

HB

285

Alaska State Legislature
Representative Carl E. Moses

CHAIRMAN
HOUSE RULES COMMITTEE
VICE-CHAIRMAN
HOUSE SPECIAL COMMITTEE ON FISHERIES

SESSION:
STATE CAPITAL BUILDING
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SPONSOR STATEMENT

Sponsor Substitute House Bill 285

An Act relating to the amount of the homestead exemption and to the method of changing amounts of exemptions.

Alaska State Statute 09.38.010 (a) currently allows a homestead exemption value up to \$54,000. This amount has not been challenged since 1982 when it was increased from \$27,000.

Additional adjustments are triggered by calculations administered by AS 09.38.115. This mechanism (formula) is triggered to increase the exemption amounts when the Consumer Price Index (CPI) has increased at least 10%. Currently, this calculation has raised the exemption amount to \$62,100.

Sponsor Substitute House Bill 285 would allow homeowners under bankruptcy proceedings to maintain the equity of their homes by increasing the *homestead exemption* amount to \$150,000. Increasing the exemption amount to \$150,000 protects the homeowners equity from creditors upon liquidation of their assets.

Additionally, SSHB 285 clarifies the method of processing the bankruptcy exemption amounts and requires the Department of Labor adopt a regulation announcing the changes in the dollar amounts. Sections 3 and 4 of SSHB 285 amend AS 09.38.115 of the Exemptions Act to reference the appropriate Consumer Price Index (CPI) and base index used in the calculation specified in statute.

In accordance with the statutes, the department has amended the bankruptcy exemption amounts twice by regulation. This was done in 1984 and again in 1992. The legislature amended the dollar amounts once in 1987, but inadvertently did not update reference to the 1982 base dollar amounts in AS 09.38.115. During the 1992 adjustment process, a number of problems were identified that related to the CPI and base index specified in statute, SSHB 285 addresses these issues.

Changing the definition of the reference base index to the *most recent year that the legislature sets exemption amounts* and inserting the *preceding calendar year* in place of the reference to January addresses the technical corrections. These corrections allow for the adjustments to be made in compliance with the timing of the Anchorage CPI and also clarifies the adjustments being made using the CPI index for the most recent year. In addition, the dollar amounts for the most recent year that the legislature sets exemption amounts is to be used as the base.

The reason for the homestead laws is the preservation of the family farm, home, or other assets in the face of severe economic conditions. In each case, the property that may be homesteaded is designed to perpetuate the family's estate and improve its chances for survival in hard times. The homestead provides a back-up and a form of insurance against unexpected catastrophe.

According to the *Alaska Housing Market Indicators 3rd Quarter 1994*, the average statewide single-family home sales price is \$137, 242. With today's higher interest rates, the average single-family homebuyer has curtailed last year's demand for larger and more expensive housing and, instead, is shopping for affordable homes. Increasing the homestead exemption amount \$150,000 will hopefully reverse the trend toward lower-priced home purchases and encourage prospective homebuyers to buy homes without the risk of leveraging their family investment. The average sales price for a single-family home in Anchorage is \$145,460 and varies considerably statewide.

In addition, with the cost of living increasing in Alaska and programs such as longevity bonus being phased out, increasing the homestead exemption to \$150,000 will allow for those who own \$150,000 homes (primarily the elderly) to maintain their primary residence.

I would appreciate your support for this legislation.

DIVISION OF LEGAL SERVICE
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

APR 12 1995

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Juneau, Alaska 99801-2105

MEMORANDUM

April 12, 1995

SUBJECT: Sectional Summary of SSHB 285
(Work Order No. 9-LS0956\G)

TO: Representative Carl Moses
Attn: Rosetta

FROM: *TB*
Theresa Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 increases the homestead exemption to \$150,000 from \$54,000.

Section 2 changes the subsection to conform it to the change in sec. 1 of the bill. Under the first change the total value of homestead exemptions in one living unit may not exceed the new amount, \$150,000. Under the second change, if there are several owners, one owner's exemption may not be greater than that owner's pro rata portion of the \$150,000.

Sections 3 and 4 change the way exemptions are changed over the years.

AS 09.38.115(a) states that an exemption amount changes according to the change in the particular consumer price index identified in the subsection.

Establishes a baseline index for each exemption. Sets the baseline index at the index for the most recent year when the exemption is established or changed by legislation (other than by AS 09.38.115).

AS 09.38.115(b) provides that an exemption amount changes October 1 of each even-numbered year. This occurs only if the change between index for the preceding year and the baseline index is 10 percent or more.

Representative Carl Moses

April 12, 1995

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The dollar amount of the exemption changes only in multiples of 10 percent of the dollar amount of the exemption. The dollar amount does not change if the dollar amount reached by an earlier application of this section already equals the dollar amount that would be reached by a current application of this section.

