

**HB**

**369**

# FISCAL NOTE

Bill Version: HB 369

(H) Publish Date: 3/3/00

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected \_\_\_\_\_ Law \_\_\_\_\_  
 Title "An Act relating to property exemptions under BRU Civil Division  
 the Alaska Exemptions Act; and providing for an effective date." Component Collections & Support  
 Sponsor Representative Harris Commercial  
 Requester House Labor and Commerce Committee Component No. 2210;2211

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2000) cost: \_\_\_\_\_

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

HB 369 increases the homestead property exemption, whether in bankruptcy or affected by executions, from \$54,000 to \$250,000. In addition, current law limits the exemption applied to property held in joint ownership, and used as principal residence by at least one of the owners or their dependents, to \$54,000 in total. This bill will entitle each owner to the \$250,000 exemption. In addition to existing exemptions for certain personal property, an individual exemption of \$8,075 for cash and defined liquid assets would be permitted under this bill.

The Department of Law does not anticipate this bill will have a fiscal impact on its collection of debts owed the state, because the debts are either excepted from this statute, or secured.

Prepared by: Joan M. Kasson *Joan M. Kasson* Phone 465-5370  
 Division Attorney General's Office Date/Time 2/25/00, 1:37 PM  
 Approved by Commissioner *Kelley* Bruce M. Botelho, Attorney General Date 2/25/00  
 Agency Department of Law

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# AlaskaUSA

Federal Credit Union

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April 12, 2000

Honorable Robin Taylor, Chair  
Alaska State Senate Judiciary Committee  
Alaska State Capitol, Room 211  
Juneau, Alaska 99801

Dear Senator Taylor:

Alaska USA Federal Credit Union is the leading provider of consumer credit in the State of Alaska. Since its inception in 1948, the credit union has extended over \$7 billion in credit to members. Currently, Alaska USA has over 155,000 members in Alaska, and another 65,000 members in the Lower 49 and overseas, many of whom joined while living in Alaska.

We are very concerned about the implications of H.B.369, which amends the Alaska Exemption Act, and is scheduled for hearing before Senate Judiciary on Monday, April 17<sup>th</sup>. This legislation significantly increases exemptions eligible for protection under Alaska's bankruptcy code. If passed, this legislation could have a chilling effect on the availability and cost of credit to Alaskans as well as have an adverse effect on financial institution reserves. I also note with some concern that to date, the record does not show any input from creditors has been sought or provided with respect to this legislation.

The increasing rate and cost of bankruptcy is a problem not only here in Alaska, but across the country. As you probably are aware, the U.S. Congress has been working for several years to improve the balance between debtor and creditor rights in the federal bankruptcy code. This reform legislation is now before a conference committee and is likely to be implemented in the next few months. In contrast to this effort to achieve balance, H.B.369 clearly tilts the scales far to the benefit of the debtor, exceeding both the federal standards and that of most States.

The public policy behind bankruptcy is to provide individuals hopelessly in debt beyond their ability to repay, the opportunity to get a fresh start. It was never intended to be a financial or estate planning tool, nor a means of protecting personal assets at the expense of lenders who advanced funds in good faith. To provide asset protection beyond a reasonable level invites abuse and fails to satisfy this public policy notion. The exemption levels in H.B.369 clearly exceed any standard of reasonableness. Under the proposed legislation, joint home owners would be entitled to retain \$500,000 in home equity, all forms of retirement savings, over \$8,000 in cash as well as increased levels of personal property. These allowable exemptions exceed the net worth of most working Alaskans who routinely satisfy their financial obligations.

According to the Sponsor's statement, the purpose of this legislation is to protect individuals from claims "that might have arisen from a rogue jury verdict or a catastrophic medical illness." Our experience is that bankruptcy resulting from these circumstances is minimal. In fact, only 5% of Alaska USA's total loans subject to bankruptcy over the last six years were the result of medical circumstances. We have no evidence that any were the result of "rogue verdicts." However, should a judgement be rendered against

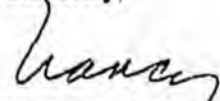
an individual, the answer is in appeal, not in the transfer of that obligation to the public. Additionally, while we are sympathetic to individuals experiencing medical emergencies, the doctors and hospitals that advanced treatment in good faith should not be expected to bear the financial burden for individuals with the means to pay. In short, this legislation re-writes laws affecting the many to address the concerns of the few.

