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INTERIM FILES,

HB 56

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BAIR PRACTICES

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John Abbott, Chairman
Page 3
September 14, 1978

"judicial lien", "lien" and "statutory lien" contained in AS 09.38.020(7), (9) and (13) respectively. The definitions of those terms follow:

(a) "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;

(b) "lien" means a security interest, or a judicial, statutory, or common-law lien, or any other interest in property securing payment of a debt or performance of an obligation; and

(c) "statutory lien" means a lien arising by force of a statute under specified circumstances or conditions, but does not include a security interest or judicial lien.

The AEA also provides at AS 09.38.140(2) that claims for money used to purchase property and for labor or materials used to improve property may be asserted against the property purchased or improved even though it is exempt.

After consideration of the above-referenced provisions, I have concluded that the proposed AEA treats the enforceability of judicial liens the same as that afforded under existing state law.

In summary, existing state law provides that a homestead is exempt to the extent of \$19,000 in value, in excess of mortgages, deeds of trust, and liens of record (presumably this includes judicial liens) while the AEA states that the homestead is exempt to a value of \$19,000 with "value" defined as fair market value less liens of record and with claims for purchase money encumbrances being enforceable against exempt property. Also, existing state law provides that judicial liens encumber only non-exempt property of a debtor while the AEA defines "exemption" as protection against subjection to a judicial lien.

I hope this answers the questions raised by Commissioner Kurtz at the August meeting; if not, I am prepared to further research the matter to his satisfaction.

JLB:jdn

SECTIONAL ANALYSIS OF HB 56

Prepared by
Legislative Affairs Agency

PREFATORY NOTE

The Alaska Code Revision Commission (commission) was created in 1976 under the provisions of AS 24.20.075. Under AS 24.20.075(c)(2), one of the duties of the commission is to review uniform and model acts proposed by the National Conference of Commissioners on Uniform State Laws (NCCUSL) for enactment by the states. The commission may recommend that the Alaska Legislative Council introduce legislation to revise the law to eliminate antiquated and inadequate rules of law and to bring the law into harmony with current needs and conditions.

The preparation and deliberation which resulted in the present proposed bill began in November 1976 when the commission first took up consideration of the Uniform Exemptions Act (Uniform Act), by the NCCUSL after the preparation and consideration of five tentative drafts over a period of two years. The initial analysis of the Uniform Act by the commission resulted in a decision to use the Uniform Act as a model in shaping exemptions provisions suited to the needs of debtors and creditors residing in Alaska.

In November 1977, the commission, after the preparation and revision of three tentative drafts, published and distributed a tentative draft of the major provisions of the Alaska Exemptions Act (AEA) for the purpose of obtaining public review and soliciting comments from interested persons in the state. Several comments were received including a detailed analysis by the Alaska Legal Services Corporation.

After reviewing all comments received, and in the course of several more meetings, the commission significantly revised the AEA draft.

The ultimate purpose of the AEA is to modernize and simplify the exemptions laws of Alaska. The commission sought to recognize the interests of debtors by defining the basic needs of individuals and protecting assets which supply those needs from seizure to satisfy the non-payment of a debt. The interests of creditors in having fair, inexpensive, and effective remedies available to permit the satisfaction of an unsecured debt from the property of an individual was also recognized by the commission. The proposed AEA is intended to balance these often competing interests so that each debtor and creditor is treated fairly according to current needs and conditions.

The purpose of the Uniform Act is to promote uniform state exemptions laws. Congress has been considering revisions to the Bankruptcy Act and bills to accomplish those revisions were introduced in the 93rd and 94th Congresses. The Uniform Act was initiated by the NCCUSL to avoid the pre-emption of state exemptions law by the proposed federal legislation. It is generally agreed among legal scholars that Congress could prescribe a schedule of exemptions allowable to an individual debtor whose estate is being administered under the Bankruptcy Act. The Bankruptcy Act now in effect provides for the allowance of exemptions to a bankrupt individual in accordance with the laws of his domicile.

The commission adopted substantial portions of the Uniform Act in the AEA but felt that departures from the Uniform Act were necessary to provide for the higher cost of living in Alaska and, particularly in rural areas of the state, to protect the economic life style of state residents. Historically, the law in Alaska has provided greater protection against the garnishment of wages of individual debtors than that afforded under the federal anti-garnishment provisions (15 USC 1673). The Uniform Act does not provide for exemptions against garnishment because its drafters felt that the federal anti-garnishment protections were adequate. The AEA, in AS 09.38.070, increases the amount of earnings protected from garnishment. The commission has recommended the addition of provisions which allow creditors to assert a continuing lien on wages payable to avoid the present practice that requires a creditor to obtain a separate writ of garnishment for each pay period of the debtor. The intent of the commission in recommending the continuing lien approach is to avoid the requirement for unnecessary legal fees and services incurred by creditors by permitting a writ of garnishment that continues, in effect, through successive pay periods until the face amount of the writ has been garnished from the wages of the debtor. The AEA treats certain public assistance benefits as liquid assets of an individual debtor and, therefore, subject to seizure by a creditor if those benefits have a value which exceeds the exemption limit set for liquid assets in general. Under the Uniform Act, these same benefits are totally exempt. These and other departures from the text of the Uniform Act will be set out in the comments to each section of the proposed Alaska Exemptions Act. The appendix contains a table for the exemption provisions of existing state law, the law of Washington and Oregon, and the proposed Alaska Exemption Act.

COMMENT

Sec. 09.38.01. DEFINITIONS.

The definitions in the Alaska Exemptions Act were adopted from the Uniform Exemptions Act, and most of the comments appearing below are based on the official comments of the Uniform Act.

(1) The definition of "burial plot" was added by the Commission and is included to prevent the possibility that a debtor may attempt to use the burial plot exemption to increase his protection from execution on a debt by designating his property as a burial place.

(2) The definition of "debt" is contained in Section 1(1) of the Uniform Act which was drawn from the Bankruptcy Act proposed by the Commission on the Bankruptcy Laws of the United States in 1973. The text of the proposed Bankruptcy Act is set out in House Document No. 93-137, Part II, 93rd Cong., 1st Session (1973) and will be referred to herein as the proposed Bankruptcy Act. A monetary obligation or liability need not be reduced to judgment in order to constitute a debt for the purpose of this Act. The definition of "debt" makes clear that the limitations imposed by this Act on collection processes apply as much to tort claims as to contractual obligations. Exemptions have sometimes but not always been disallowed when asserted against tort claimants.

(3) The definition of "dependent" is contained in Section 1(2) of the Uniform Act and is comparable to that used in the administration of the Internal Revenue Code.

(4) The definition of "earnings" was added by the Commission and is derived from 15 U. S. C. 1673 (restraint on garnishment) and is used in this Act to promote uniformity between state and federal law.

(5) The definition of "exempt" and "exemption" is contained in Section 1(3) of the Uniform Act and makes it clear that the exemptions provided by this Act operate not only to bar a levy but also to bar the imposition of a lien by judgment or other legal or equitable process or proceeding. The definition thus eliminates any basis for argument that a purchaser of exempt property nevertheless takes it subject to a judgment lien that was unenforceable against the judgment debtor-vendor. Exempt property is not, however, absolutely protected against creditor process by this Act. Section 20(5) of the Act recognizes that exempt property may be

subjected to levy for the purpose of enforcing collection of certain claims. Moreover, this Act does not restrict the collection of federal tax claims or the leviability of property made subject to the enforcement of any other claim by federal law.

The purpose of the definition of "exempt" and "exemption" to extend protection against any form of appropriation of an individual debtor's property through judicial proceedings by an unsecured creditor is consistent with the uniform construction of exemption laws. Thus exemption from levy by final process has been construed to leave the property exempted, neither leviable on mesne process nor subject to appropriation by order of a court in an equitable proceeding commenced by creditor's bill or in a statutory proceeding supplementary to an execution.

(6) The definition of "household goods" was added by the Commission so that the individual debtor has sufficient flexibility to claim exemption for items that make his residence habitable according to the times. The Commission wished to avoid specificity in designating "necessary" household items because tastes, styles and people change with the times and so should the exemption laws.

(7) The definition of "judicial lien" is contained in Sec. 1(4) of the Uniform Act and is similar to the definition used in §1201(3) of the proposed Bankruptcy Act. In addition, to achieve consistency with existing Alaskan law, a reference was made to AS 09.30.010, the statutory provision which requires recordation of a lien as a prerequisite to enforceability.

(8) The definition of "levy" is contained in Sec. 1(5) of the Uniform Act and excludes any seizure effected for the purpose of enforcing a security interest or statutory lien or of asserting rights of ownership in property. The term thus does not include replevin. The steps requisite to the making of a valid levy are generally prescribed by other state law, but this Act imposes particular procedural requirements when the debtor is an individual.

(9) The definition of "lien" is contained in Sec. 1(6) of the Uniform Act and is similar to that contained in §1201(31) of the proposed Bankruptcy Act.

(10) The definition of "principal residence" was added by the Commission to extend the application of the homestead exemption to any residence in which an individual is dwelling whether it be classed as real or personal property.

(11) The definition of "security interest" is contained in the Uniform Act and was adopted from the first sentence of the definition of "security interest" contained in sec. 1-201(37) of the Uniform Commercial Code. It differs from the definition in being exclusively applicable to consensual liens in this Act but extending to security interests in real property as well as personal property.

(12) The definition of "serve notice" is contained in Sec. 1(8) of the Uniform Act. When in the Act it is required that a notice be served, the definition of "serve notice" authorizes three alternative modes of service. All of the three modes are consistent with the requirements of due process respecting fair notice. When service is made by mail, it is the intent of the definition that the notice be sent both by regular first-class mail and by certified or registered mail. Requirement of a signed receipt is intended to facilitate proof of service. The failure to obtain a signed receipt does not affect the validity of the service, e.g., when an addressee refuses to accept delivery of the mail. cf. Federal Rule of Civil Procedure 4(g); Rule of Bankruptcy Procedures 704(g); Note, 74 Mich. L.Rev. 381 (1975).

(13) The definition of "statutory lien" is contained in Sec. 1(9) of the Uniform Act which is an adaptation of §1-102(45) of the proposed Bankruptcy Act.

(14) The definition of "value" is contained in the Uniform Act and is similar to that used in the proposed Bankruptcy Act. Since exemption of property does not limit the enforceability of a valid lien against the property, and since the interest of an individual in the property that is leviable by his unsecured creditors is limited to the value exceeding the amount required to satisfy the holder of any lien against the property, the amount of debt secured by valid liens is deducted for the purpose of determining the value of the individual's interest under this Act. Exemption statutes with value limitations typically exclude valid liens. See, e.g., Cal. Civ. Code §1260 (homestead); Cal. Code Civ. Pro. 690.2 (Motor Vehicle); Id. §690.3 (House Trailer or Mobile Home).

(15) The definition of "wearing apparel" was added by the Commission and includes apparel worn for ornamentation and is not strictly limited to "necessary" wearing apparel as now required under AS 09.35.080(a)(3).

COMMENT

Sec. 09.38.030. HOMESTEAD EXEMPTION.

(1) This section is an adaptation of section 4 of the Uniform Act and contains a higher exemption amount (\$10,000 under the Uniform Act compared to \$19,000 under the AEA) and a longer period during which a debtor may object to an execution sale (30 days under the Uniform Act compared to 60 days under the AEA). The \$19,000 value set in (a) for the Homestead Exemption is that currently in effect under existing state law. The amount of exemption that has been set is higher than that prescribed by most state statutes (see appendix), and it should be noted that the exemption amount applies to the residence and may be increased due to joint ownership of the homestead by persons entitled to claim a homestead exemption. A number of states allow the aggregation of exemption amounts up to a top limit permitted for any one living unit. The exemption amount is to be applied to the value of the individual's equity in the property used as a home, since "value" is defined in section 20(14) to exclude the portion allocable to the payment of valid liens.

(2) Subsection (b) makes clear the availability of the homestead exemption to an individual owner of an undivided interest in property used as a home but limits the aggregate value of multiple homestead exemptions allowable to a value of \$28,000 with respect to any single living unit. If the value of the individual's interest in property owned by him and his spouse as tenants by the entirety exceeds the amount allowable as the homestead exemption, section 210 of this Act would make the interest severable at the instance of a creditor of either of the spouses.