If I may be of further assistance, please advise.

TLB:glc:klb

95-283.glc

APR 18 1995

BILL NO: SSHB 285

DATE: April 17, 1995

TITLE: Amount of Homestead and
Other Exemptions

CONTACT: Dwight Perkins
465-2700

AS 09.38.115 provides for the adjustment of the exemption amounts specified in other sections of the Exemptions Act. AS 09.38.115 also describes the process for adjusting the bankruptcy exemption amounts and requires that the Department of Labor adopt a regulation announcing the changes in the dollar amounts. **Sections 3 and 4 of Sponsor Substitute for House Bill No. 285** amend AS 09.38.115 of the Exemptions Act to reference the appropriate Consumer Price Index (CPI) and base index used in the calculation specified in statute.

In accordance with the statutes, the department has amended the bankruptcy exemption amounts twice by regulation, in 1984 and again in 1992. The legislature amended the dollar amounts once, in 1987, but did not update reference to the 1982 base dollar amounts in Section 09.38.115. During the 1992 adjustment process, a number of problems were identified that related to the CPI and base index specified in statute.

It is our understanding that Section 09.38.115 was added by the legislature to maintain the value of the dollar amounts as set in statute. The section worked well as long as the legislature did not change the original dollar amounts. However, when the exemption amounts were changed by regulation in 1992, and because the statute specified the use of the original 1982 base dollar amounts to calculate the amount of the increase, the 1987 dollar amounts, as set in statute, were not used in the calculation. The increase in 1982 dollars was added to the 1987 dollar amounts to arrive at the new exemption amounts.

Though the department has implemented the requirements of the statute based on the explicit terms of the statute, it may have resulted in an effect that may not have been intended by the legislature. The Department of Labor supports the amendments in sections 3 and 4 to clarify legislative intent.

APPROVED:



Tom Cashen, Commissioner

DATE:

4-17-95

POSITION PAPER/Department of Labor

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. SSHB 285

Revision Date: _____ Dept. Affected: Alaska Court System
 Title: Act relating to the homestead BRU: Trial Courts
exemption Components: _____
 Sponsor: Rep. Moses COMPONENT SERIAL NO. 768
 Requestor: _____

EXPENDITURES/REVENUES (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 96 | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 |
|------------------------|-------|-------|-------|-------|-------|-------|
| 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 EXPENDITURES | | | | | | |
|----------------------|--|--|--|--|--|--|

| | | | | | | |
|------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|-----|-----|-----|-----|-----|-----|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 1005 GF/Program Receipts | | | | | | |
| 1008 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

POSITIONS

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

Estimate of current year (FY 95) cost: \$ None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel *CS* Phone: 284-8228
 Agency: Alaska Court System Date: 04/13/95

Approved by: Arthur H. Snowden, II, Administrative Director *AS* Date: 04/13/95
 Agency: Alaska Court System

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APR 18 1995

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. SSHB 285

Revision Date: _____

Department Affected: Labor

Title: Amount of homestead and other exemptions

BRU: Administrative Services

Sponsor: Representative Moses

Component: Labor Market Information

Requestor: House Judiciary

COMPONENT SERIAL NO. 336

EXPENDITURES/REVENUES:

(Thousands of Dollars)

| OPERATING | FY 96 | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

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

| | | | | | | |
|--|--|--|--|--|--|--|
| CHANGE IN REVENUE FUND SOURCE # | | | | | | |
|--|--|--|--|--|--|--|

FUNDING:

(Thousands of Dollars)

| | | | | | | |
|-------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipt | | | | | | |
| 1006 GF/MHTIA | | | | | | |
| Other | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

POSITIONS:

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

Estimate of current year (FY95) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

Sections 3 and 4 of Sponsor Substitute for House Bill No. 285 amend AS 09.38.115 of the Exemptions Act to reference the appropriate Consumer Price Index and base index used in the calculation specified in statute.

Prepared by: Arbe Williams, Director Phone: 465-2720
Division: Administrative Services Date: 4/14/95

Approved by Commissioner: Tom Cashen, Commissioner
Agency: Department of Labor Tom Cashen Date: 4/14/95

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Revisor's notes. — Several sections in this chapter were redrafted in 1982 to remove personal pronouns in conformity with AS 01.05.031.

Cross references. — For general provisions concerning execution, see AS 09.35 and Civ. R. 69; for legislative intent, see § 1 ch 62 SLA 1982; for transition provisions, see § 15 ch 62 SLA 1982. For limitations on the applicability of this chapter, see AS 25.27.062 and 25.27.250 (child support); AS 43.20.270 (unpaid taxes); and AS 43.23.067 (scholarship loans).

Collateral references. — 31 Am. Jur. 2d, Exemptions, § 1 et seq.

