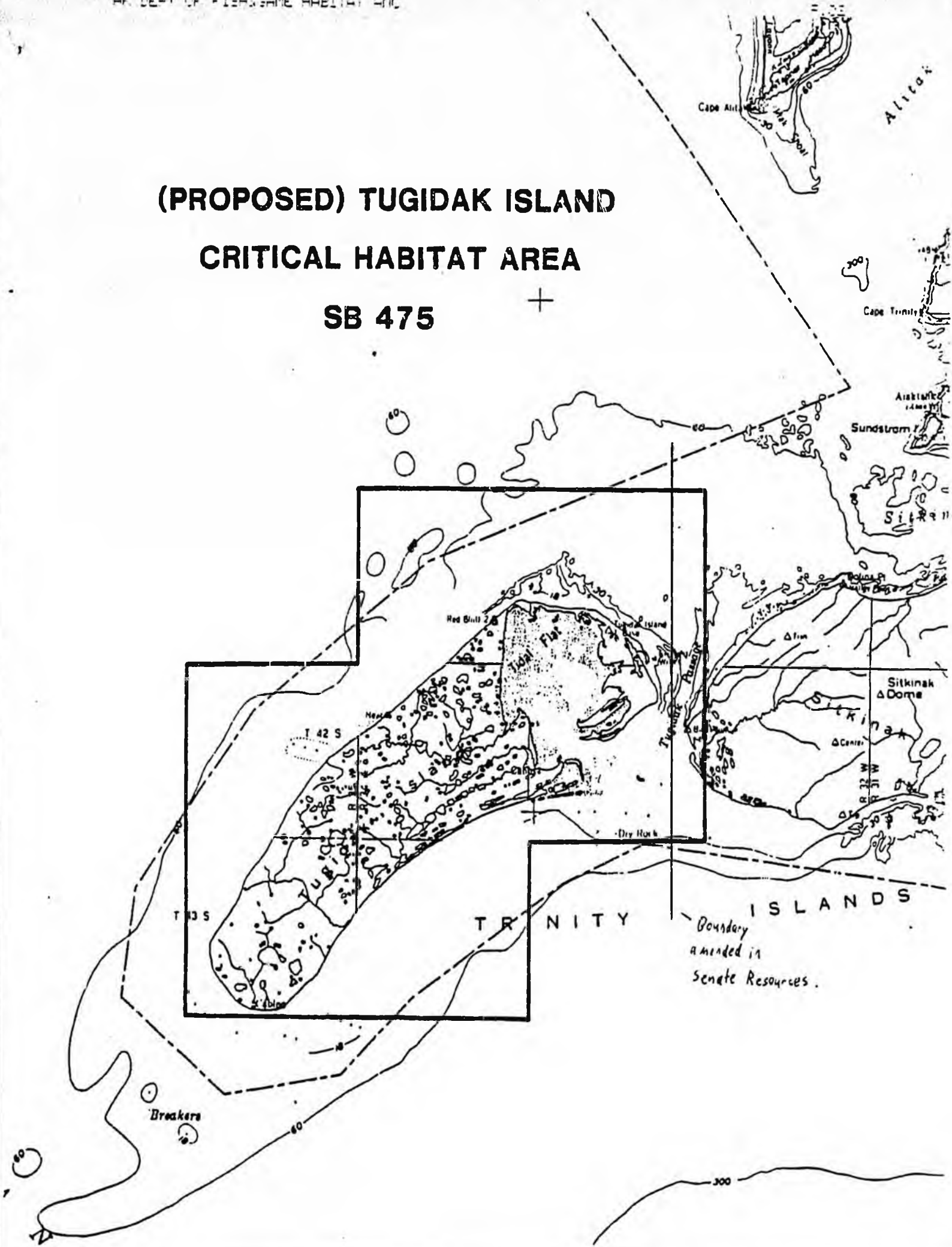


Kodiak Island Area Map



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**(PROPOSED) TUGIDAK ISLAND
CRITICAL HABITAT AREA
SB 475**



DRAFT 2/88

PROPOSED TUGIDAK ISLAND CRITICAL HABITAT AREA
BACKGROUND INFORMATION

LOCATION: The proposed Tugidak Island Critical Habitat Area is located approximately 15 miles south of Kodiak Island and is part of the Trinity Islands group.

AREA DESCRIPTION: The proposed Tugidak Island Critical Habitat Area is a large treeless, low lying island. Among its unique features is a large shallow lagoon and barrier spit complex at its northern end.

LAND STATUS: The proposed critical habitat area encompasses approximately 84,480 acres and is entirely state-owned land and water. It is located within the Kodiak Island Borough.

JUSTIFICATION: Tugidak Island is unique in the Gulf of Alaska not only because of its unusual number of extremely productive and diverse fish and wildlife habitats but also because those habitats have remained in a relatively natural, undisturbed state. To date very little human disturbance has occurred on the island to threaten the vulnerable groundnesting birds, harbor seal pupping areas and rich lagoon environment.