Alaska USA has incurred loan losses of over \$9,585,000 as a result bankruptcies during the last six years. Because credit unions are financial cooperatives, these losses translate into a cost of \$61.84 per member in Alaska. This number impacts and penalizes all members through increased cost, and reduced availability, of credit. Fortunately, many of the individuals declaring bankruptcy have successfully re-established credit and have achieved financial stability as a result of the second chance that the current law provides. However, it is an insult to those who manage their credit, pay their bills on time and live within their means to ask them to subsidize debtors declaring bankruptcy while protecting assets far in excess of the average Alaskan's net worth.

We urge your thoughtful analysis of the public policy reflected in this legislation to determine its effects on Alaskans and Alaskan creditors. We believe that in its current form the bill invites the opportunity to use bankruptcy as a financial planning tool to avoid repayment of debts, instead of the purpose for which it is intended. We ask that the legislation not be advanced until its financial implications are investigated and input provided by the creditor community. We would be pleased to work with the bill's sponsor and interested parties during the interim to explore what changes to the current law may be warranted.

I have enclosed an analysis of this legislation that was provided by two of the leading bankruptcy attorneys in Alaska. This summary points out the potential impact of this legislation and may assist in putting these issues in perspective.

Sincerely,



Nancy Bear Usara  
Senior Vice President  
Corporate Development

Cc: Members, Alaska State Senate Judiciary Committee  
Members, Alaska Credit Union League  
Alaska Bankers Association  
Alaska State Hospital and Nursing Home Association

## Howard & Margo Morgan

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April 16, 2000

Senator Robin Taylor  
Chairman Judiciary Committee  
Alaska State Legislature

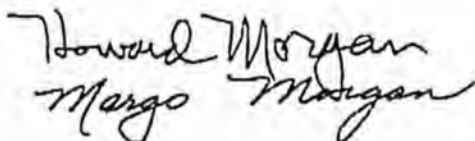
RE: HB 369

Dear Senator Taylor:

My wife and I would like to go on record as approving the passage of HB 369, an Act Relating to Property Exemptions.

As long time Alaskans, who were in the building business during the eighties when real estate was going south along with the Alaskan economy, we can speak with experience as the banks tried many times to foreclose on our house, even though we never missed a payment in over 20 years. Fortunately, as our building business was going under, we were able to keep the banks from taking the house, but we lost everything else including our building business and all investment property. We avoided bankruptcy, but it has taken us many years to recover. Since most long time Alaskans have the majority of their estate tied up in the value of their home, it only makes sense to increase the exemption allowed, especially today as appraisals and values have gone up many times over the years. Most states exempt a persons homestead, and we feel that Alaska should too. I thank you for your kind consideration.

Sincerely,



Howard Morgan and Margo Morgan

cc: Senator Sean Parnell,  
Our Senator, District 1

**Subject: House Bill 369(JUD)**

**Date:** Mon, 17 Apr 2000 10:31:45 -0800

**From:** Dennis Fenerty <fenertyd@groheggers.com>

**To:** Senator Dave Donley <Senator\_Dave\_Donley@legis.state.ak.us>,  
Senator Johnny Ellis <Senator\_Johnny\_Ellis@legis.state.ak.us>,  
Senator Rick Halford <Senator\_Rick\_Halford@legis.state.ak.us>,  
Senator Robin Taylor <Senator\_Robin\_Taylor@legis.state.ak.us>,  
Senator John Torgerson <Senator\_John\_Torgerson@legis.state.ak.us>

Senators,

I have been a creditors' rights lawyer in Alaska for more than 15 years, representing mostly institutional lenders. I understand that the above referenced bill increases the homestead exemption to \$250,000 per owner, \$500,000 per married couple, and it also allows an exemption for life insurance and annuities of up to \$250,000. This radical change will have unintended consequences of significant import. I urge you not to pass this bill into law.

The homestead exemption is rarely of use to homeowners when they get into financial difficulties, since most home owners have mortgaged their homes close to the full value. When financial problems arise, the homeowners will preserve the home only if they cure mortgage defaults, and there is typically little equity available beyond the mortgage to benefit the typical homeowner. When someone has paid down their mortgage, the current exemption shields significant equity, protecting reasonably valuable homes.

The benefits of this legislation will not, in fact, reach the targeted audience, the typical working stiff homeowner. The benefits will flow to those with very expensive homes. Assuming there is a mortgage in place when the homeowner gets into financial difficulty, the present exemption protects homes of a value that working class homeowners own. These homeowners already have all the protections they need. The increased exemption will protect those who own mansions.

Besides protecting very expensive homes, the increased exemption will create an invitation for people who anticipate financial difficulties to muster funds to buy annuities or life insurance, or to make large payments against the mortgage (creating greater equity to shield with the now larger exemption), rather than using those funds to pay creditors. The increased exemption will be exploited mostly by people who will convert non-exempt assets into exempt assets for the purpose of avoiding paying their creditors. This is nothing we should encourage.