35 C.J.S., Exemptions, § 1 et seq.

Joint bank account as subject to attachment, garnishment, or execution by creditor of one of the joint depositors, 11 ALR3d 1465.

Family allowance from decedent's estate as exempt from attachment, garnishment, execution, and foreclosure, 27 ALR3d 863.

What is "necessary" furniture entitled to exemption from seizure for debt, 41 ALR3d 607.

Injury to credit standing, reputation, solvency, or profit potential as elements of damage resulting from wrongful execution against business property, 55 ALR3d 911.

Employee retirement pension benefits as exempt from garnishment, attachment, levy, execution, or similar proceedings, 93 ALR3d 711.

Choice of law as to exemption of property from execution, 100 ALR3d 1235.

Sec. 09.38.010. Homestead exemption. (a) An individual is entitled to an exemption as a homestead of the individual's interest in property in this state used as the principal residence of the individual or the dependents of the individual, but the value of the homestead exemption may not exceed \$54,000.

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

(c) If property that includes a homestead is sold under an execution, the sale becomes effective upon confirmation by order of the court. The court shall enter the order of confirmation unless, within 60 days after the sale, the individual repurchases the property under this section or the court extends the time for confirmation upon the filing of a timely motion by a party in interest. The individual may repurchase property, including that individual's homestead, at a sale on execution before confirmation by paying into court the costs of the sale plus the lesser of either (1) the difference between the highest bid and the amount of the exemption in the property, or (2) the amount of the creditor's claim. If the individual does not exercise the repurchase right under this subsection, the clerk of the court shall first remit an amount determined to be exempt to the individual from the proceeds

of sale and the balance less the cost of the sale to the creditor. For the purpose of collecting an amount remaining unpaid on a judgment after repurchase of property by an individual under this subsection, the creditor or the creditor's assignee may not make another levy on the property repurchased.

(d) Upon entry of the order of confirmation under (c) of this section and expiration of the time period for repurchase, the clerk may execute a deed to the property and when delivered it shall be sufficient to convey all title of the individual in the premises sold to the purchaser at the sale. (§ 2 ch 62 SLA 1982; am §§ 1, 2 ch 135 SLA 1988)

Cross references. — For current exemption amounts, see 8 AAC 95.030.

NOTES TO DECISIONS

Cases construing former statutes. — See *Seagreen v. Wendler*, 5 Alaska 715 (1917); *Wendler v. Brenneman*, 7 Alaska 13 (1923); *Williams v. Thompson*, 7 Alaska 601 (1927); *In re Bocash*, 10 Alaska 206 (1942); *Dalton v. Interior Credit Bureau, Inc.*, 615 P.2d 631 (Alaska 1980).

Avoidance of judicial lien to extent of impairment of homestead exemption. — Section 522(f) of the Bankruptcy Code [11 U.S.C.] provides that ". . . the debtor may avoid the fixing of a [judicial] lien on . . . property to the extent that such lien impairs an exemption . . ." To determine whether there is such an im-

pairment of a homestead exemption, the following steps are taken by the court: (1) all liens are ranked in order of priority (and equity, if any) to the extent of the value of the property; (2) the gross amount of the homestead exemption is subtracted from the value of the property; and (3) from the remainder left, each lien is subtracted, one at a time, beginning with the most senior lien, until a judicial lien is reached. Then the judicial lien is subtracted. To the extent that all or any portion of the judicial lien exceeds the remainder derived in (2), above, it is voidable. *In re Duncan*, 43 Bankr. 833 (Bankr. D. Alaska 1984).

Sec. 09.38.015. Property exempt without limitation. (a) An individual is entitled to exemption of the following property:

- (1) a burial plot for the individual and the individual's family;
- (2) health aids reasonably necessary to enable the individual or a dependent to work or to sustain health;
- (3) benefits paid or payable for medical, surgical, or hospital care to the extent they are or will be used to pay for the care;
- (4) an award under AS 18.67 (Violent Crimes Compensation Board) or a crime victim's reparations act of another jurisdiction;
- (5) benefits paid or payable as a longevity bonus under AS 47.45;
- (6) compensation or benefits paid or payable and exempt under federal law;
- (7) liquor licenses granted under AS 04;
- (8) limited entry permits granted under AS 16.43, except as provided in that chapter;
- (9) tuition credits under an advance college tuition payment contract authorized under AS 14.40.809(a);

Sec. 09.38.105. Waiver of exemption. A waiver of exemption executed in favor of an unsecured creditor before levy on an individual's property is unenforceable, but a valid security interest may be given in exempt property. (§ 2 ch 62 SLA 1982)

Sec. 09.38.110. Federal requirements. If a federal department or agency issues a formal ruling that a section of this chapter relating to public assistance will cause a state plan for the delivery of services or benefits to be out of conformity with federal requirements, the section will not apply to the extent that it causes the program to be out of conformity with federal requirements. (§ 2 ch 62 SLA 1982)

Sec. 09.38.115. Adjustment of dollar amounts. (a) The dollar amounts in this chapter change, as provided in this section, according to and to the extent of changes in the Consumer Price Index for all Urban Consumers for the Anchorage Metropolitan Area compiled by the Bureau of Labor Statistics, United States Department of Labor (the index). The index for January of 1982 is the reference base index.