Marine Mammals: Tugidak is most renowned for its harbor seal population. Tugidak Island has historically supported one of the largest harbor seal populations in the world, estimated at 15,000 to 20,000 animals with peak concentrations of hauled out seals reaching 14,000 at a time. Tugidak Island is also a major pupping area for harbor seals in the Gulf of Alaska with annual production once estimated at a high of 5,500 pups. That population is now substantially depressed but remains one of the largest known. Seals haul, pup, and molt on beaches found along the west and northeast side of the island and in the vicinity of the mouth of the lagoon.

Sea otters are common in the nearshore waters around Tugidak Island. Approximately 400 to 700 sea otters are found in the vicinity of Tugidak Island, with medium to high densities along the south side of the island.

Birds: The interspersed of many different habitat types on Tugidak Island associated with cliff and bluff shores; sand and rocky beaches; spits, bars and tideflats; freshwater streams and lakes; saltwater marshes and lagoons; vast eelgrass beds; freshwater wetlands; and uplands attracts some of the greatest diversity of bird life known to nest on and visit any one island in the Gulf of Alaska.

The island serves as a valuable spring and fall resting and feeding area and as a production area for birds migrating from the Pacific coast of North America. Because Tugidak Island is low, treeless, and free of introduced predators, all birds nest on the ground and are particularly susceptible to habitat destruction, predation, and trampling.

- ° At least 56 species of birds occur on Tugidak Island. Thirty eight species are known to nest there, and 26 of these species are considered common or abundant.
- ° Wetland habitats throughout the island provide nesting habitat for waterfowl, shorebirds, tundra swans and loons, with wetlands habitats along the south shore supporting nesting concentrations of mallards, pintails, gadwalls, green-winged teal and wigeon.
- ° Snow geese concentrate on the island during spring migration to rest and feed.
- ° The lagoon supports spring and fall concentrations of ducks and shorebirds. Black brant and white-fronted geese also concentrate in the lagoon in the fall to rest and feed. The lagoon area provides winter habitat for emperor geese, a species that has recently experienced a serious population decline.
- ° The coastal waters surrounding Tugidak Island are a major overwintering area for waterbirds, primarily seabirds.
- ° Five seabird colonies are documented on Tugidak Island, totally nearly 4,000 nesting birds. Glaucous-winged gulls are the most abundant seabird, followed by arctic terns, mew gulls, and cormorants.
- ° Of particular significance are records of six ground nesting bald eagles. These bald eagle nests are located on bluffs or slight rises in the terrain throughout the island.
- ° Peregrine falcons are also reported to nest on the island's bluffs.
- ° Several thousand ptarmigan nest in upland areas of the island.

Fish and Shellfish: The lagoon and nearshore waters of Tugidak provide a productive marine environment for several species of fish and shellfish. The island's stream systems provide habitat for anadromous fish.

- ° There are three documented salmon stream systems on the island supporting chum and/or coho salmon.
- ° The lagoon is a productive rearing and feeding area for large numbers of Pacific herring.
- ° Known razor clam concentrations occur along the bars at the mouth of the lagoon.
- ° Based upon frequent observations of small Dungeness crab carapaces and exoskeletons washed up along the lagoon's shores and large commercial catches of Dungeness crab directly offshore of the lagoon, the shallow waters and large eelgrass beds found in the lagoon are thought to provide an important nursery rearing area for Dungeness crab.

Archaeological Sites: Eight archaeological sites have been documented on the island. Although largely unexplored, they appear to indicate abundant prehistoric use of the island, with a majority of the sites located along the lagoon.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400

April 11, 1988

Senator Jack Coghill
Chairman Senate Resources Committee
Alaska State Senate
P.O. Box V
Juneau, Alaska

99811

Re: SB 475 Tugidak Island Critical Habitat Area

Dear Senator Coghill;

Position: The Department of Natural Resources is not opposed to the protection of critical habitat on Tugidak Island, and recognizes that critical habitat values exist there. However, the Department believes that legislative designation should follow from the planning process. Work on the Kodiak Island area plan is scheduled to begin this summer.

Background: The Kodiak Island Area plan will include Tugidak Island. Legislative designation at this time would preclude management prerogatives and boundary descriptions arrived at through the planning process. Planning team members will include representatives from the Department of Fish and Game. Additionally, other concerns such as archaeological and oil and gas and other resource values will be addressed at that time.

If the legislature should decide to pass critical habitat legislation at this time, the Department would recommend language which would allow for boundary amendment as a result of planning process, as well as language which will allow for oil and gas exploration activities.

I appreciate the opportunity to comment on this legislation and am
happy to make my staff available to work with the committee as it
moves through the legislature.

Sincerely,

Jennie Gomb

Judith M. Brady

for Commissioner of Natural Resources

cc

Committee Members

Sponsor

Governor's office

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DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

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