(3) Although requiring confirmation of a sale of property that includes a homestead before the sale becomes effective, (c) does not authorize the making of any objection to the validity of the sale not previously recognized by the law of this state. It does provide a minimum period of 60 days during which any objection available under the law can be made. If such an objection is made before confirmation is ordered, the court may postpone the confirmation pending disposition of the issues raised by the objection or enter the order of confirmation at the end of the 60-day period in the event the option to repurchase is not exercised. As mentioned above, the Uniform Act proposed a 30-day period during which objections to the validity of a sale may be made.

(4) The right of repurchase prior to confirmation of the execution sale authorized by (c) is to be distinguished from the statutory right of redemption from a foreclosure or execution sale after it has become final. The statutory right of redemption is not intended to be affected by this subsection.

(5) The Act further provides for the distribution of proceeds from the sale when the debtor fails to exercise his right of repurchase. The Commission was concerned with providing absolute protection for the amount of proceeds which represents the exemption amount. Therefore, (c) specifically provides for the distribution of the proceeds and sets forth the procedures to be followed by the clerk of court in effectuating the intent of this section.

(6) A homestead exemption may be claimed for the "principal residence" of an individual. That term is defined in §20(10) and includes both real and personal property. The intent of that definition is to make it clear that a mobile home or other similar dwelling qualifies for this exemption.

COMMENT

Sec. 09.38.040. PROPERTY EXEMPT WITHOUT LIMITATION.

(1) Subsection (a)(1) provides for an exemption of a burial plot; but, by definition in sec. 020(1), the area in which the burial plot is located must be designated for burial purposes by the state or a general law or home rule municipality. Nearly half the states provide for an exemption of a burial plot, typically without prescribing any area or value limitation. The risk that an unlimited exemption of a burial plot for an individual and his family may be exploited by a debtor to the detriment of his creditors was the major reason for the inclusion of the definition at sec. 020(1).

(2) The exemptions contained in sec. 040(a)(2) and (3) are derived from section 5 of the Uniform Act and the official comment to that section follows:

'The exemption of health aids is not a feature of most exemption statutes which were enacted before the development of medical technology that has made ownership of valuable health aids a relatively common occurrence. The requirement that the aids be "reasonably necessary to enable the individual or a dependent to work or to sustain health" eliminates any basis for claiming an exemption in a swimming pool, sauna, bicycle, golf clubs, or gymnastic equipment merely because their use is conducive to maintaining good health. Sec. 040(2) contemplates an exemption of such items as a wheel chair for an individual unable to walk to work, an airconditioning unit for an individual afflicted with asthma, or an elevator for an individual unable to climb stairs.

The exemption of benefits for medical, surgical, or hospital care is subject to no specific value limitation but is available only to the extent that the benefits are used or will be used to pay for the care. If the cost of the care is otherwise defrayed, there is no justification for exempting the benefits provided for this purpose from creditor's claims."

(3) The exemption provided sec. 40(c)(4) was added by the Commission and covers an award under the Violent Crimes Compensation Act (AS 18.67) or similar legislation in effect in other jurisdictions.

(4) The exemption contained in 40(c)(6) was added by the Commission and protects a longevity bonus from execution. This provision does not amend existing law but is included here for purposes of clarity and organization.

(5) The exemption contained in sec. 40(a)(6) applies to compensation and benefits paid or payable under federal law. These items include social security benefits and compensation for longshore and harbor workers.

(6) Section 40(b) makes exempt liquor licenses and limited entry permits granted by the state under the exercise of its regulatory jurisdiction. These intangibles are generally viewed as a grant of the privilege of doing business and are generally considered a valuable property right and business asset. The state, through its regulatory agencies, closely regulates the recipients of these property rights and the Commission determined that it would be a bad public policy to allow creditors to effect transfer of a license under an execution and without consideration of needs of the public for the services offered under the license. The exemptions provided in this section may be claimed by an individual, corporation, or other business entity. The Commission did not intend to prohibit the taking of a valid security interest in a liquor license. The Alaska Supreme Court has upheld the enforceability of a security arrangement which involved an agreement to transfer a liquor license if the holder failed to perform. See Queen of the North v. Legrue, 581 P. 2d _____, Opinion No. 1670 (Alaska; July 21, 1978). The exemption of other transferable business rights such as air commerce certificates and certificates of public convenience and necessity was not provided for by the Commission since existing law provides adequate provisions for the transfer of those rights.

(7) Section 40(c) incorporates exemptions for amounts held by the state on behalf of individuals which may become payable in the future. It should be noted that this exemption does not apply once the amounts are paid to the individual. The type of benefits covered by this subsection are exempt under existing law, see AS 23.20.405 (unemployment), AS 14.25.200 (teachers' retirement), AS 39.35.500 (public employees), and AS 47.23.095 (child support).

(8) Section 40(d) provides an exemption for property of the state and its political subdivisions. These exemptions appear in existing law and are included here to simplify the location of the various exemptions by interested persons. These exemptions currently appear in AS 09.35.080(a)(6) (property of a public or municipal corporation), AS 44.58.340 (Municipal Bond Bank Authority), and AS 18.55.620 (Alaska State Housing Authority).

(9) Section 40(e) restates the exemption provided under AS 10.30.060 for cemetery associations.

State Housing Authority

COMMENT

Sec. 09.38.050. EXEMPTIONS OF PERSONAL PROPERTY SUBJECT TO VALUE LIMITATIONS.

(1) The specific personal property exemptions listed in (a)(1) and (2) and (c) are fairly typical of those found in most state exemption laws and in the Internal Revenue Code §6334(a). The Commission adopted an approach which allows the individual debtor to choose from a list of three categories the property he desires to have declared exempt under the Act. These categories were made extremely broad in order to provide the protection that an individual should enjoy over his personal property. It should be noted that "household goods" is defined in sec. 020(6) of the Act and includes those items that "make a residence habitable according to modern standards". the inclusion of family portraits and heirlooms of sentimental value in (a)(3) recognizes that the debt-paying value obtainable by levy and sale of such property by a creditor is unlikely to be proportionate to the deprivation suffered by the individual and his family, and the \$1,500 value limitation set for the exemption for any category of property is a safeguard against abuse of this provision.

(2) While jewelry held for personal use is not often specified as exempt under state statutes, courts have frequently held that items of jewelry are included in the exemption of "wearing apparel" which has been designated a separate type of property for the purposes of this section; see also the definitions contained in secs. 20(6) and (15) which are intended to clearly separate the jewelry exemption from the wearing apparel exemption.

(3) Property of the kind listed in (a) and (b) is customarily held in the individual owner's home, and most property so held is of insufficient value to exceed the prescribed exemption limitations. To protect the individual against harassment and ill-advised levies on such property, under section 160 special procedures are required to be pursued by a creditor who would levy on property of the kinds described in these two subsections.

(4) While motor vehicles are frequently held to be exempt under various state laws, it is also necessary for the debtor to establish that the motor vehicle is a tool of a trade or is used in the debtor's trade or occupation. 31 Am. Jur. 2d Exemptions §62, 65-68 (1967)(see also the appendix). While most of these statutes prescribe a value limitation, they vary as to whether a motor vehicle having a greater value than the maximum is exempt to the extent of the maximum or is entirely non-exempt. 31 Am. Jur. 2d, supra at §69. It is clear in (c) that a debtor may claim an exemption to the extent of \$1,500 in the equity of an automobile if the full value of that vehicle does not exceed \$10,000 but does not enable him to claim an exemption in more than

one vehicle. The intent of this provision is to prevent exemption claims for vehicles which are clearly luxury items or purchased with the intent to accumulate exempt assets.

(5) The exemption of pets in (c) was added by the Commission to prevent the ill-advised and vexatious seizure of household animals. The top value limit of \$3,000 for this category of property was added by the Commission to prevent the accumulation of exempt pets to frustrate the collection efforts of creditors.

COMMENT

Sec. 09.38.060. EXEMPTION OF UNMATURED LIFE INSURANCE AND ANNUITY CONTRACTS.

Section 60(a) is identical to section 7 of the Uniform Act and the official comment to that section follows:

(1) This section is similar to §4-503(d) of the Proposed Bankruptcy Act. See also Int. Rev. Code §§6323(c)(9), 6332(b); National Commission on Consumer Finance, Consumer Credit in the United States 38 (1973). Compare Vukowich, Debtors' Exemption Rights, 62 Geo. L.J. 779, 874-75 (1974). Like the second proviso of §70a(5) of the present Bankruptcy Act, the provision of subsection (a) of this section, applicable to policies having a loan value and accrued dividends of more than \$5,000 is intended to enable an insured debtor "to retain insurance which, because of advancing years or declining health, it might be impossible for him to replace." Burlingham v. Crouse, 228 U.S. 459, 473 (1913).

(2) An unexpired life insurance contract without any loan value or accrued dividends payable to an individual owner is exempt in its entirety under this section. If an individual owns several contracts having loan values and accrued dividends, it may be appropriate for the debtor, the creditor, or one or more of the insurers to obtain a determination by a proceeding pursuant to §14(e) [170 of the AEA] as to which loan values and dividends are being claimed as exempt and which are being subjected to the creditor's claim. Although the determination in such a proceeding would not be binding on a creditor not a party thereto, the individual debtor would be entitled to claim his exemption as against all other creditors after the nonexempt values and dividends had been appropriated by judicial proceedings at the instance of one or more creditors.

(3) The second sentence of the section contemplates that the creditor may obtain an order in proceedings supplementary to judgment directed against the individual to execute a written assignment of the policy or a written surrender that would satisfy the terms of the policy. See Blinn v. Dame, 207 Mass. 159, 93 N.E. 601 (1911), where an assignee for the benefit of creditors was permitted to sue an insurer in his own name to recover the cash surrender value of a nonexempt endowment policy owned by the assignor; V. Countryman, Cases and Materials on Debtor and Creditor, 124 n. 1 (2d ed. 1974).

Under existing law, insurance contracts are exempt under AS 21.42.320-350 and, except for life insurance contracts on the life of the debtor, are exempt without limitation.

COMMENT

Sec. 09.38.070. EXEMPTION OF EARNINGS AND LIQUID ASSETS.

(1) Under §70(a) the weekly net earnings of an individual are exempt from execution to the extent of \$125 per week. It is also provided in (b) that an individual who does not receive earnings regularly, i.e., either weekly, semi-monthly or monthly, shall also receive an exemption for his liquid assets which are his substitute for earnings. This section recognizes the fact that, in Alaska, there is a large proportion of the work force which does receive compensation regularly but there is also an equally large percentage of the work force that is seasonally employed and therefore does not receive compensation on a regular basis. The Commission felt that the earnings exemption should, in some way, be adapted to afford protection to those individuals who receive compensation which must serve to support the individual throughout the year. The "seasonal wage earner" enjoys an exemption to the extent of \$500 for liquid assets in his possession during a 30-day period.

(2) The Commission in §70(e) has rejected the approach taken in many states that certain types of public benefits or property should be given totally exempt or partially exempt status by adopting a definition of "liquid assets" which includes these previously exempt benefits or property. The Commission determined that once these benefits are paid over to an individual debtor and in his possession they should become part of the liquid assets of that individual and are adequately protected by the aggregate value exemption for liquid assets under (a) and (b) of this section. The effect of §70(e) is to expose these assets to levy once they are in the possession of an individual if their total value would exceed the weekly or monthly exemption amount provided under §70(a) and (b).

COMMENT

Sec. 09.38.080. CONTINUING LIEN ON WAGES.

Section 80 of the Act is designed to reduce the amount of legal services and litigation necessary to garnish the earnings of an individual debtor, thereby alleviating a burden on both the debtor and creditor as well as the court dockets. The section provides for a continuing lien on wages which remains in effect until the amount of the lien is satisfied or the employment relationship is terminated or the writ is dismissed. Under existing law, a creditor must file his writ of garnishment each time the debtor is to receive earnings. Adoption of the procedures proposed in sec. 80 would require only one filing which would remain in effect as a lien until the amount stated on the writ is satisfied through payments of nonexempt earnings. The approach taken in sec. 080 is similar to that used in Washington, see RCW 7.33.350 - 390 (Continuing lien on wages). The Commission wanted to make the employer's task of computing the nonexempt portion of earnings as easy as possible. To achieve this goal, the employer is required to pay the amount stated in the writ without figuring accrued interest on the unpaid balance. A creditor may recover accrued interest under a supplemental writ.