~~(b) The dollar amounts change on October 1 of each even-numbered year if the percentage of change, calculated to the nearest whole percentage point, between the index for January of that year and the most recent index used to change the exemption amount, is 10 percent or more, but~~

~~(1) the portion of the percentage change in the index in excess of a multiple of 10 percent is disregarded and the dollar amounts change only in multiples of 10 percent of the amounts appearing in this chapter on August 26, 1982; and~~

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

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

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

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

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

(e) The Department of Labor shall also provide notification of a change in exemption amounts required under (c) of this section to the clerks of court in each judicial district of the state. (§ 2 ch 62 SLA 1982; am § 37 ch 6 SLA 1984; am §§ 18, 19 ch 14 SLA 1987)

Cross references. — For current exemption amounts, see 8 Alaska Administrative Code 95.030.

Sec. 09.38.120. Protection of property of residents and non-residents. (a) Residents of this state are entitled to the exemptions provided under this chapter. Nonresidents are entitled to the exemptions provided by the law of the jurisdiction of their residence.

(b) The term "resident" means an individual who is physically present in the state and who intends to maintain a permanent home in Alaska. (§ 2 ch 62 SLA 1982)

NOTES TO DECISIONS

Garnishment against non-resident. — Superior court's order allowing garnishment of 50 percent of a California resident's workers' compensation and social security benefits, in order to satisfy unpaid child support, was proper, since the Alaska Exemptions Act and the Workers' Compensation Act both clearly favor the compelling public policy of enforcing child support obligations. *Cameron v. Hughes*, 825 P.2d 882 (Alaska 1992).

Sec. 09.38.500. Definitions. In this chapter, unless the context otherwise requires,

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

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

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

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

(5) "exempt" means protected, and "exemption" means protection, from subjection to process or a proceeding to collect an unsecured debt;

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

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

PART 7. ADMINISTRATIVE SERVICES DIVISION.

Chapter

95. Adjustments to Alaska Exemptions Act (8 AAC 95.020 — 8 AAC 95.030)

CHAPTER 95. ADJUSTMENTS TO ALASKA EXEMPTIONS ACT.

Section

20. Determination of changes in the Consumer Price Index

Section

30. Adjustments to exemptions

8 AAC 95.020. **DETERMINATION OF CHANGES IN THE CONSUMER PRICE INDEX.** The department has determined that the December 1991 Consumer Price Index is 32 percent above the January 1982 base index. Under AS 09.38.115(b)(1), this percent increase is rounded to 30 percent. For the purpose of adjusting the dollar amounts set out in AS 09.38 Alaska Exemptions Act the 30 percent increase is applied to the dollar amounts that appeared in AS 09.38 on August 26, 1982. (Eff. 7/1/86. Register 98: am 10/1/92, Register 123)

Authority: AS 09.38.115

8 AAC 95.030. **ADJUSTMENTS TO EXEMPTIONS.** (a) The \$54,000 homestead exemption provided in AS 09.38.010(a) and (b) is increased to \$62,100.

(b) The personal property exemptions provided in AS 09.38.020 are increased as follows:

(1) the \$3,000 aggregate exemption for personal property, set out in AS 09.38.020(a), is increased to \$3,450;

(2) the \$1,000 exemption for jewelry, set out in AS 09.38.020(b), is increased to \$1,150;

(3) the \$2,800 exemption for implements, professional books, and tools of the trade, set out in AS 09.38.020(c), is increased to \$3,220;

(4) the \$1,000 exemption for pets, set out in AS 09.38.020(d), is increased to \$1,150; and

(5) the \$3,000 exemption for a motor vehicle, set out in AS 09.38.020(e), is increased to \$3,450 and the \$20,000 value limitation for the motor vehicle, set out in AS 09.30.020(e), is increased to \$23,000.

(c) The \$10,000 exemption for accrued dividends and loan values on life insurance and annuity contracts, in AS 09.38.025(a), is increased to \$11,500.

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

(1) the \$350 exemption for weekly net earnings, set out in AS 09.38.030(a), is increased to \$402.50; and

(2) the \$1,400 exemption for cash and other liquid assets, set out in AS 09.38.030(b), is increased to \$1,610.