Mortgage lenders will not suffer; rather, unpaid vendors and consumer lenders will. Vendors who perform services or supply materials are not in the business of extending credit. They typically bill on a "due on receipt" basis and they expect immediate payment. When the invoice is not paid, they sue. To collect, they bring pressure to bear by threatening the debtor's assets. This bill puts important assets beyond reach. These small vendors can not do without payment. They will be forced out of business.

This bill will ultimately make credit more difficult and costly to get. Consumer lenders will be forced to take into account the fact that borrowers will be able to put significant assets beyond the reach of creditors. The costs of consumer credit will go up as dollars recovered on claims decline. Consumer lenders will also take fewer risks, making loans to fewer people, denying scarce credit to those already least likely to have access to credit.

It is difficult to understand who will benefit from this bill that is truly deserving of the generous

benefits of the bill. The national audience has a vivid picture of the person who benefits from a large homestead exemption, based on a report aired some time ago on the television show *60 Minutes*. Florida and Texas, with their unlimited homestead exemptions, were painted as states that favor unsavory characters who cheat working stiff creditors while living in mansions. This is not a desirable image for Alaska to seek.

Thank you for taking the time to consider this comment.

Dennis G. Fenerty



ALASKA STATE LEGISLATURE  
REPRESENTATIVE JOHN HARRIS  
STATE CAPITOL 110, JUNEAU, ALASKA 99801-1182 (907) 465-4859

Sponsor Statement

HB 369

This bill increases the dollar amount of specified assets which an Alaskan resident can retain free of creditor claims. It also provides protection for certain assets not previously covered by existing law. The protection which this bill affords Alaska residents is by no means as expansive as the laws of other states but is a vast improvement over our existing law. The justification for an exemption lies in a public policy decision that certain assets should be beyond the reach of creditor claims if a person is unable to repay the creditor. For instance the homestead exemption expresses a public policy decision that an individual is entitled to keep a certain amount of equity in a home free of a creditor claim that might have arisen from a rogue jury verdict or a catastrophic medical illness. At the same time it should be noted an exemption statute has no effect on a lender who secures the debt because the debt will always be repaid to the extent of the collateral securing the loan.

HB 369 changes the dollar amounts of our existing exemption statute with respect to the homestead exemption and life insurance. The homestead exemption is increased from the present amount of \$63,000 to \$250,000 per individual. This dollar amount tracks the same dollar amount which is exempt from federal income tax on the sale of a residence. At the present time 13 states give its citizens greater homestead protection than that given to Alaskan residents. Of these 13 states, Florida, Iowa, Kansas, Oklahoma and Texas give its citizens an unlimited homestead exemption. This bill also increases the exemption for the cash value of all life insurance policies and/or annuity contracts owned by an individual to \$250,000 and provides an unlimited exemption for the proceeds on a life insurance contract or annuity paid to a beneficiary. This furthers the public policy goal of providing financial protection for the insured's beneficiaries in the event of death, as well as providing an additional means of saving for retirement.

Several new exemptions are provided for in this bill. The first of these pertains to reserves established by condominium associations. At the present time these are not protected. If a creditor of an association were to receive a judgment in excess of the insurance coverage maintained by the association and the reserves were taken by the creditor, there would be no money left to pay the common bills or provide for the repair of common structures. This could result in a dislocation of the residents and a potentially huge problem for the public. Residents of condominium associations should have the security of knowing their dues will be used for the purposes intended.

Second, HB 369 adds deferred compensation plans established for government employees as a protected retirement asset. Current law is grossly unfair to governmental employees because deferred compensation plans, which are akin to the 401(k) plans found in private enterprise, do not have any protection under current law. This section would put governmental 457 plans on an equal footing with other retirement plans.

Third, there is a new exemption which allows an individual to retain a minimal amount of cash which might be necessary to pay for the following month's rent and living expenses. This dollar amount follows the exemption now found for cash under federal bankruptcy law.

## HB 369 – Changes to “Exemptions” statute

In Summary, CSHB 369 Amends AS 09.38 to:

- Increase the dollar amount of specified assets
- Provide new protection to certain assets not currently covered

What is the Exemption Statute? AS 09.38 – The state exemption statute delineates what assets are protected from creditors when a person is sued and loses and has a judgement entered against him.

It could also apply in some cases of bankruptcy, if the person opts state exemptions instead of federal exemptions.