COMMENT

Sec. 09.38.090. PRIORITIES BETWEEN CONTINUING LIENS.

This section specifies the priorities in effect between competing liens upon wages. The intent is to avoid unnecessary legal services and litigation to determine the enforceability of various writs that may establish a continuing lien upon wages.

COMMENT

Sec. 09.38.100. EFFECTIVE DATE OF CONTINUING LIEN.

This section establishes the effective date of the continuing lien by reference to the date of service or expiration of prior writs.

COMMENT

Sec. 09.38.110. INCREASED EXEMPTION AMOUNT.

Section 110(a) was added by the Commission and provides an increased exemption for individuals who have received money in payment for an injury or disability. The section authorizes the court to examine the needs of a recipient for the purpose of determining whether there may be an excess that should be subject to execution at the instance of a creditor although another court presumably fixed the amount of the individual's award on the basis of a determination of the same needs. The creditor was not likely to have been a party to the proceeding in which the prior determination was made, and the award may have been sufficient to permit an accumulation of an asset surplus not reasonably required for the individual's and dependents' support.

Subsection (b) allows an increased exemption amount up to \$200 per week for wage earners or \$800 per month for seasonally employed persons if those persons are the only source of income for the household.

COMMENT

Sec. 09.38.120. BANKRUPTCY PROCEEDINGS.

The bankruptcy law vests in the federal district court exclusive jurisdiction to determine exemptions, but that court is bound to follow state law and the interpretation placed upon state statutes by decisions of state courts. The intent of the Commission in adding sec. 120 is to specifically designate which state exemptions are available to a bankrupt. It is not clear whether a state may provide that less than all of its exemption laws apply to a bankruptcy proceeding. The exemptions specifically made applicable are:

- 1) homestead exemption (sec. 30);
- 2) personal property exempt without limitation (sec. 40(a));
- 3) personal property exempt to a value limit (sec. 50);
- 4) life insurance exemption (sec. 60); and
- 5) earnings and liquid assets exemption (sec. 70).

It is also provided that limited entry permits and liquor licenses are non-exempt property during bankruptcy proceedings.

COMMENT

Sec. 09.38.130. TRACING EXEMPT PROPERTY.

(1) Subsections (a) and (b) of this section are nearly identical to sec. 9(a) and (c) of the Uniform Act as proposed for enactment by the Commissioners on Uniform Laws. This section differs from the Uniform Act in that it allows a three-month period in which to trace the proceeds from the voluntary sale of a homestead. The Commission felt that this period was sufficient time to protect a debtor while searching for a new homestead. It should also be noted that the Commissioners on Uniform Laws recommended that proceeds derived from the involuntary sale, conversion or destruction of exempt property be exempt for 18 months while under the Alaska Exemptions Act a 12-month period is proposed.

(2) To limit the protection of the individual to the proceeds in their original form would be to destroy the utility of the protection and defeat the purpose of the exemption statute. See 31 Am. Jur. 2d Exemptions §87 (1967). See also Riesenfeld, Life Insurance and Creditors Remedies in the United States, 4 UCLA L. Rev. 583, 603 - 04 (1957); Comment, 21 Iowa L. Rev. 153 (1935).

COMMENT

Sec. 09.38.140. CLAIMS ENFORCEABLE AGAINST EXEMPT PROPERTY.

This section is identical to section 10 of the Uniform Act as proposed for enactment by the Commissioners on Uniform State Laws. The official comment to section 10 of the Uniform Act follows (references to this Act appear in brackets following citations to the Uniform Act):

(1) This section authorizes levy by certain creditors against exempt property, both real and personal. Subsection (a) contains exceptions typically found in state exemption statutes. Sec 31 Am. Jur. 2d Exemptions §§ 122, 127, 131, 134, 135 (1967); Joslin, Debtors' Exemption Laws: Time for Modernization, 34 Ind. L.J. 355, 372-75 (1959).

(2) Garnishment of earnings for personal services is restricted by §§302-03 of the Consumer Credit Protection Act, 15 U.S.C. §§1671-73 (1970), and §§5.105 of the Uniform Consumer Credit Code. The considerations underlying these restrictions also support the exception of claims for unpaid earnings from those that are generally unenforceable against exempt property. A reasonable degree of protection is afforded the claimant by the provision in subsection (a)(1)(ii) allowing recovery from exempt property of one month's compensation or, if the claimant works part-time, an amount of compensation equal to the earnings of one month of full-time employment.

(3) A claim of a kind listed in this section may be enforced against exempt property by an assignee of the original creditor. A creditor seeking to collect such a claim by levy on exempt property must comply with subsection (c) of this section. Enforcement of a lien securing a claim of the kind listed in the section is subject to §11 [150] of this Act. As noted in the Comment (3) [5] accompanying §1 [20], this Act does not limit the enforcement of federal tax claims or liens against exempt property.

COMMENT

Sec. 09.38.150. LIMITATION ON ENFORCEMENT OF CERTAIN SECURITY INTERESTS IN EXEMPT GOODS.

This section is similar to section 11 of the Uniform Act as proposed for enactment by the National Conference of Commissioners on Uniform State Laws. A portion of the official comment to section 11 of the Uniform Act follows:

This section is an adaptation of §5.116 of the Uniform Consumer Credit Code. It provides protection against potentially oppressive enforcement of a security interest in exempt personal property unless the creditor is seeking collection of the unpaid purchase money obligation. Restrictions on the enforceability of non-purchase-money security interests in household goods were recommended by the National Commission on Consumer Finance in Consumer Credit in the United States xx (1972). See also §4-503(f) of the Commission's Proposed Act; FTC's Trade Regulation Rules on Credit Practices §444.2(a)(4); and FRB's Rules on Uniform Credit Practices §228.2(a)(4). The premise of the section is that actual or threatened enforcement of the secured creditor's right against exempt goods of the kinds embraced by its provisions may so seriously disrupt the family life of the individual and his dependents that the creditor should first afford the individual notice and an opportunity to be heard in court on whether enforcement of the security interest may create undue hardship.

This section differs from section 11 of the Uniform Act by excluding security interests in motor vehicles even though the security interest does not secure the payment of money used to purchase the motor vehicle. The Commission felt that since motor vehicles are so easily moved from one jurisdiction to another that the notices and procedural requirements imposed by this section would unduly frustrate the collection efforts of creditors.

COMMENT

Sec. 09.38.160. SPECIAL PROCEDURES RELATING TO LIMITED VALUE EXEMPTIONS.

This section is similar to section 12 of the Uniform Act as proposed for enactment by the National Conference of Commissioners on Uniform State Laws. The official comment to section 12 of the Uniform Act follows; (citations appearing in brackets are to the Alaska Exemptions Act):

(1) This section is based on the assumption that all of the property owned listed in §8(a) and (b) [50] is likely to be exempt. Property of an individual of the kinds listed is unlikely to bring at a forced sale under execution a sum exceeding the amount of the applicable exemption. Another assumption underlying this section is that an effective levy on such property is likely to involve an intrusion by the officer of the court into the privacy of the individual's home. Moreover, his creditors do not ordinarily expect to collect their debts out of the sale of such property. A reasonable balance of the rights of individual debtors and creditors in respect to such property is provided by the procedures prescribed in this section. Before any levy is made against these items, the individual is provided a notice of the creditor's belief that he has property of one or more of the kinds listed which is not exempt, and an opportunity to claim the property in these categories as exempt or to indicate which items, if any, are not claimed as exempt. If the individual and his creditor cannot agree as to whether particular items are exempt, the dispute may be resolved by resort by any interested person to the procedure prescribed in §14(e) [170(e)]. If the individual does not respond to a notice of the creditor's belief that the debtor has nonexempt property of the kind listed in §8(a) or (b) [50], he may be required by court order to appear and submit to a disclosure respecting his property. If the individual fails to appear and submit to a disclosure, he is deemed to have waived any claim of exemption to the property described in the creditor's notice served under this section. The individual is subject to such further processes for disobedience of the court order as may be provided by the laws of the state.

(2) Any costs incurred in proceedings under this section are to be charged against the creditor, unless sufficient proceeds to cover the costs are obtained by a sale of property of a kind listed in §8(a) or (b) [50].

COMMENT

Sec. 09.38.170. PROCEDURES APPLICABLE TO A LEVY ON PROPERTY OF AN INDIVIDUAL.

This section is similar to section 14 of the Uniform Act as proposed for enactment by the National Conference of Commissioners on Uniform State Laws. The official comment to section 14 of the Uniform Act follows; (citations appearing in brackets refer to the Alaska Exemptions Act):

A secured creditor who is resorting to judicial process for the purpose of enforcing his lien against goods in the possession of an individual is subject to the requirement of §11 [150] but need not comply with §§13 [160] and 14 [170], since these sections govern only a levy issued as a process for collecting unsecured debt. A secured creditor may nevertheless obtain a levy for the purpose of collecting a deficiency judgment against an individual out of property that is not subject to the creditor's lien and, when doing so, should comply with §14 [170] and, if appropriate, with §13 [160].

Subsection (d) applies to a sale under a levy against property that is exempt to the extent its value does not exceed a statutory limit. Such value limitations are prescribed by §4 [030] for the homestead exemption and subsections (a), (b), and (c) of §8 [050] for certain tangible personal property. Provisions comparable in part to subsection (d) are found in Mich.Stat. Ann. §§27A.6027, 27A.6033, and 27A.6059 (1962). The restoration of property to an individual debtor under this subsection does not preclude a new levy on the property in accordance with the provisions of this Act and other applicable law.

Subsection (e) is an adaptation of Iowa Code §628.21 (1971). "An interested person" under this section may be an individual debtor who has been served a notice pursuant to §13 [160] or §14 [170] of this Act, a person entitled under §16 [190] to claim an exemption or object to a levy, a creditor who has levied or attempted to levy on an individual's property, a sheriff or other officer of the court who has made a levy or been requested to make one, or any other person whose rights may be affected by a determination of an individual's claim to an exemption under this Act.

The last sentence of subsection (f) states the possible consequences of delay in filing an objection to a levy but is not to be read as a limitation on the discretion of the court to afford judicial relief under §17(b) [200(b)]. Thus an individual who is deterred from

filing a timely objection by a representation by a creditor that he does not intend to pursue collection against a particular asset may present an appropriate case for judicial relief.

Section 14(b) of the Uniform Act required individual debtors to object to a levy within 10 days after it is made. The Commission increased this period to 15 days to equal the time allowed for objections under current state law. See AS 09.35.035.

COMMENT

Sec: 09.38.180. CONTENTS OF NOTICE.

This section is similar to section 15 of the Uniform Act as proposed for enactment by the National Conference of Commissioners on Uniform State Law. Excerpts from the official comment to section 15 of the Uniform Act follows; (citations in brackets refer to the Alaska Exemptions Act):

(1) The notice to the individual required for compliance with §§14 [170] and 15 [180] may vary depending on the nature of the property the creditor proposed to levy on. Thus, a levy on a bank account or other obligation owed the judgment debtor by a third person ordinarily contemplates no sale of the debtor's property. Rather the creditor in such a case proceeds by garnishment or similar process, and the debtor should raise any objection to the creditor's attempt to collect through such means by filing an answer or appropriate motion in the garnishment proceeding. If a creditor is proceeding to levy on property of a kind listed in §8(a) [050(a)], he must, in addition to serving on the individual a notice that complies with §§14 [170] and 15 [180], serve a copy of an order issued pursuant to a request of a notice under the Act as specified in §1(8) [020(12)].

(2) The court with rule-making authority may appropriately promulgate forms in more than one language when there is a likelihood that the notice required by §§14 [170] and 15 [180] will be served on a significant number of individuals unable to understand English. The items of information required to be included in the notice by the section are not intended to be exclusive. Thus, the court with rule-making authority may adopt appropriate requirements to facilitate identification, in the notice, of the proceeding in which the notice is issued.

The Commission was requested by Alaska Legal Services Corporation to prepare legislation which provided for automatic claims of exemption by individual debtors. Representatives of that public law firm argued that their clients frequently are intimidated by the complexity of legal proceedings and for this reason are reluctant to assert their exemption claims. The Commission rejected an automatic claim-of-exemption-approach because the debtor has information concerning his property that is difficult for a creditor to obtain. The Commission was of the opinion that forms for the claiming of

exemptions could be prepared by the Supreme Court in simple, lay terminology. The use of carefully prepared forms could simplify the procedures and, in non-complex cases, significantly reduce the need for legal assistance to individual debtors.