(e) The increased exemption amounts provided in AS 09.38.050(b) are increased as follows:

(1) the \$550 amount regarding weekly disposable earnings is increased to \$632.50; and

(2) the \$2,200 maximum monthly exemption for cash and other liquid assets is increased to \$2,530. (Eff. 7/1/86, Register 98; am 10/1/92, Register 123)

Authority: AS 09.38.115

Legislative Research Agency

130 Seward Street, Suite 218
Juneau, Alaska 99801-2196

Alaska State Legislature



Phone: (907) 465-3991
Fax: (907) 463-3351

April 4, 1995

MEMORANDUM

TO: Representative Carl Moses

FROM: Patricia Young *P. Young*
Legislative Analyst

RE: State Exemption Acts--Homestead Exemptions
Research Request 95.184

State Exemption acts provide protection to persons being sued by creditors or facing bankruptcy so that they and their families are not left destitute. Such laws guarantee that insolvent individuals will continue to have the basic necessities. Among the usual exemptions is an allowance for a person's residence; this allowance is referred to as a *homestead exemption*. You wished to know which states provide exemptions for homesteads among their statutes and the value of those homestead exemptions.

Bankruptcy proceedings are governed primarily by federal law, and federal law contains a list of property that a debtor is allowed to keep to make a fresh start. The property that a debtor is allowed to keep is *exempt* from the bankruptcy and may not be liquidated to pay creditors. Under federal law, however, states may determine what property a debtor may keep as exempt. States may opt-out of the federal exemption scheme by passage of a law specifically providing that state exemptions shall be used. State exemptions may be more or less generous than federal exemptions, and they need not be identical or even comparable to the exemptions established under federal law. Debtors filing bankruptcy in states which do not pass such laws may elect exemptions under either the state or the federal scheme. In Alaska, a debtor may choose exemptions under either the state or the federal scheme.¹

¹Alaska Statute 09.38.055 of the Alaska Exemptions Act has sometimes been thought to prohibit a debtor from using the federal exemptions (see, for example, William C. Hillman, *Personal Bankruptcy: What Every Debtor and Creditor Needs to Know* [New York: Practising Law Institute, 1993] pp. 92-93, 185, and 189); however, such interpretations are mistaken. Alaska Statute 09.38.055 does not preclude a debtor from using the federal exemptions; it identifies available state exemptions.

Representative Moses

April 4, 1995

Page 2

I have attached a table showing the value of the homestead exemption under each state's law, as well as the value of the homestead exemption available under federal law. Information in the table is compiled from William C. Hillman's *Personal Bankruptcy: What Every Debtor and Creditor Needs to Know* (New York: Practising Law Institute, 1993). You may note the following from the table:

- Six states—Connecticut, Delaware, Maryland, New Jersey, Pennsylvania, and Rhode Island—and the District of Columbia do not provide for homestead exemptions. In Maryland, Pennsylvania, and the District of Columbia, however, property that is held as *tenancy by the entirety* (ownership status available only to married couples) may be exempt where the debt is owed by only one spouse.
- Eight states provide for homestead exemptions to unlimited value under some conditions. Those states are Arkansas, Florida, Iowa, Kansas, Minnesota, Oklahoma, South Dakota, and Texas. In Arkansas the unlimited homestead exemption is for heads of families; in each of the other states, acreage limitations apply.

I have also attached a chart comparing the federal exemptions to the comparable Alaska exemptions. I hope this information is useful. If you have questions or need more information, please let me know.

