

HPB

2911



Alaska Court System  
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

CHARLES S. CHRISTENSEN III  
Staff Counsel

January 17, 1992

303 K Street  
Anchorage, AK 99501  
(907) 264-8228

The Honorable Pat Carney, Co-Chair  
The Honorable Georgianna Lincoln, Co-Chair  
House HESS Committee  
P.O. Box V  
Juneau, Alaska 99811

Dear Representatives Carney and Lincoln:

I am writing to request that the HESS Committee schedule HB 291, relating to claims on a permanent fund dividend, at its earliest convenience. This bill was introduced at the request of the Alaska Supreme Court, and was drafted with the assistance of the Department of Law and the Department of Revenue. Its primary purpose is to improve the procedures surrounding execution by a creditor on the permanent fund dividend of a debtor.

As you know, existing law provides that a creditor may execute on the dividend of a debtor, just as a creditor may execute on a debtor's bank account or other property. The amount which the creditor may seize is limited to 55% of a dividend, unless the creditor is executing on the dividend in order to satisfy a child support obligation, court-ordered restitution, or a debt owed to the state. In such cases, the entire dividend may be seized.

The current procedures surrounding execution on a dividend are contradictory, cumbersome, expensive, and frequently fail to give adequate notice to the debtor. Specific problems, and the corrections proposed in HB 291, are as follows:

1. Existing law requires the creditor to serve notice of the execution on the debtor. This causes several problems. First, aside from being unwieldy and expensive, existing notice procedures are unnecessary, since the Department of Revenue automatically notifies a debtor that the dividend

*Carney Sustain Overview*

has been seized. Second, the creditor frequently does not know where the debtor can be reached in order to be notified of the claim. Great expense can be incurred in attempting to locate and serve the debtor, and if he cannot be found, the execution may take place without notice. Third, since the state is frequently the creditor seeking execution, the unnecessary expense of the notice requirement prevents it from attempting to recover many small debts.

HB 291 corrects these problems by eliminating the existing notice requirement, and instead requiring the Department of Revenue to provide legally adequate notice to the debtor. Because the department already sends notice of seizure to debtors, no additional expense will be incurred by expanding the information provided in that notice. Because the debtor has provided a current address to the department in order to receive a dividend, the debtor is more likely to receive notice of the seizure than under the existing procedure. Finally, because notice procedures will be less expensive, the state will be able to economically pursue far more debts than it does now (section 5).

2. As noted above, AS 43.23.065 provides that 45% of a dividend is exempt from execution for most debts. However, AS 9.38.030(b) provides a liquid assets exemption for debtors which can be read to exempt all of a dividend from execution. Most courts have rejected this reading, because it subverts the legislature's purpose in enacting the 45% exemption. HB 291 resolves this issue by making it clear that the liquid assets exemptions does not apply to dividends (sections 2 and 4).
3. As noted above, creditors may seize an entire dividend, not just 55% of it, to pay for child support obligations, restitution, or other debts owed to a state agency, in that priority. While court-ordered fines (such as a fine imposed as the penalty in a criminal case) are owed to the state, some argue that they are not "a debt owed . . . to a state agency" and thus are subject to the exemption. Also, criminal fines imposed by a municipality are subject to the exemption. HB 291 corrects this problem by adding court-ordered fines for either state or municipal violations to the list of exemptionless debts (section 4).
4. While current law prioritizes claims against a dividend, it is not clear whether the listed priorities apply only in the case of execution, or if the listed priorities also apply to voluntary assignments of a dividend. HB 291 provides that the priorities apply in both cases (section 4).

The Honorable Pat Carney  
The Honorable Georgianna Lincoln  
January 17, 1992  
Page 3

Passage of HB 291 will improve the procedures surrounding execution on a permanent fund dividend by giving better notice to debtors that their dividend is being seized, and making it less expensive for the state to execute on persons who fail to pay child support or other debts. We urge your favorable consideration.

Very truly yours,



C. S. Christensen III  
Staff Counsel

CSC:bh

## SECTIONAL ANALYSIS

- HB 291 "An Act relating to the exemption for permanent fund dividends from the collection of debts, to the collection of debts by execution on dividends, and to claims on a dividend; and providing for an effective date."
- Section 1. Amends AS 09.38.015(a) to clarify that an individual is entitled to an exemption of a portion of a permanent fund dividend under AS 43.23.064(a).
- Section 2. Amends AS 09.38.030(b) to clarify that the liquid assets exemption does not apply to an individual's permanent fund dividend.
- Section 3. Conforms AS 14.43.120(i) with the change made in section 4 of the bill, by renumbering the statutory reference from AS 43.23.065(b)(3) to (b)(4).
- Section 4. Amends AS 43.23.065 in three ways: First, it conforms with section 2 of this bill, to clarify that the liquid assets exemption does not apply to an individual's permanent fund dividend. Second, it adds court-ordered fines to the list of debts for which a permanent fund dividend exemption is not available to an individual. Third, it provides that claims listed in AS 43.23.065(b) have priority over other debts whether payment is sought through legal action or through assignment.
- Section 5. Provides that AS 09.38.080(c) and 09.38.085, relating to notice, do not apply to a levy on a permanent fund dividend. Instead, the Department of Revenue must provide notice of the levy to a debtor.
- Section 6. Amends AS 43.23.067(b), relating to seizure of a dividend to pay a student loan, to clarify that a debtor's request for a hearing must be made to the Postsecondary Education Commission, rather than the Department of Revenue.
- Section 7. Amends AS 43.23.067(c) to conform with the amendment made by section 6.
- Section 8. Immediate effective date.

Sectional Analysis

FISCAL NOTE

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Bill No. HB 291

Revision Date: \_\_\_\_\_ Department Affected: Alaska Court System  
 Title: An Act relating to the exemption for BRU: Trial Courts  
permanent fund dividends from collection of debts Components: \_\_\_\_\_  
 Sponsor: Rules Committee by request  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 

000   000	000   768
-----------	-----------

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel *[Signature]* Phone: 264-8228  
 Division: Alaska Court System Date: 02/11/92  
 Approved by: Arthur H. Snowden, II, Administrative Director *[Signature]*  
 Agency: Alaska Court System Date: 02/11/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).