COMMENT

Sec. 09.39.190. ASSERTION OF RIGHTS BY ANOTHER.

The reference to "other authorized person" in this section is not intended to enable a creditor to assert the right to exemption merely by reason of the fact that he has an unprotected security interest in exempt property or that he is a creditor with a right to levy on exempt property. The Commission altered the proposed draft of the Uniform Act by adding the words "any other person authorized by law". This was intended to clearly provide that there must be some legally recognized agency existing between the debtor and the "other authorized person". "It has been held that, ordinarily, the claim cannot be made by the debtor's mortgagee or assignee, because the right of exemption is personal and not vendible or assignable, but, so far as the selection of statutory exemptions is concerned, there is authority that under a statute permitting the selection to be made by the debtor 'or his authorized agent,' a mortgagor..., giving the mortgagee the right to make the selection, is not against public policy." 31 Am. Jur. 2d Exemptions 445 (1967).

COMMENT

Sec. 09.38.200. JUDICIAL RELIEF.

This section is identical to section 17 of the Uniform Act as proposed for enactment by the National Conference of Commissioners on Uniform State Laws. The official comment to section 17 of the Uniform Act follows:

(1) Generally injunctive relief provides the only adequate and complete protection for the beneficiaries of exemption laws. Sometimes, however, that relief is no longer available, and sometimes both an injunction and an award of damages may be appropriate. See generally 31 Am. Jur. 2d Exemptions §§173-90 (1967). The section does not authorize or require an award of damages for every violation, in particular one that is merely technical and causes no loss or prejudice to those protected by the exemption laws. Because of the difficulty of proving actual damages for a violation of the Act, an award of costs and reasonable attorney's fees may also be justified. Cf. U.C.C.C. §§5.108(6) and 5.201(8) and the accompanying comments.

(2) Subsection (b) enables the court to take into account any special circumstances in granting relief to a party or any other person, including a spouse or dependent of a debtor, for noncompliance with a time limitation prescribed by the Act or fixed by the court in proceedings under the Act. Such circumstances may include not only failure to receive timely notice or knowledge of the right or duty to take action but also inaction induced by a communication received from an adversary party or an officer of the court indicating that no action is necessary.

COMMENT

Sec. 09.38.210. DEBTOR'S PROPERTY OWNED WITH ANOTHER.

Section 210(a) of this Act is similar to section 18 of the Uniform Act proposed by the National Conference of Commissioners on Uniform State Laws.

(1) The section is a restatement of existing law as presently enacted in AS 34.15.140. The section is included here in an effort to consolidate provisions relating to exemptions. The divisibility of tenancies by the entirety for the purpose of satisfying an execution upon a debt has been recognized in Pilip v. U. S. 186 F. Supp. 397 (D Alas. 1960). Under the law of some states, a debtor's interest in a tenancy by the entirety is exempt from execution for the payment of a judgment based upon a debt owed by only one of the co-tenants. However, under the law of the state the shelter afforded by a tenancy by the entirety has been somewhat diminished through the operation of AS 34.15.140 which protects the tenancy by the entirety against the debts of one or either of the co-tenants only to the extent of the value of the homestead exemption. See also, Barclay v. Automatic Welding and Supply, Inc. Superior Court, 3rd Jud. Dist., Civ. No. 73-2476 (1974).

(2) Section 210(b) is a restatement of AS 32.05.200 version of the Uniform Partnership Act which was inserted here to consolidate the exemption laws of this state.

COMMENT

Sec. 09.38.220. WAIVER OF EXEMPTION.

This section is identical to section 12 of the Uniform Act as proposed for enactment by the Commissioners on Uniform State Laws. The official comment to section 12 of the Uniform Act follows; (citations appearing in brackets are to the Alaska Exemptions Act):

This section is comparable to §4-503(f) of the Proposed Bankruptcy Act. Waivers of exemption executed in favor of unsecured creditors are generally unenforceable. Annot., 94 A.L.R. 2d 967 (1964). The purpose of this section is to protect an individual against pressure to execute a waiver of his exemptions except insofar as he may create a valid security interest in exempt property as provided in §11 [150]. Section 12 [220] furthers the policy underlying §11 [150] by providing protection against harsh enforcement of security interests in exempt property.

COMMENT

Sec. 09.38.230. FEDERAL REQUIREMENTS.

The Commission has proposed that certain benefits payable under a public assistance program should lose their exempt status once in the possession of the recipient. The protection afforded by the "earnings and other liquid assets exemption" created under §70 is intended to be sufficient to exceed the value of public assistance benefits. This section is intended to prevent a loss of federal funding for state-administered public assistance programs if the exemption of the benefits while in the hands of the recipient is a precondition to receipt of federal financial participation. The formal ruling by a federal department or agency referred to in this section is any ruling having determinative effect on the availability of federal financial participation.

COMMENT

Sec. 09.38.240. ADJUSTMENT OF DOLLAR AMOUNTS.

This section is similar to section 2 of the Uniform Act. The Commission determined that the index for the U.S. City Average used in the Uniform Act would not realistically reflect the buying power of the Alaskan consumer. The Anchorage Metropolitan Area Consumer Price Index was selected because it would realistically reveal fluctuations in the local consumer price index. Anchorage is a commercial center and one in which a majority of the debtor-creditor litigations occur. The ravages of inflation have eroded the effectiveness of the protections intended under the existing exemption laws. The intent of the Commission is to recommend a proposal for legislation that will not require regular oversight, and to protect the citizens of Alaska by allowing exemptions determined under modern economic standards.

COMMENT

Sec. 09.38.250. PROTECTION OF PROPERTY OF RESIDENTS AND NON-RESIDENTS.

This section is similar to section 3 of the Uniform Act as proposed by the National Conference of Commissioners on Uniform State Laws. An excerpt from the official comment to that section follows:

Many states restrict the benefits of their exemption laws to resident debtors, and the full faith and credit clause does not require a state to accord a non-resident debtor the protection of the exemption laws of his domicile. Vukowich, Debtors Exemption Rights, 62 Geo. L.J. 779, 838 - 41 (1974); Note 68 Yale L.J. 1472 - 75 (1959). In allowing a non-resident the benefit of the exemption laws of his own residence, the section adopts a rule frequently adopted as a matter of comity. Vukowich, supra, 62 Geo. L.J. at 839. Cf. Restatement 2nd Conflict of Laws §132 (1971) (Forum should apply the exemption laws of another state which, "by reason of such circumstances as the domicile of the creditor and debtor within its territory, has the dominant interest in the questions of exemptions"); Comment, 68 Yale L.J. 1459, 1474 (arguing that a state's exemption law should be accorded full faith and credit by other states). According to an individual debtor, the exemptions provided by the law of his residence will generally conform to the expectations and understanding of his creditors in more cases than an alternate rule would. Vukowich, supra, 62 Geo. L.J. at 840; Cf. Hanover National Bank v. Moyses, 186 U.S. 181, 189 (1902).

Section 250(b) was altered from the original (b) of section 3 of the Uniform Exemptions Act to include the same definition of "resident" as was applied in State v. Adams, 522 P.2d 1125 (Alaska, 1974). For the purposes of this section, the term "resident" means the same as "domicile".

COMMENTS TO AMENDING SECTIONS

Sections 3 - 13

These sections of the Act contain proposed amendments to existing law. The amendments are intended to consolidate provisions relating to exemptions under one title and to provide cross-references from related provisions to AS 09.38 as an aid to finding the exemption laws of the state. The technique used in Alaska for setting out new language in an existing section of the law is to underscore the new material. When material is deleted from an existing section, the deleted material appears in brackets and is capitalied. Set out below is a list of the amending sections and the subjects to which they relate:

- Section 3: teachers retirement benefits;
- Section 4: unemployment compensation benefits;
- Section 5: workmen's compensation benefits;
- Section 6: tenancies by the entirety;
- Section 7: public employee retirement benefits;
- Section 8: general relief assistance benefits;
- Section 9: aid to families with dependent children;
- Section 10: old age assistance benefits;
- Section 11: aid to the blind;
- Section 12: aid to the permanently and totally disabled; and
- Section 13: longevity bonuses.

ALASKA
POLICE
STANDARDS
COUNCIL

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

ALASKA POLICE STANDARDS COUNCIL

POUCH AS
JUNEAU, ALASKA 99811
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October 4, 1979

Margaret W. Berck
Counsel to the House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Ms. Berck:

Thank you for returning our Regulations and Procedures Manual and the opportunity to review your report to the House Judiciary Committee.

Generally, I thought your report to be an excellent summary of the council's purpose, responsibilities and activities; however, I would like to bring to your attention and clarify some areas that might lead to a misunderstanding by the Judiciary Committee.

II. JURISDICTION OF THE APSC

1. A municipality with an established police training program may exclude itself, by ordinance, from our minimum requirements, but only if its program meets or exceeds APSC minimum standards.

2. There is an inconsistency between our statutes, which mention "temporary officers," and our current regulations, which have authority only over "full time police officers." Major police departments in Alaska do not hire temporary officers. They are found in the rural areas where a person is hired as a full time police officer for a specific limited period of time. We hope to reach some, if not all, of these officers with the adoption of rural police regulations.

IV. MINIMUM TRAINING REQUIREMENTS FOR POLICE OFFICERS

Although our regulations require a minimum of 8 hours of firearms instruction, in actuality, students at the

Letter to Ms. Berck

Page 2

Municipal Police Academy receive 27 hours of firearms training, plus 6 hours of "shoot/don't shoot" instruction.

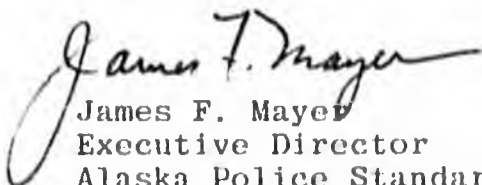
The latter is, of necessity, general in nature, since each individual police department has its own specific policy in these situations, which is imparted to the officer during the field training program. There is no way to predict the reaction of any individual in an emergency situation, regardless of the amount of training received.

VI. VILLAGE POLICE OFFICERS

Without an explanation, the term "ignored" seems to imply a lack of concern. The council is, and has been, fully cognizant of the problems faced by rural municipalities in obtaining officers who meet the current minimum standards, and any attempt to force compliance through civil process would be counterproductive to the council's purpose of supporting and encouraging police training. Over 40% of the students attending the recent Municipal Police Academies have been from communities considered rural, and while the Department of Public Safety has historically provided police training to the villages, the council will provide an incentive for the rural areas to take advantage of all available training through its proposed village police certification program.

I hope you will provide this information to your committee for their information and clarification. If there is any other information you think might be of assistance, please let me know.

Sincerely,



James F. Mayer
Executive Director
Alaska Police Standards Council

JFM/mas
encl: MPA-15 schedule



Alaska State Legislature

House of Representatives

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

To: Charlie Parr, Chairman, and Members of the House
Judiciary Committee

From: Margaret W. Berck, Staff

Date: September 13, 1979

Subject: The Alaska Police Standards Council

I. INTRODUCTION

The Alaska Police Standards Council (APSC) was created by the Alaska Legislature in 1972.¹ Some 47 states have similar agencies. The ultimate goal of the APSC is to assure high quality police protection for the people of Alaska. By statute, the APSC is empowered to adopt, pursuant to the Administrative Procedure Act, regulations which establish minimum employment, training and education standards for Alaska's police officers. It is also charged with coordination and development of police training schools and programs of instruction.

The APSC is composed of 9 members: the Commissioner of Public Safety or his designee, 4 chief administrative officers or chiefs of police of participating local governments, and 4 members of the public at large with at least 2 from communities of 2500 population or less. Members are appointed to 4-year terms by the governor.

Administration of council policies, programs, and day-to-day business is accomplished by full-time staff consisting of the

¹AS 18.65.130-290.

executive director, Mr. James Mayer, the training coordinator,² Mr. John Marshall, and 1 secretary.

The minimum standards adopted by the APSC, both in terms of qualifications, as well as, training requirements, closely parallel national standards established by the International Associations of Police and the American Bar Association.

II. JURISDICTION OF THE APSC

The jurisdiction of the APSC is not without limitation. First, pursuant to Alaska law,³ any municipality with an established police training program may exclude itself from the minimum requirements for police officers as established by the APSC. Although the municipality of Anchorage had at one time opted out of APSC jurisdiction, it, together with the remaining some 138 local police departments in Alaska, is currently under APSC jurisdiction.