Attachments

State and Federal Homestead Exemptions

| State | Federal Exemption Available | Homestead Exemption |
|-------------|-----------------------------|--|
| Alabama | no | Real property or mobile home value to 27,000 , maximum 160 acres; double for married couple. |
| Alaska | yes | Value to 100,000 maximum for married couple filing jointly. |
| Arizona | no | Real property, apartment, or mobile home in which debtor resides to a value of 100,000 . Sale proceeds exempt until earlier of purchase of new home or 18 months after sale. No doubling for married couple. |
| Arkansas | no | (No. 1 or No.2) No.1—head of family: real or personal property used as residence, value not limited, but acreage and value limitations apply depending upon location of homestead. No. 2—real or personal property used as residence: maximum 20,000 |
| California | no | (No.1 or No. 2) No.1—real or personal property occupied as residence at the time of filing bankruptcy, including mobile home, boat, cooperative stock, community apartment, planned development or condo, and proceeds (including homeowner's insurance proceeds) of any of the above for 6 months after receipt. Maximum value: \$50,000 for single and not disabled; \$85,000 for married couples (one per family), \$125,000 if 65 or older; or physically or mentally disabled; 55 or older, single and earn less than \$15,000; or 55 or older, married and earn less than \$20,000. (In last two cases creditors must be seeking to force sale of home.) No.2—real or personal property, including cooperative, used as residence, or burial plot, value not over 7,500 . If not used for homestead, can be applied to any property. |
| Colorado | no | Real property occupied when file bankruptcy to 100,000 . Same for mobile or manufactured home if debt incurred after 1/1/83. Sale proceeds exempt one year after received if kept separately or used for new residence. |
| Connecticut | yes | |
| Delaware | no | Maximum value: \$50,000 Overall value—single person not more than 50,000 , married couple not more than 100,000 . |
| DC | yes | Maximum value: \$50,000 Tenants by the entirety—may be exempt where debt only of one spouse. |
| Florida | no | Real property, mobile or modular home or condo to unlimited value ; property cannot exceed one-half acre in municipality or 160 contiguous acres in other places. Property held as tenants by the entirety may be exempt against debts owed by only one spouse. |
| Georgia | no | Real or personal property, including cooperative, used as a residence to 50,000 per debtor . Unused portion may be applied to any other property. |
| Hawaii | yes | Real property to 200,000 , except for head of family or debtor over 65 to 200,000 ; property cannot exceed 1 acre; sale proceeds exempt for six months after sale; property held as tenancy by the entirety may be exempt against debts owed by only one spouse. |
| Idaho | no | Real property or mobile home to \$30,000; sale proceeds are exempt for six months. |
| Illinois | no | Real or personal property, including a farm, lot and buildings, condo, cooperative or mobile home to 7,500 ; sale proceeds are exempt for one year; spouse or child of deceased owner may claim homestead; husband and wife may double. |
| Indiana | no | Real or personal property used as a residence to 7,500 . Homestead plus personal property, excluding health aids cannot exceed \$10,000 ; property held as tenants by the entirety may be exempt against debts incurred by only one spouse. |
| Iowa | no | Real property or an apartment to an unlimited value; property cannot exceed one-half acre in town or city or forty acres elsewhere, except that the amount may be increased to obtain a value of \$300 . |
| Kansas | no | Real property or mobile home to unlimited value ; property cannot exceed one acre in incorporated town or 160 acres on farm; property must be occupied or intended to be occupied at time of filing. |
| Kentucky | no | Real or personal property used as a residence up to 20,000 in debts incurred after purchase; sale proceeds are exempt. An additional \$1,000 can be applied to the homestead, if not used for personalty. |
| Louisiana | no | Real property to \$20,000 ; property cannot exceed 160 acres on one tract or on 2 or more tracts if there is a home on 1 tract and a field, garden, or pasture on the others; husband and wife may not double; spouse or child of a deceased owner may claim the exemption; spouse given home in a divorce proceeding gets the exemption; homestead must be occupied when the exemption is claimed. |
| Maine | no | Real or personal property, including cooperative, used as a residence to \$7,500; if the debtor is over 60 or physically or mentally disabled to \$60,000; joint debtors may double. |
| Maryland | no | None, except that property held as tenancy by the entirety may be exempt against debts owed by only one spouse. |

State and Federal Homestead Exemptions

| State | Federal Exemption Available | Homestead Exemption |
|----------------|-----------------------------|---|
| Massachusetts | yes | Exemption amount is \$100,000 (200% of value over 65 or disabled), except with respect to debts arising prior to or for the purchase of the homestead and support; property held as tenants by the entirety may be exempt against non-necessity debts; joint owners may not double; homestead must be occupied or intended to be occupied at the time of filing for bankruptcy; homestead declaration must be recorded prior to filing for bankruptcy; spouse or child of a deceased owner may claim the exemption. |
| Michigan | yes | Real property, including condo to \$100,000; property cannot exceed one lot in town, village, or city or 40 acres elsewhere; property held as tenancy by the entirety may be exempt against debts owed by only one spouse; spouse or child of deceased owner may claim exemption. |
| Minnesota | yes | Real property, mobile home, or manufactured home to unlimited value; property cannot exceed one-half acre in city or 160 acres elsewhere; proceeds from sale are exempt for one year. |
| Mississippi | no | Property to \$30,000; property cannot exceed 160 acres; sale proceeds are exempt; property must be occupied unless claimant is over sixty and married or widowed. |
| Missouri | yes | Real property to \$10,000 or mobile home to \$5,000; property held as tenancy by the entireties may be exempt from debts owed by only one spouse; joint owners may not double. |
| Montana | no | Real property or mobile home to \$40,000; sale, condemnation, or insurance proceeds exempt for 18 months; property must be occupied at the time of bankruptcy filing; homestead declaration must be recorded prior to filing. |
| Nebraska | no | Property to \$20,000; property cannot exceed two lots in city or village or 160 acres elsewhere; sale proceeds are exempt for six months after sale. |
| Nevada | no | Real property or mobile home to \$20,000; husband and wife may not double; homestead must be recorded before bankruptcy filing; land held in spendthrift trust is exempt. |
| New Hampshire | no | Real property or manufactured housing owned and occupied by the same person to \$30,000. |
| New Jersey | yes | None. |
| New Mexico | yes | Real property to \$20,000 if married, widowed or supporting another; joint owners may double. |
| New York | no | Real property including cooperative, condominium, or mobile home to \$40,000; proceeds from sale are exempt for one year; husband and wife may double. |
| North Carolina | no | Real or personal property, including a cooperative, used as a residence to \$7,500; property held as tenancy by the entireties may be exempt against debts owed by only one spouse; up to \$2,000 of unused portion of homestead may be applied to any property. |
| North Dakota | yes | Real property, house trailer, or mobile home to \$80,000. |
| Ohio | no | Real or personal property used as a residence to \$5,000; property held by tenancy by the entireties may be exempt against debts owed by only one spouse. |
| Oklahoma | no | Real property or manufactured home to unlimited value; property cannot exceed one-quarter acre; if property exceeds one-quarter acre, exemption is \$5,000 or one acre in city, town or village or 160 acres elsewhere; homestead need not be occupied so long as another is not acquired. |
| Oregon | no | Real property, mobile home, or house boat to \$45,000 (\$20,000 for joint owners); \$15,000 for mobile home if land is not owned (\$18,000 for joint owners); property cannot exceed one lot in town or city or 160 acres elsewhere; sale proceeds are exempt for one year from sale if owner intends to purchase another home; homestead must be occupied or intended to be occupied at the time of filing. |
| Pennsylvania | yes | None except that property held by tenant by the entirety may be exempt against debtors owed by only one spouse. |
| Rhode Island | yes | None. |