Specifically, CSHB 369 will:

- Increase the homestead exemption to \$250,000 per individual Sec 1
- Increase the exemption for the cash value of life insurance policies and/or annuity contracts owned by the individual to \$250,000 Sec 7
- Provides an unlimited exemption on the proceeds of a life insurance contract or annuity paid to a beneficiary Sec 8
- Increases from 6 months to 2 years to trace assets that an individual could have claimed under the exemption Sec 14
- Increases the maximum allowed for various property exemptions currently in statute Sec 6, 10, 11, 12, 15

New exemptions proposed by CSHB 369:

- Reserves kept by condominium associations Sec 4
- Government employee's deferred compensation plans Sec 5
- Limited cash and liquid asset exemption of up to \$8075. Sec 6
- Changes how certain revocable trusts are treated Sec 16

The bill also repeals indexing provisions currently in statute (AS 09.38.115) which the Judiciary committee determined were no longer needed and a burden to the Dept. of Labor. Sec 17

## Proposed Property Exemption Comparisons - CSHB 369

Effect	Exemption Category	Federal Bankruptcy Exemption	Current Alaska Exemption	Proposed CSHB 369 Exemption	Proposed Modifications
Change	Homestead	\$16,150 (each debtor owner)	\$62,100 (aggregate)	\$250,000 (each owner, husband/wife=\$500,000) 2 years on proceeds	\$250,000 aggregate (6 months on proceeds)
No Change	Motor Vehicle	\$2,575 (in one vehicle)	\$3,450 (vehicle cannot exceed \$23,000 in value)	\$3,600 (vehicle cannot exceed \$24,000 in value)	
No Change	Household Goods	\$ 8,625	\$ 3,450	\$ 3,600	
No Change	Jewelry	\$ 1,075	\$ 1,150	\$ 1,200	
No Change	Tools of the Trade	\$ 1,625	\$ 3,200	\$ 3,360	
Change	Life Insurance		\$ 11,500	\$ 250,000	
No Change	Any Property	\$850 plus up to \$8,075 of any unused homestead exemption			
No Change	Earnings/Liquid Assets		\$402.50 per week or \$1,610 per month	\$420.00 per week or \$1,680 per month	
New	Medical Savings Accounts			Unlimited	
New	Condominium Assn Reserves			Unlimited	
New	Govt Employee Deferrred Comp			Unlimited	
New	Liquid Assets			\$ 8,075	
New	Revocable Trusts			Can be treated as individuals with all the same exemptions as above	No "double-dipping" and cannot exceed amount of personal exemptions



ALASKA STATE LEGISLATURE  
REPRESENTATIVE JOHN HARRIS  
STATE CAPITOL 110, JUNEAU, ALASKA 99801-1182 (907) 465-4859

Summary Sectional Analysis  
CSHB 369 (Jud)

- Sec. 1 raises an individual's homestead exemption to \$250,000.
- Sec. 2 eliminates the "aggregate value" restriction currently on homestead exemption.
- Sec. 3 stops the court from ordering a home sold if the value of the property is less than the court award.
- Sec. 4 protects funds held by a condominium association.
- Sec. 5 extends protection to deferred compensation plans of government employees and to funds held in medical savings accounts.
- Sec. 6 updates exemption amounts for various personal properties, which are currently indexed by the Dept. of Labor.
- Sec. 7 provides a limited cash/liquid assets exemption of \$8,075, which is the amount allowed by federal law in bankruptcy proceedings.
- Sec. 8 provides a \$250,000 exemption for life insurance policy and annuity contracts for the individual.
- Sec. 9 provides an unlimited life insurance/annuity exemption if payable to a beneficiary of the individual.
- Sec. 10 updates an exemption for weekly net earnings.
- Sec. 11 updates a monthly income exemption for individuals who do not receive weekly or monthly earnings.
- Sec. 12 increases the exemption for an individual who is a household's sole provider.
- Sec. 13 adds protection for condo association dues in bankruptcy proceedings.

Sec. 14 increases from 6 months to 2 years the time period in which an individual can trace property that has been transferred, but which could have been claimed under the exemption.

Sec. 15 updates the exemption from claims of crime victims.

Sec. 16 applies coverage to revocable trusts.

Sec. 17 includes repealers for the life insurance provision changed by sec. 9 and to eliminate indexing provision, which is currently done by the Dept. of Labor.

Sec. 18 provides an immediate effective date.

Summary of changes made by House Judiciary committee:

The committee removed the indexing provision (AS 09.38.115). In conjunction with that repealer, they updated in statute a number of exemption amounts that have been indexed in regulation since 1982. These amounts are found in sections 6, 10, 11, 12, and 15.