Second, in accordance with statute⁴ the commissioner and deputy commissioner of public safety and the chief administrative officer of local police departments are exempt from APSC requirements. The APSC contends that the blanket exemption provided to chiefs of police is contrary to good public policy. This contention is based on the fact that certain chiefs of police, primarily in the villages, have operational duties without having had any police training whatsoever. H.B.213 currently in Senate Judiciary would correct this deficit. A copy of H.B.213 is attached at the end of this report.

²This position was established in March 1978 when funding was granted for one year through the Law Enforcement Assistance Administration.

³See AS 18.65.280(b).

⁴See AS 18.65.280(a).

Presently the APSC exercises no jurisdiction over temporary police officers. Although the APSC had no idea how many temporary police officers were utilized in Alaska, they did state that it was a lot. Furthermore, the APSC does not have any mechanism to insure that probationary officers meet the minimum qualifications requirements at the time of their initial employment. This initial hiring decision is completely left up to local police departments. It is only after the officer has served his or her probationary time, which is 12 months, that the APSC confirms that qualifications and training requirements are met. If such requirements are met, the APSC then certifies the officer as Basic. This essential process would be continued under the "proposed" revised regulations for the APSC.

Pursuant to Alaska law,⁵ it seems that the APSC is empowered to establish minimum educational and training standards for police employment in permanent, temporary or probationary positions. Despite this legal authority, the APSC has apparently determined not to exercise its jurisdiction over temporary positions.

Finally, it should be noted that the APSC has no jurisdiction over airport security or private security guards.

III. MINIMUM QUALIFICATIONS FOR POLICE OFFICERS

The minimum qualifications for police officers are set forth in the regulations adopted by the APSC.⁶ In essence these qualifications require: (1) that he or she is a citizen of the United States or a resident alien who intends to become a citizen of the United States; (2) that he or she is 19 years of age or older; (3) that he or she

⁵See AS 18.65.220(2), but see also AS 18.65.240(a).

⁶See 6 AAC 70.010

has not been convicted of a felony or other crime that would prevent him or her from legal possession or ownership of a firearm; (4) that he or she is of good moral character; (5) that he or she holds a high school diploma or the equivalent; (6) that he or she satisfies the particular police department's hiring representative that he or she has the proper motivation, appearance, demeanor, attitude and ability to communicate to become a successful police officer; and (7) that a licensed physician certify that he or she is physically sound and free from any physical defects that might adversely affect his or her performance of the duties of a police officer. It is specifically required that the person possess normal hearing, normal color discrimination, normal binocular coordination, normal peripheral vision, and and corrected visual acuity of 20/30 or better in each eye. Verification of these facts, including a background investigation, must be conducted by the particular law enforcement agency seeking to hire the individual prior to the individual's employment.

Presently, the APSC is in the midst of revising all of its regulations. In accordance with a preliminary draft of these revised regulations, the most significant change to the qualifications section relates to psychological standards. Should the revised regulations be adopted in their current form, local police departments would have the discretion to require psychological evaluations in all cases. Furthermore, the revised regulations would mandate local police departments to require such if any indication of past or present emotional or mental disorder is disclosed as a result of the background investigation or completion of the medical or personal history forms by the applicant. All psychological evaluations must be conducted by a licensed psychologist or psychiatrist.

IV. MINIMUM TRAINING REQUIREMENTS FOR POLICE OFFICERS

The APSC issues Basic, Intermediate, and Advanced Certificates to police officers meeting the specified requirements of qualifications, training, education, and experience. In accordance with APSC regulations, all police officers must eventually obtain Basic certification. The issuance of Intermediate and Advanced certificates are not necessary to secure various promotional positions within local police departments. However, the Department of Public Safety (DPS) does require Intermediate and Advanced certifications to be eligible for various promotional positions beginning with sergeant.

To be eligible for Basic certification, the individual must meet the qualifications described in the preceding section, attest to the Law Enforcement Code of Ethics (see Appendix to this report for a copy of that code of ethics), have completed a probationary period of not less than 12 months with his or her department, and have successfully completed the required Basic training program or its equivalent.

The Basic training program consists of 40 hours of supervised field training and 230 hours of classroom instruction. The "field training" is essentially on-the-job training conducted by the department that has hired the individual, and this portion may occur either before or after the classroom instruction program. Although some individuals attend equivalent "classroom training" programs, such as the Anchorage Police Department's program, most obtain their "classroom training" at the Municipal Police Academy. The Municipal Police Academy is organized by the APSC and takes place in Sitka, Alaska.

The Municipal Police Academy instruction consists of 10 hours of first aid instruction, sufficient to qualify students for Standard

Red Cross First Aid Certification, and 220 hours of instruction in criminal law, administration of justice, criminal investigation, offensive and defensive tactics, field techniques, traffic operations, firearms, and other subjects. Basic training programs conducted by other entities, such as the Anchorage Police Department and DPS, must consist of similar instructional content, at a minimum, in order to be certified as "equivalent" Basic training programs by APSC.

According to the APSC Procedures Manual, the Municipal Police Academy devotes a total of 8 hours to firearms instruction. Mr. Mayer, executive director of the APSC, stated that this instruction is extremely basic, consisting primarily of familiarization with firearms, and does not include officer survival training which specifically deals with "shoot and no shoot" situations. Although the course descriptions for the Municipal Police Academy indicate that this matter is briefly discussed both in the firearms, as well as, Laws of Arrests courses, no one course is devoted to this matter. It should be noted that the joint Department of Law and DPS investigation of the Phillip Moore incident criticized the Alaska State Trooper training on this subject. As the Alaska State Trooper training is considerably more extensive than that offered by the Municipal Police Academy, it seems that similar criticism might be appropriately lodged against the Municipal Police Academy on this point.

Reciprocity is available for a police officer certified in another state provided that such officer has undergone a Basic training program equivalent to that required by the APSC. However, in all cases, such

officer must complete 40 hours of field training in Alaska before the APSC will certify the officer.

It should be noted that many agencies are involved in police training in Alaska. The Anchorage Police Department and the DPS provide Basic training for their own officers. The FBI conducts 25-45% of all police training in Alaska. Furthermore, the Criminal Justice Center offers courses primarily dealing with the legal aspects of law enforcement, as well as, police management. The courses offered by the latter two agencies may eventually qualify an officer, together with experience, for Intermediate and Advanced certification. Finally, the Department of Law is in the midst of training all Alaska State Troopers and local law enforcement officers on the new criminal code. This training program is being conducted throughout the state and will last a total of three days.

The APSC may revoke the certification of any police officer pursuant to the due process requirements of the Administrative Procedures Act. Revocation is authorized only upon a finding of the following: the holder falsified information required for eligibility or the holder was discharged for cause from employment. The APSC has never revoked certification for a violation of the Ethics Code, per se.

V. ALASKA LAW ENFORCEMENT OFFICERS: CERTIFICATION STATUS AND OTHER CHARACTERISTICS

Currently there are approximately 1000-1050 law enforcement officers in Alaska. This figure includes both probationary, as well as, permanent positions, but does not include temporary positions. The Alaska State Troopers comprise approximately 450 of these officers; while, village police officers, 75-100. Of the total 1000-1050

officers, 700-725 are certified as Basic by the APSC. With the exception of the village police officers, most of those uncertified officers will be certified as Basic once their 12-month probationary period is completed.

The APSC had no idea how many of these 1000-1050 police officers are minorities or women. Although this information would require a hand tally, the APSC is willing to furnish the House Judiciary Committee such information should the Committee specifically request it.

The turnover rate each year for law enforcement officers is 20-30%. Although the APSC has attempted to discover the reasons for the high turnover, they have not been able to determine any statistically valid answers. Individual responses include: peer pressure, salaries, problems with department, and desire to return to home state.

VI. VILLAGE POLICE OFFICERS

Generally, village police officers are never able to comply with the requirements of the APSC. In the past, this failure was simply ignored by the APSC. Presently, however, the APSC is considering the promulgation of regulations specifically pertaining to the village police officer. Should those proposed regulations be adopted in their current form, they would essentially establish separate requirements for Basic certification of village police officers. A Basic village police certificate would not entitle the officer to employment with a urban police department, unless such officer met the additional APSC requirements needed for urban areas.

Pursuant to the preliminary draft of these proposed regulations, certain qualifications and training requirements have been relaxed

for the village⁷ police officer seeking Basic certification. A village police officer is not required to possess a high school diploma or its equivalent. Although the village police department must be satisfied that the applicant does not suffer from physical or mental defects which would adversely affect the applicant's performance, medical or psychological examinations are not required. No probationary period is necessitated. The Basic village police officer training program consists of a minimum of 40 hours of instruction in basic law enforcement subjects. Subjects include, for example, first aid, firearms, and firefighting instruction.

Village police departments would not be able to employ a police officer on either a temporary or permanent basis unless such person meets the Basic qualifications standards. However, confirmation⁸ that the individual meets those qualifications is not required of the village police department until permanent appointment is sought. As permanent employment is defined as a period exceeding 12 consecutive months, this confirmation process may not occur until after the individual has been employed as a police officer for a considerable amount of time. The Basic training requirements must be met any time prior to permanent employment.

It should be noted that no provision is made for the issuance of Intermediate or Advanced certificates to village police officers.

⁷A village would be defined as a political subdivision with a population of less than 1000 based on the most recent federal census, which is incorporated as provided in AS 29.18, and, which employs one or more full-time paid village police officers.

⁸The confirmation process would not include the intensive background investigation required of urban police departments.

The intent of these proposed regulations pertaining to village police officers is to facilitate the certification of such officers in line with existing training programs accessible to them. Although village police officers have access to the Municipal Training Academy, frequently the limited financial resources of the villages prohibit taking advantage of this program. To meet this gap in training, the Alaska State Troopers have for a number of years conducted a Basic 40-hour village police training program, as well as, an Advanced 154-hour program. This Basic 40-hour village police training program would satisfy the training program requirements contemplated in the proposed APSC regulations.

The village police training programs, conducted by the Alaska State Troopers, were recently evaluated in a report⁹ written by John E. Angell, Ph.D. The Angell report indicates that since 1971 nearly three-quarters of a million dollars have been expended for village police training. This includes \$542,000 in funds from the Law Enforcement Assistance Administration (LEAA). These funds provided training for a total of 292 persons. However, it is estimated that only about 70 village officers who received such training are still serving in that capacity in their villages. The majority of Alaskan villages are served by officers who have received no training under this program.¹⁰

⁹Alaska Village Police Training: An Assessment and Recommendations, John E. Angell, Ph.D., December 1978. This report was the result of a study commissioned by the Criminal Justice Planning Agency and was conducted under a contract with the Criminal Justice Center and with the cooperation of DPS.

¹⁰73% of all Alaskan villages have full-time police officers. 42% of these villages are served by officers trained under this program.

The specific recommendations of the Angell report include:

1. The first step in improving village police training should be the accumulation of detailed information on the actual conditions found in the villages which would better define the desirable role responsibilities of the village police officer. This could then be used to provide direction for specific curriculum content and structure.
2. Methods be developed and implemented to stabilize the village police employment situation and reduce the turnover rate to a reasonable level. The average pay for village police officers is about \$837 a month and is as low as \$65 per month. In 40% of the villages officers are paid from CETA funds which are currently in danger of being terminated. As a consequence, the attraction of commercial fishing and other job opportunities draw many trained officers from their villages. Solutions to this problem are: increased direct support from the state; arrangement with the Native Corporations; arrangements developed under Borough governments; or reorganization within DPS.
3. Develop a more economical village police training program which, after LEAA funding, is capable of continuance without further LEAA support. The largest portion of program costs in the past was not for training, but for transportation and per diem. This need to reduce costs was the basis for recommending a cooperative effort between police agencies and other agencies, such as the Alaska Skill Center, in establishing a permanent training program.

4. The Alaska State Troopers should increase their support of the village police and should actively participate in whatever reorganization of village police training occurs.

VII. BUDGETARY INFORMATION

The Municipal Police Academy, which is offered twice each year, is currently funded at the rate of \$96,000 per year through a LEAA grant. The APSC has been advised by LEAA that those funds will be cut by at least 50% during fiscal year 1980, October 1, 1979 through September 30, 1980. Furthermore, at this time, it is anticipated that no federal funds will be available in fiscal year 1981.