State and Federal Homestead Exemptions

| State | Federal Exemption Available | Homestead Exemption |
|----------------|-----------------------------|---|
| South Carolina | yes | Real property including a cooperative to \$5,000; joint owners may double. |
| South Dakota | no | Real property or mobile home larger than 240 square feet at its base and registered in state at least six months before filing ; in an unimproved value ; property cannot exceed one acre in town or 160 acres elsewhere; sale proceeds to \$30,000 are exempt for one year after sale unless debts is over 70, in which case the exemption amount is unlimited; spouse or child of a deceased owner may claim the the homestead exemption; the acreage is limited if the homestead is mineral or mining land. |
| Tennessee | no | Value to \$5,000, \$7,500 for joint owners; property held by tenants by the entirety may be exempt against debts owed by only one spouse; exemptions may be claimed for life estates and leases; spouse or child of deceased owner may claim the exemption. |
| Texas | yes | Unlimited ; property cannot exceed one acre in town, village, or city or 100 acres elsewhere (200 acres for families); sale proceeds are exempt for six months after sale. |
| Utah | no | Real property, mobile home, or water rights to \$5,000 ; \$2,000 added for spouse and \$500 per dependent; homestead declaration must be filed before bankruptcy filing. |
| Vermont | yes | Real property or mobile home to \$50,000 ; rents, issues, profits and outbuildings may be claimed; property held by tenants by the entirety may be exempt against debts owed by only one spouse; spouse of deceased owner may claim homestead exemption. |
| Virginia | no | Property to \$5,000 , plus \$500 for each dependent; rents and profits may also be claimed; property held as tenancy by the entirety may be exempt against debts owed by only one spouse; homestead declaration must be filed prior to bankruptcy filing; unused portion of homestead may be applied to any personal property. |
| Washington | yes | Real property or mobile home to \$50,000 ; homestead declaration must be recorded prior to sale if the property is unimproved or unoccupied. |
| West Virginia | no | Real or personal property used as a residence to \$5,000 ; unused portion of homestead may be applied to any property. |
| Wisconsin | yes | Value to \$20,000 ; sale proceeds are exempt for two years from sale if debtor plans to purchase another home; homestead must be occupied or intended to be occupied at the time of filing; husband and wife may not double. |
| Wyoming | no | Real property to \$40,000 or house trailer to \$6,000; property held as tenancy by the entirety may be exempt against debts owed by only one spouse; joint owners may double; homestead must be occupied at the time of bankruptcy filing; spouse or child of deceased owner may claim homestead exemption. |

Federal Value to \$15,000.

Source: William C. Hillman, *Personal Bankruptcy: What Every Debtor and Creditor Needs to Know*, (New York: Practising Law Institute, 1993)

TABLE OF MOST COMMON EXEMPTIONS ALLOWED BY LAW

(See AS 09.38.010 et seq. & 11 USC § 522(d) for complete listing)

| PROPERTY | STATE STAT. | AMOUNT* | FED. STAT. | AMOUNT* |
|------------------------------|--|---|--|---|
| | AS 09.38.010 | \$ 62,100 | § 522(d)(1) | \$ 15,000 |
| HOUSEHOLD GOODS | AS 09.38.020(a) | \$ 3,450 | § 522(d)(3) | \$ 8,000 |
| JEWELRY | AS 09.38.020(b) | \$ 1,150 | § 522(d)(4) | \$ 1,000 |
| AUTOMOBILES (1 EA DEBTOR) | AS 09.38.020(e) | \$ 3,450 | § 522(d)(2) | \$ 2,400 |
| PETS | AS 09.38.020(d) | \$ 1,150 | See (d)(3) above: Household Goods | N/A |
| RETIREMENT PLANS | AS 09.38.017(a)** | See note below | § 522(d)(10)(A) | Payments for ongoing support only |
| IRA's | AS 09.38.017(a) | Deposits made at least 120 days before petition | Not protected | N/A |
| SOC. SEC & UNEMPLOYMT | AS 09.38.015(a)(6) | ALL | § 522(d)(10) | ALL |
| LIQUOR LICENSE | AS 09.38.015(a)(7) | ALL*** | Not protected | N/A |
| FISHING PERMITS | AS 09.38.015(a)(8) | ALL**** | Not protected | N/A |
| PFDs | AS 43.23.065(a) AS 09.38.015(a)(10) | 45% | May be protected under § 522(d)(5) | |
| WAGES or LIQUID ASSETS | AS 09.38.030(a) AS 09.38.030(b) | \$ 1,610 | No specific provision; see § 522(d)(5) below | N/A |
| LIFE INS. | AS 09.38.025 | \$ 11,500 (Cash value) | § 522(d)(8) | \$ 8,000 (Cash value) |
| TOOLS OF TRADE | AS 09.38.020(c) | \$ 3,220 | § 522(d)(6) | \$ 1,500 |
| ALIMONY & CHILD SUPPORT | AS 09.38.015(b) | ALL | § 522(d)(10)(D) | ALL |
| *CATCH-ALL* | None | N/A | § 522(d)(5) | Up to \$7,500 of unused (d)(1) plus \$800 |

* All property, even if protected by exemption, subject to tax liens to extent of debtor equity.

** If plan ERISA qualified, not property of estate; no need to exempt. *Patterson v. Shumate*, 112 S.Ct. 2242 (1992). If not ERISA qualified, may still not be property of estate, if plan qualifies as spendthrift trust. *In re Foster*, 2 ABR 224 (1991).

*** Subject to tax liens and holds.

**** Not protected from child support obligations; subject to tax liens.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

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April 10, 1995

The Honorable Carl Moses
Representative
Room 204
State Capitol
Juneau, AK 99801

RECEIVED
APR 12 1995

Rep. Brian Porter

Re: HB 285

Dear Mr. Moses:

I am writing to inform you of the Department of Law's concerns regarding HB 285, which would amend the statute exempting from execution part of a debtor's interest in a personal residence, by removing the limitation on the exempt amount. I am the supervisor of the Collections & Support Section of the Attorney General's Office. As you can imagine, I am deeply interested in legislation which affects the collectibility of debts owed to the state. I have also consulted with other Assistant Attorneys General handling various collection matters for the state, who unanimously expressed the same concern that the bill creates an unfair advantage for certain debtors.

Alaska's current homestead exemption is very generous. The federal bankruptcy law exempts only \$15,000 of equity in a home. 11 U.S.C. § 522(d)(1). Pursuant to Alaska law, however, an individual is entitled to an exemption of \$62,100 for property used as a principal residence. AS 09.38.010 and 8 AAC 95.030. This means that even a person who owes substantial sums (to the state or to a private creditor) may, with few exceptions, keep his or her home even though it has a very large equity value.

Presumably the purpose of the homestead exemption is to avoid having debtors be forced from their homes in most cases. The current limitation furthers this goal without allowing substantial exploitation. There are undoubtedly few debtors in Alaska who have more than \$62,100 equity in their homes; thus the vast majority of debtors are protected by the current statute. Removing the limitation on the exempt amount would

The Honorable Carl Moses
Representative

April 10, 1995
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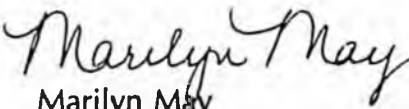
mean a debtor owing \$250,000 who lives in a home with an equity value of \$500,000 might not ever be required to pay his or her debts. This would not advance the policy of keeping debtors in their homes but would instead promote abuse.

We can envision a debtor selling non-exempt assets or using them as collateral to borrow money to pay down or pay off a mortgage, thus shielding him- or herself from liability for a valid debt. This provides a considerable advantage to the wealthy, who could safely protect their wealth from creditors by pouring it into equity in an expensive home. This is unfair to innocent creditors, and unfair to poorer debtors who can raise no such shield.

For these reasons, we do not favor the amendment of AS 09.38.030 set forth in HB 285. If you would like to discuss this further, please do not hesitate to call.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Marilyn May
Assistant Attorney General

MM:jv

cc: Rep. Brian Porter