This LEAA funding constitutes only a portion of the total costs of training a police officer at the Municipal Police Academy. APSC estimates that it costs \$11,365 to train one urban police officer. This cost figure breaks out as follows: \$1602 for training costs which is derived from the current LEAA grant; \$1100 for instructors and clerical staff, as well as, maintenance expenses, this amount is derived from DPS; and the balance, some \$8663 for salaries, and possible overtime, for both the trainee and the trainee's replacement, while the trainee is absent from his or her police force, this amount is derived from the municipalities.

The costs of training a village police officer at the Municipal Police Academy is substantially less than \$11,365 due to the lower salaries involved and also the fact that replacements frequently are not obtained.

BAIL

PRACTICES

Third Judicial District

MUNICIPAL BAIL SCHEDULE

<u>CITE</u>	<u>CHARGE</u>	<u>BAIL</u>
8.05.010	Alcoholic Liquor - Sale - Gift - Delivery to Designated Persons Prohibited	\$ 500.00
8.05.030	Assault and Battery	\$ 250.00
8.05.030(d)	Assault and Battery on Officer, Fireman, Paramedic	\$ 500.00
8.05.070	Concealed Weapon	\$ 250.00
8.05.080	Consuming Liquor in Public Place	\$ 50.00
8.05.100	Defrauding Innkeeper	\$ 250.00
8.05.120	Disorderly Conduct	\$ 100.00
8.05.150	Drunk on Roadway	\$ 50.00
8.05.160	Enticement	\$ 500.00
8.05.170	Escape	JUDGE
8.05.180	Evidence - Withholding of	\$ 500.00
8.05.190	False Report of Crime	\$ 500.00
8.05.200	False Complaints and Alarms	\$ 500.00
8.05.210	False Bomb Report	\$1000.00
8.05.220	False Pretenses - Obtaining Money by	\$ 500.00
8.05.240	Firearms - Discharging of	\$ 500.00
8.05.250	Firearms on Licensed Premises	\$ 250.00
8.05.270	Fireworks	\$ 50.00
8.05.290	Impersonation of Officer	\$ 500.00
8.05.300	Indecent Exposure or Exhibition	\$ 250.00
8.05.360	Larceny, Petty (less than \$250.00)	\$ 500.00
8.05.370	Littering and Defacing	\$ 250.00
8.05.380	Lost Property - Retention of	\$ 500.00
8.05.390	Magazine Subscription Sales	\$ 50.00
8.05.400	Malicious Destruction of Property	\$ 500.00

MUNICIPAL BAIL SCHEDULE

<u>CITE</u>	<u>CHARGE</u>	<u>BAIL</u>
8.05.420	Minors-Disseminating Indecent Material to	\$ 250.00
8.05.425	Sexual Exploitation of Children	\$1000.00
8.05.430	Minors - Sale of Firearms to	\$ 250.00
8.05.440	Minors - Curfew	\$ 50.00
8.05.450	Minors - Sale of Tobacco Products to	\$ 100.00
8.05.480	Notices - Destruction of	\$ 50.00
8.05.490	Public Excretion	\$ 100.00
8.05.530	Resisting Officers	\$ 250.00
8.05.550	Shoplifting	\$ 250.00
8.05.560	Solicitation of Illegal Act	\$ 500.00
8.05.580	Switchblade Knives	\$ 250.00
8.05.590	Telephones - Illegal Use of	\$ 250.00
8.05.600	Theft of Vehicle and Joyriding	\$1000.00
8.05.610	Unauthorized Use of Keys (duplication)	50.00
8.05.620	Unauthorized Entry	\$ 500.00
8.05.660	Vehicle - Tampering with	\$ 250.00
8.05.670	Weapon - Possession of with Intent to Assault	JUDGE
8.14.	Prostitution & related offenses	\$ 500.00
8.16.020	Gambling & related offenses	\$ 500.00
8.30.010	Trespass	\$ 100.00
9.28.010	Reckless Driving	\$ 500.00
9.28.020	Driving While under the Influence of Intoxicating Liquor	\$ 500.00
9.28.040	Eluding Police Officer	\$ 500.00
9.10.036	Leaving Scene of Accident(Hit & Run)	\$ 500.00

STATE BAIL SCHEDULE

<u>CITE</u>	<u>CHARGE</u>	<u>BAJL</u>
4.10.010	Sales without a License	\$ 500.00
4.10.110	Sales Other than to Licensee	\$ 500.00
4.10.190	Perjury	JUDGE
4.15.010	Sales during Closed Hours	\$ 500.00
4.15.020	Sales to Minors	\$ 500.00
4.15.020(d)	Minor on Premises	\$ 50.00
4.15.035	Warehousing of Intoxicating Liquors in Unlicensed Premises	\$ 500.00
4.15.060	Purchasing Liquor by Minor	\$ 50.00
4.15.060(e)	Allowing Minor to Remain on Premises	\$ 500.00
4.15.080	Non-licensee Giving Intoxicating Liquor to Minor	\$ 500.00
4.15.085	Giving Intoxicating Liquor on Credit	\$ 500.00
4.15.110	Sales in Violation of Local Option	\$1000.00
15 AAC 20.040	Operating Bottle Club	\$ 500.00
15 AAC 20.100	Possession by a Minor	\$ 50.00
15 AAC 20.100(a)	Consumption by a Minor	\$ 50.00
4.10.070	Sales to Other than Club Members	\$ 500.00

STATE BAIL SCHEDULE/MISDEMEANORS

<u>CITE</u>	<u>CHARGE</u>	<u>BAIL</u>
AS 28.10.181(j)	Improper Use of Dealer Plates	\$ 50.00
AS 28.10.271	Failure to Transfer Registration	\$ 50.00
AS 28.10.271(b)	Failure to Notify Department of Motor Vehicles of Transfer	\$ 50.00
AS 28.10.351	Failure to Surrender Title and Registration	\$ 100.00
AS.28.10.271	Failure to Endorse or Deliver Title	100.00
AS 28.11.010	Unlawful Abandonment of Vehicle	\$ 250.00
AS 28.15.171	Driving While License Suspended by Another State	500.00
AS 28.15.281(1)	Possession of Invalid License	500.00
	(2) Using Another's License	100.00
	(4) Allowing Use of License by Another	100.00
AS 28.15.291	Driving While License Suspended	500.00
	Driving in Violation of Limited License	500.00

STATE BAIL SCHEDULE/MISDEMEANORS

Page -2-

<u>CITE</u>	<u>CHARGE</u>	<u>BAIL</u>
DRIVER TRAINING:		
AS 28.17.011	Instructor's License Required	\$ 100.00
FINANCIAL RESPONSIBILITY:		
AS 28.20.560(a)	Giving False Affidavit	\$ 500.00
AS 28.20.560(b)	Failure to Surrender License	\$ 500.00
AS 28.20.570	Falsified Proof of Financial Responsibility	\$ 500.00
MISCELLANEOUS:		
AS 28.35.010(a)	Joyriding	\$1000.00
AS 28.35.015	Vehicle Tampering	\$ 250.00
AS 28.35.024(a)	Person Renting Vehicle Not Licensed	\$ 100.00
AS 28.35.024(b)	Renter Failing to Inspect	\$ 50.00
AS 28.35.024(c)	Renter Failing to Keep Information	\$ 50.00
AS 28.35.030	Operating a Motor Vehicle Under the Influence	\$ 500.00
AS 28.35.040	Reckless Driving	\$ 500.00
AS 28.35.045	Negligent Driving	\$ 250.00
AS 28.35.045(b)	Failure to Remain at Scene of Accident with Attended Vehicle	\$ 500.00
AS 28.35.045(c)	Failure to Remain at Scene of Accident with Unattended Vehicle	\$ 500.00
AS 28.35.045(d)	Leaving Scene of Unattended Vehicle without Leaving Information Statement	\$ 500.00
AS 28.35.060(a)	Failure to Give Information at Accident Resulting in Injury or Damage to Attended Vehicle	\$ 500.00
AS 28.35.080(a)	Operator Failure to Notify of Accident	\$ 100.00
AS 28.35.080(b)	Operator Failure to Forward Report of Accident	\$ 100.00
AS 28.35.090(a)	Occupant Failure to Notify of Accident	\$ 100.00
AS 28.35.090(b)	Owner Failure to Forward Report of \$500.00 Accident	\$ 100.00

STATE BAIL SCHEDULE/MISDEMEANORS

<u>CITE</u>	<u>CHARGE</u>	<u>BAIL</u>
AS 28.35.110(a)	Falsification of Accident Report	\$ 500.00
AS 28.35.130	Concealing Evidence of Accident	500.00
AS 28.35.135(b)	Notification of Change of Address	50.00

STATE BAIL SCHEDULE/MISDEMEANORS

Page -4-

<u>CITE</u>	<u>CHARGE</u>	<u>BAIL</u>
TITLE II:		
AS 11.15.200	Careless Use of Firearms	\$ 250.00
AS 11.15.230	Assault and Battery	\$ 250.00
AS 11.15.230(a)	Assault and Battery on a Police Officer	\$ 500.00
AS 11.15.340	Negligent Use of Combustible Materials	\$ 500.00
AS 11.20.135	Unauthorized Entry	\$ 500.00
AS 11.20.140	Petty Larceny (under \$250.00)	\$ 500.00
AS 11.20.145	Unconsensual Taking Watercraft or Aircraft	\$1000.00
AS 11.20.170	Driving Animals from Range	\$ 250.00
AS 11.20.210	ICWOF	\$ 500.00
AS 11.20.230	ICWOF with Intent to Defraud (under \$250.00)	\$ 500.00
AS 11.20.275	Concealment of Merchandise	\$ 250.00
AS 11.20.280	Embezzlement by Employee (under \$100.00)	\$ 500.00
AS 11.20.290	Embezzlement by Bailee (under \$100.00)	\$ 500.00
AS 11.20.330	Embezzlement by Trustee (under \$100.00)	\$ 500.00
AS 11.20.340	Embezzlement by Fiduciary (under \$100.00)	\$ 500.00
AS 11.20.350	Buying, Receiving and Concealing Stolen Property (under \$250.00)	\$ 500.00
AS 11.20.430	False Corporation Records	\$ 500.00
AS 11.20.440	False Corporation, Reports	\$ 500.00
AS 11.20.450	False Pretenses for Organization	\$ 500.00
AS 11.20.470	False Statements about Financial Institutions	\$ 250.00
AS 11.20.480	Defrauding Innkeeper	\$ 250.00
AS 11.20.495	Fraudulent Use of Telecommunications Service	\$ 500.00
AS 11.20.500	Unauthorized Use of Badge or Emblem	\$ 50.00

STATE BAIL SCHEDULE/MISDEMEANORS

Page -5-

<u>CITE</u>	<u>CHARGE</u>	<u>BAIL</u>
AS 11.20.510	False Labeling of Jewelry	\$ 500.00
AS 11.20.515(a)	Malicious Destruction of Private Property	\$ 500.00
AS 11.20.515(b)	Tampering with Property	\$ 250.00
AS 11.20.517	Destruction of Gas and Oil Signs	\$ 500.00
AS 11.20.575	Malicious Destruction by Tenant	\$ 500.00
AS 11.20.590	Injury to Public Highway, Recreation Facilities and Highway Signs	\$ 500.00
AS 11.20.610	Trespassing on Improved Lands	\$ 100.00
AS 11.20.630	Trespass	\$ 100.00
AS 11.20.635	Trespass on Oil or Gas Property	\$ 100.00
AS 11.20.650	Trespass on Mining Claims	\$ 100.00
AS 11.20.660	Opening Sealed Letters	\$ 250.00
AS 11.20.670	Destruction of a Camp	\$ 500.00
AS 11.22.010	Theft of Credit Card	\$ 500.00
AS 11.22.020	Possession of Stolen Credit Card	\$ 500.00
AS 11.22.030	Sale and Purchase of a Credit Card	\$1000.00
AS 11.22.040	Obtaining Credit Card as Security with Intent to Defraud	\$ 500.00
AS 11.22.060	Signing Credit Card of Another	\$ 500.00
AS 11.22.070	Fraudulent Use of Credit Card (under \$500.00)	\$ 500.00
AS 11.22.080	Fraud by Provider of Goods	\$ 500.00
AS 11.22.090	Misrepresentation to Issuer	\$ 500.00
AS 11.22.110	Receiving Stolen Goods of Services Knowing Obtained Fraudulently	\$ 500.00
AS 11.25.080	Counterfeiting or Imitating Brands	\$ 250.00

STATE BAIL SCHEDULE/MISDEMEANORS
Page -6-

<u>CITE</u>	<u>CHARGE</u>	<u>BAIL</u>
AS 11.30.200	Refusal to Aid Officer	\$ 500.00
AS 11.30.220	Impersonating Peace Officer	\$1000.00
AS 11.30.230	Public Officer Misconduct	\$ 500.00
AS 11.30.240	Mishandling Public Records	\$ 500.00
AS 11.30.315	Destruction of Evidence	\$ 500.00
AS 11.30.210	Obstructing an Officer	\$ 250.00
AS 11.30.090	Escape (Misdemeanor)	JUDGE
AS 11.30.215	False Police Report	\$ 500.00
AS 11.30.245	Obstruction of Access to Public Records	\$ 500.00
AS 11.30.190	Compounding a Crime	\$ 500.00
AS 11.35.010	Non-support	\$ 500.00
AS 11.36.010	Failure to Permit Visitation	\$ 100.00
AS 11.40.080	Indecent Exposure	\$ 250.00
AS 11.40.090	Concealment of Death of Child	\$1000.00
AS 11.40.130	Contributing to Delinquency of Child (Misdemeanor only)	\$ 500.00
AS 11.40.160	Objectional Comic Books	\$ 250.00
AS 11.40.220	Prostitution	\$ 500.00
AS 11.40.230	Procuring for Prostitution	\$ 500.00
AS 11.40.240	Receiving for Prostitution	\$ 500.00
AS 11.40.260	Keeping Bawdyhouse	\$1000.00
AS 11.40.420	Pimping	\$ 500.00
AS 11.40.440	Disinterment of Body	JUDGE
AS 11.40.450	Attaching or Detaining Dead Body for Debt	\$ 500.00
AS 11.40.460	Damage to Cemetery	\$ 250.00
AS 11.40.470	Road through Cemetery	\$ 250.00

STATE BAIL SCHEDULE/MISDEMEANORS
Page -7-

<u>CITE</u>	<u>CHARGE</u>	<u>BAIL</u>
AS 11.40.510	Use of Live Birds as Target	\$ 250.00
AS 11.40.500	Abandoning Disabled Animals to Die	\$ 250.00
AS 11.40.520	Illegal Fighting Animals	\$ 500.00
AS 11.40.530	Unsanitary Pet Shop	\$ 500.00
AS 11.40.480- 17.05.090	Cruelty to Animals	\$ 250.00
AS 11.45.010	Riot	\$1000.00
AS 11.45.030	Disorderly Conduct	\$ 100.00
AS 11.45.035	Illegal Use of Telephones	\$ 250.00
AS 11.45.050	False Alarms	\$ 500.00
AS 11.45.055	Threats and False Reports of Bombing	\$1000.00
AS 11.55.010	C.C.W.	\$ 250.00
AS 11.55.050	Flourishing	\$ 500.00
AS 11.55.060	Shooting at Buildings	\$ 500.00
AS 11.55.070	P.F.W.I.	\$ 500.00
AS 11.60.225	Improper Use of State Seal	\$ 100.00
AS 11.60.010	Lottery	\$ 500.00
AS 11.60.020	Selling Tickets or Shares	\$ 250.00
AS 11.60.030	Advertising Tickets or Shares	\$ 250.00
AS 11.50.040	Selling Fictitious Tickets or Tickets in Fictitious Lotteries	\$ 500.00
AS 11.50.070	Minors in Card Rooms	\$ 500.00
AS 11.60.080	Selling or Giving Tobacco to Minors	\$ 100.00
AS 11.60.100	Frequenting Opium Dens	\$ 250.00
AS 11.60.140	Dealing or Conducting Gambling Game	\$ 500.00
AS 11.60.200	Permitting Dangerous Animals to be at Large	\$ 250.00
AS 11.60.220	Desecration of Flag	\$ 250.00

STATE BAIL SCHEDULE/MISDEMEANORS
Page -8-

<u>CITE</u>	<u>CHARGE</u>	<u>BAIL</u>
AS 11.60.270	Penalty for Violation of Curfew	\$ 50.00
AS 11.60.280	Unauthorized Publication or Use of Communications	\$ 250.00
AS 11.60.290	Eavesdropping	\$ 250.00
AS 11.60.350	Deprivation of Rights under Color of Law	\$ 500.00
AS 11.65.010	Discharging Ballast into Navigable Waters	\$1000.00
AS 11.65.020	Interfering with Buoys and Beacons	\$1000.00
AS 11.65.030	Tampering with Posted Notices	\$ 500.00
AS 17.	All Title 17 Misdemeanors are to be set at	\$ 250.00
	with the exception of	
AS 17.12.010	Possession of Marijuana	\$ 100.00

ALCOHOLIC BEVERAGE CONTROL BOARD BAIL SCHEDULE

<u>CITE</u>	<u>CHARGE</u>	<u>BAIL</u>
AS 4.10.010	Sales without a License	\$ 500.00
AS 4.10.010	Trafficking in Alcoholic Beverage without a License	\$ 500.00
AS 4.10.110	Sales other than to a Licensee	\$ 500.00
AS 4.10.190	Perjury	JUDGE
AS 4.15.010) 15 AAC 20.070)	Sales During Closed Hours	\$ 500.00
AS 4.15.010	Consumption on Premises During Closed Hours	\$ 100.00
AS 4.15.020(a)	Sales to Minor	\$ 500.00
AS 4.15.020(a)	Sales to Intoxicated Person	\$ 500.00
AS 4.15.020(a)	Licensee or His Employee Furnishing to a Minor	\$ 500.00
AS 4.15.020(d)	Minor on Licensed Premises	\$ 50.00
AS 4.15.035(a)	Warehousing of Intoxicating Liquors in Unlicensed Premises	\$ 500.00
AS 4.15.060(a)	Purchasing Liquor by a Minor	\$ 50.00
AS 4.15.060(c)	Use of False I.D.	\$ 50.00
AS 4.15.060(e)	Allowing a Minor to Remain on Licensed Premises	\$ 500.00
AS 4.15.080	Non-licensee Giving Intoxicating Liquor to a Minor	\$ 500.00
AS 4.15.085	Giving Intoxicating Liquor on Credit	\$ 500.00
AS 4.15.110	Sales in Violation of Local Option	\$1000.00
15 AAC 20.040	Operating a Bottle Club	\$ 500.00
15 AAC 20.100	Possession by a Minor	\$ 50.00
15 AAC 20.100	Consumption by a Minor	\$ 50.00
AS 4.10.070	Sales Other Than to Club Members	\$ 500.00
15 AAC 20.170	Sales Other Than to Club Members	\$ 500.00

FISH AND GAME BAIL SCHEDULE

<u>CITE</u>	<u>CHARGE</u>	<u>BAIL</u>
UNLAWFUL ACTS:		
AS 16.05.920	Polar Bear	\$5000.00
	Brown Bear	\$5000.00
	Glazier Bear	\$5000.00
	Sheep, Waste	\$5000.00
	Walrus, Bison or Specified Game (same day airborne, illegal taking and possession)	\$2500.00
	Black Bear	\$1000.00
	Moose, Elk, Caribou, Goat	\$1500.00
	Undersized Sheep	\$1500.00
	Deer	\$ 500.00
	Wolf, Wolverine	\$100.00
	Sale of Game Meat	\$2500.00
	Import of Exotic Species	\$1000.00
	License/Tags:	
	Sport Fishing without License	\$ 100.00
	Sport Hunting, Small Game	\$ 500.00
	Sport Hunting, Big Game	\$ 500.00
	Falsification of License	\$ 500.00
	Illegal Means, Except Same Day Airborne	\$ 500.00
	Sport Fish:	
	Overlimit	\$ 250.00
	Closed Waters	\$ 500.00
	Snagging	\$ 250.00
	Illegal Gear	\$ 500.00
	Illegal Size	\$ 500.00
	All Other Sport Fishing Violations	\$ 500.00

FISH AND GAME BAIL SCHEDULE
Page -2-

<u>CITE</u>	<u>CHARGE</u>	<u>BAIL</u>
	Unlawful Sale of Fish	\$2500.00
	All Trapping	\$ 500.00
	Waterfowl	\$ 250.00
	Limited Entry:	
	Closed Waters	\$5000.00
	Closed Period	\$5000.00
	Closed Season	\$5000.00
	Illegal Gear	\$5000.00
	Illegal Possession	\$5000.00
	Crew Member	\$2000.00

NATURAL RESOURCES BAIL SCHEDULE

<u>CITE</u>	<u>CHARGE</u>	<u>BAIL</u>
11 AAC 12.010	Limitation on Use of Park Lands and Water	\$ 100.00
11 AAC 12.020	Speed Limit in Parks	\$ 2.00 p/mph
11 AAC 12.030	Waters Closed to Aircraft and Boats	\$ 100.00
11 AAC 12.040	Special Event by Permit	\$ 100.00
11 AAC 12.050	Refuse and Waste (Littering)	\$ 100.00 or 8 hrs. picking up litter
11 AAC 12.100	Vehicles (Off-road Operation)	\$ 500.00
11 AAC 12.110	Motor Vehicle Operation	\$ 50.00
11 AAC 12.120	Horses	\$ 50.00 p/horse
11 AAC 12.130	Pets	\$ 100.00
11 AAC 12.140	Construction of Structures	\$ 100.00
11 AAC 12.150	Construction of Signs	\$ 50.00
11 AAC 12.160	Assembly by Permit	\$ 100.00
11 AAC 12.170	Disturbance of Natural Material	\$ 250.00
11 AAC 12.180	Fires (Building in Wrong Place)	\$ 50.00
11 AAC 12.190	Explosives and Fireworks	\$ 100.00
11 AAC 12.200	Underwater Diving Safety	\$ 50.00
11 AAC 12.210	Limitation as to Numbers	\$ 50.00
11 AAC 12.230	Camping	\$ 50.00
11 AAC 12.300	Peddling	\$ 100.00
11 AAC 12.310(a) 11 AAC 12.310(b)	Fees	\$ 50.00
11 AAC 18.010	State Park Incompatible Uses	\$ 500.00
AS 41.	Protection of Forest Lands	\$ 500.00

State of Alaska
Department of Commerce and Economic Development
Weights and Measures Section

FINES AND PENALTIES GUIDELINE

- AS 45.75.100(b) Sell or offer for sale "off sale" commodity
1st \$20/count, \$100 minimum
2nd \$50/count, \$250 minimum
- 110(b) Violation of "stop use" order
1st \$100
2nd \$250
- 180 Failure to correct device within 30 days
1st \$50/count
2nd \$100/count
- 180 Use a rejected device
1st \$100/count
2nd \$250/count
- 190 Incorrect method of sale
1st \$20/count, \$100 minimum
2nd \$50/count, \$250 minimum
- 200(a)(1) No declaration of net quantity
1st \$20/count, \$100 minimum
2nd \$50/count, \$250 minimum
- 200(a)(2) No declaration of origin
1st \$20/count, \$50 minimum
2nd \$50/count, \$100 minimum
- 200(a)(3) No declaration of identity
1st \$20/count, \$50 minimum
2nd \$50/count, \$100 minimum
- 210 No declaration of unit price
1st \$20/count, \$100 minimum
2nd \$50/count, \$250 minimum
- 220 Misleading packaging
1st \$50/count, \$250 minimum
2nd \$100/count, \$500 minimum
- 225(a) No "price per quantity" declaration in advertising
1st \$100
2nd \$250

- 225(c) Use of qualifying term in advertising
1st \$100/count
2nd \$250/count
- 230 Misrepresentation of price
1st \$50/count, \$250 minimum
2nd \$100/count, \$500 minimum
- 240 Incorrect sale of meat, poultry or seafood
1st \$20/count, \$100 minimum
2nd \$50/count, \$250 minimum
- 250 Incorrect sale of bread
1st \$20/count, \$100 minimum
2nd \$50/count, \$250 minimum
- 260 Incorrect sale of butter, oleo, or margarine
1st \$20/count, \$100 minimum
2nd \$50/count, \$250 minimum
- 270 Incorrect sale of fluid dairy product
1st \$20/count, \$100 minimum
2nd \$50/count, \$250 minimum
- 280 Incorrect sale of flour, cornmeal or hominy
1st \$20/count, \$100 minimum
2nd \$50/count, \$250 minimum
- 282 Incorrect or no delivery ticket on bulk delivery
1st \$100/count
2nd \$250/count
- 288 Incorrect or no delivery ticket on bulk liquid fuel
1st \$100/count
2nd \$250/count
- 290(a) Incorrect sale of coal, coke and charcoal
1st \$20/count, \$100 minimum
2nd \$50/count, \$250 minimum
- 290(b) Incorrect or no delivery ticket on bulk coal,
coke or charcoal
1st \$100/count
2nd \$250/count
- 300 Incorrect sale of textile products
1st \$20/count, \$100 minimum
2nd \$50/count, \$250 minimum

- 310 Incorrect sale of berries or small fruits
1st \$20/count, \$100 minimum
2nd \$50/count, \$250 minimum
- 360 Hindering or obstructing an officer
1st \$100/count
2nd \$200/count, jail
- 370 Impersonation of an officer
1st \$250/count
2nd \$500/count, jail
- 380 Has or uses incorrect or fraudulent device
1st \$100/count
2nd \$250/count
- 380(2) Uses an unsealed device
1st \$100/count
2nd \$250/count
- 380(3) Disposes of an incorrect device
1st \$100/count
2nd \$250/count
- 380(4) Removes a seal
1st \$100/count
2nd \$250/count
- 380(5) Short quantity
1st \$20/count, \$100 minimum
2nd \$50/count, \$250 minimum
- 380(6) Represents fraudulent quantity as buyer
1st \$50/count, \$200 minimum
2nd \$100/count, \$500 minimum
- 380(7) Keeps, sells or advertises contrary to law
1st \$20/count, \$100 minimum
2nd \$50/count, \$250 minimum
- 380(8) No customer indication of quantity on a device
1st \$100/count
2nd \$250/count
- 380(9) Violation of law or regulation
1st \$20/count, \$100 minimum
2nd \$50/count, \$250 minimum

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

ADMINISTRATIVE DIRECTIVE NO. 121

Pursuant to the directive of the Supreme Court set forth in Supreme Court Order No. 309, IT IS HEREBY ORDERED that Administrative Directive No. 119 is hereby rescinded and replaced by the following directive:

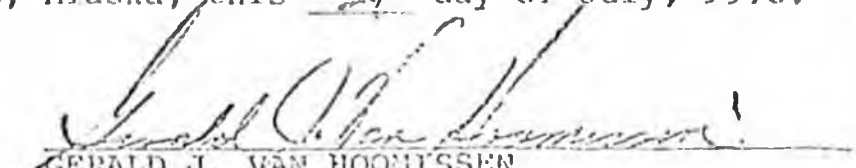
1. That bail schedule previously existing and as modified and appended hereto before issuance of Administrative Directive No. 119, is hereby reinstated subject to the following conditions:

A. In any case in which unusual circumstances exist, involving questions of the protection of the public, before release of defendant, the duty judge, or in the event of his unavailability, any other judge shall be contacted so that adequate bail may be determined.

B. In cases where defendant is unable to post the scheduled amount and so requests, the duty judge, or in cases of his unavailability, any other judge shall be immediately contacted so that adequate bail may be determined. The following alternatives to the scheduled amount shall be considered:

- 1) Release on personal recognizance;
- 2) Release on other appropriate conditions;
- 3) Release pursuant to execution of unsecured appearance bond in an amount equal to or less than the scheduled bail amount, and a deposit in cash or other security of not more than 10 percent of the amount of the bond; or
- 4) The execution of a bail bond in the amount less than the scheduled bail amount secured by cash or other appropriate security.

DATED at Fairbanks, Alaska, this 21 day of July, 1978.


GERALD J. VAN HOOISSEN
Presiding Superior Court Judge

Attachment

Distribution

Supreme Court Justices
Superior Court Judges
District Court Judges
Magistrates
Magistrate Supervisor
Clerks of the Court
Law Librarian
Probate Master
Department of Law
Public Defender Agency
Department of Public Safety
Fairbanks City Police Department
Alaska Legal Services
Division of Corrections
Probation Department
Fairbanks Correctional Center
Judicial Services
Area Court Administrator

BAIL SCHEDULE

- A. Ordinarily, bail on any and all felonies shall be set at arraignment or the initial presentment before the judge or magistrate. If the defendant has been arrested on a felony warrant, that bail will control until the defendant appears before a judge or magistrate unless a judge or magistrate otherwise directs.
- B. Any misdemeanor not listed on a warrant or on the following schedule shall be \$50.00 unless the court sets a different bail.

	<u>OFFENSE</u>	<u>BAIL</u>
1.	Possession of Drugs <u>except marijuana</u> (when misdemeanor)	\$ 500.00
2.	Riot, Rescue, and Escape (when misdemeanor)	1,000.00
3.	Prostitution offenses (including assignation and soliciting)	1,000.00
4.	Gun violations (including Carrying Concealed Weapon when it is a gun)	500.00
5.	Assault and Battery (including Battery or Assault)	500.00
6.	Assault and Battery on a Police Officer	1,000.00
7.	Impersonating a Police Officer or Peace Officer	500.00
8.	Reckless Driving, OMVI, Leaving Scene of Accident, Driving While License is Cancelled, Suspended, or Revoked, Joyriding, Violation of Limited License	250.00
9.	Petty Larceny and Shoplifting	500.00



Superior Court

State of Alaska

SECOND JUDICIAL DISTRICT

FEDERAL BUILDING

NOME, ALASKA

99762

WILLIAM H. SANDERS, PRESIDING JUDGE

September 10, 1979

Ms. Margaret W. Berck
Counsel
House Judiciary Committee
Pouch V
State Capitol
Juneau, Alaska 99811

Re: Misdemeanor Bail Schedule

Dear Ms. Berck:

Enclosed is a photostatic copy of our bail schedule for this area. This schedule is used by the jailers pending arraignment. After arraignment a vast majority of our misdemeanor defendants are released on their own OR.

We have a felony bail schedule and a traffic bail schedule.

The traffic bail schedule is the same as that in Anchorage. The felony bail schedule is separate and likewise is used by the jailers pending arraignment by the judge.

The judge in the majority of cases, including misdemeanors and felonies, allows defendant's release on their own OR unless the Court finds that they are a danger to the community or will not show up for the next hearing.

If there is anything further we can provide for you please so advise.

Sincerely,


WILLIAM H. SANDERS

Enclosure
WHS:ghb

IN THE TRIAL COURTS FOR THE STATE OF ALASKA

SECOND JUDICIAL DISTRICT

In the Matter of Bail Considerations)
For the Second Judicial District)
Misdemeanor Cases in the Nome Area)
_____)

ORDER SETTING BAIL SCHEDULE
IN MISDEMEANOR CASES

IT IS ORDERED that bail for misdemeanors is scheduled as follows:

I. BAIL:

A. Any misdemeanor bail not listed on a warrant or on the following schedule shall be \$50.00- (except when the only penalty is a fine, see paragraph II, unless the Court sets a different bail).

B. LISTED OFFENSES:

BAIL

- 1. Possession of Drugs except marijuana (when misdemeanor)..... \$250.00
- 2. Riot, Rescue, & Escape (when misdemeanor)..... \$500.00
- 3. Prostitution offenses (assignation & soliciting)..... \$250.00
- 4. Gun Violations (including Carrying a Concealed Weapon when it is a gun)..... \$1000.00
- 5. Assault & Battery (including Assault or Battery)..... \$500.00
- 6. Reckless Driving, OMVI, Leaving Scene of Accident, Driving While License is Cancelled, Suspended or Revoked, Violation of Limited License, Joyriding..... \$250.00
- 7. Impersonating a Police Officer or Peace Officer..... \$500.00
- 8. Petty Larceny, Shoplifting or Disorderly Conduct..... \$100.00

C. The scheduled bail amount shall not apply and a judicial officer shall be contacted in any case in which unusual circumstances exist involving questions of protection of the public.

II. PENALTY FINES:

No person may be held in custody and no bail shall be required on a misdemeanor charge where the penalty can only be a fine (trespass, public possession of small amounts of marijuana, etc.).

III. ORDERED that the Nome State Correctional Facility or any other detention facility shall take cash bail as set by this schedule and if the defendant is released he is to report to the trial court in the Federal Building in Nome, Alaska, the next work day at 1:30 p.m. for arraignment with the following conditions of release-

- (1) Promise to appear in Court.
- (2) Not to consume any alcoholic beverages or enter any bar or liquor store where alcoholic beverages are sold.
- (3) Promise not to contact, talk or approach any witnesses to the incident or the victim involved in the case (his attorney may investigate the matter).
- (4) Not to violate any City, State or Federal laws. It is further

IV. ORDERED that all defendants shall be arraigned within 24 hours of their detention, and all defendants who have been arraigned coming in from the bush to Nome shall be taken before the judge or magistrate in Nome within 24 hours of his/her detention in Nome for his/her bail to be

reviewed and assignment of counsel. No distinction shall be drawn between cases in which arrest was made pursuant to a warrant and cases in which arrest was made without a warrant. (In any case in which there may be some misunderstanding or confusion please call a judge or magistrate for directions). (Defendants released on bail are to report to the Court on the next workday for arraignment. Workdays are Mondays through Fridays).

DATED at Nome, Alaska this 15th Day of May, 1979.

William H. Sanders *Grant B. Pankhurst*

WILLIAM H. SANDERS
Superior Court Judge
Home Telephone: 443-2360

GRANT B. PANKHURST
District Court Judge
Home Telephone: 443-5585

Janet M. Tobak

JANET M. TOBAK
Magistrate
Home Telephone: 443-2751

All Judges and Magistrates
Office Number: 443-5216

DISTRIBUTION:

1 IN THE TRIAL COURTS FOR THE STATE OF ALASKA

2 FIRST JUDICIAL DISTRICT

3 In the Matter of)
4 A BAIL SCHEDULE,)
5 First Judicial)
6 District.)

7 ORDER

8 It appearing to the court that the orderly administration of
9 criminal justice will be served if the officials admitting persons
10 to the jails in Sitka, Ketchikan, Wrangell and Juneau, are
11 authorized to accept bail from such persons immediately after
12 their booking and pending arraignment, and accordingly, pursuant
13 to Supreme Court Order No. 309, it is

14 ORDERED as follows:

15 1) The officials in charge of the jails in the above-named
16 locations are authorized to accept bail from persons arrested and
17 admitted to those jails for the purpose of ensuring their appear-
18 ance at arraignment; the bail shall consist of a cash deposit in
19 the full amount listed except as otherwise ordered herein.

20 2) Nothing herein shall prevent the officials in charge of
21 the jails from refusing to receive bail pending arraignment from
22 a defendant who is under the influence of intoxicants, or of
23 narcotic or hallucinogenic drugs at the time of booking to such a
24 degree as to be a danger to themselves or the public. If unusual
25 circumstances exist involving questions of protection of the
26 public, the bail schedule will not apply and a judicial officer
27 shall be contacted.

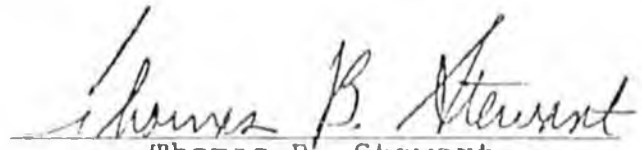
28 3) The bail schedule will not apply, and a judicial
29 officer shall be contacted at the defendant's request, if the
30 defendant is immediately unable to post the scheduled amount and
31 it appears that circumstances exist indicating that the defend-
32 ant's appearance in court can be reasonably assured by one of the

1 following:

- 2 (a) release on personal recognizance;
- 3 (b) release on other appropriate conditions;
- 4 (c) the execution of an unsecured appearance bond in
5 an amount equal to or less than the scheduled
6 bail amount, and the deposit in cash or other
7 security of not more than ten percent of the amount
8 of the bond; or
- 9 (d) the execution of a bail bond in an amount less
10 than the scheduled bail amount, secured by cash
11 or other solvent sureties.

12 4) The bail schedule applicable in these designated loca-
13 tions of the First Judicial District shall be as shown in the
14 appendix to this order, consisting of two pages, effective on
15 and after the date hereof.

16 DATED: November 9, 1978.

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18 Thomas B. Stewart
19 Presiding Judge
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