

ALASKA LEGISLATIVE COMMITTEE REPORTS 1967

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SJ

HB 74

The Honorable Patrick M. Rodey
April 30, 1982
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Thank you for your consideration of these amendments. If a hearing is scheduled, a representative of the department would be available to provide testimony. A fiscal note is enclosed.

Sincerely,

Judy Knight

Judy Knight
Legislative Liaison

Enclosure

Marked with changes
as bill passed the House -
CS HB 74 (Rls) am

Introduced: 2/4/81
Referred: Judiciary

BY THE RULES COMMITTEE BY REQUEST
OF THE LEGISLATIVE COUNCIL (for
the Code Revision Commission)

1 IN THE HOUSE

2 HOUSE BILL NO. 74

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the rights of debtors and credi-
7 tors."

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

9 * Section 1. It is the intent of the legislature to modernize the proce-
10 dures for execution on a judgment and to afford to a judgment debtor adequate
11 protection of his personal property and income necessary to provide for his
12 own needs and the needs of his dependents while remaining independent of
13 further public assistance.

14 * Sec. 2. AS 09 is amended by adding a new chapter to read:

15 CHAPTER 38. ALASKA EXEMPTIONS ACT.

16 Sec. 09.38.010. HOMESTEAD EXEMPTION. (a) An individual is en-
17 titled to an exemption as a homestead of his interest in property in
18 this state used as the principal residence of that individual or his
19 dependents, but the value of the homestead exemption may not exceed

20 27,000
\$19,000.

21 (b) If property owned by the entirety or in common is used by one
22 or more individual owners or their dependents as their principal resi-
23 dence, each owner is entitled to a homestead exemption of his interest
24 in the property as provided in (a) of this section. The aggregate
25 value of multiple homestead exemptions allowable with respect to a
26 single living unit may not exceed 27,000 \$28,000. If there are multiple
27 owners of property exempt as a homestead, the value of the exemption of
28 each individual owner may not exceed his pro rata portion of 27,000 \$28,000.

29 (c) If property that includes a homestead is sold under an execu-

1 tion, the sale becomes effective upon confirmation by order of the
2 court. The court shall enter the order of confirmation unless, within
3 60 days after the sale, the individual repurchases the property under
4 this section or the court extends the time for confirmation upon the
5 filing of a timely motion by a party in interest. The individual may
6 repurchase property, including his homestead, at a sale on execution
7 before confirmation by paying into court the costs of the sale plus the
8 lesser of either (1) the difference between the highest bid and the
9 amount of the exemption in the property, or (2) the amount of the
10 creditor's claim. If the individual does not exercise his repurchase
11 right under this subsection, the clerk of the court shall first remit
12 an amount determined to be exempt to him from the proceeds of sale and
13 the balance less the cost of the sale to the creditor. For the purpose
14 of collecting an amount remaining unpaid on his judgment after repur-
15 chase of property by an individual under this subsection, the creditor
16 or his assignee may not make another levy on the property repurchased.

17 (d) Upon entry of the order of confirmation under (c) of this
18 section and expiration of the time period for repurchase, the clerk may
19 execute a deed to the property and when delivered it shall be sufficient
20 to convey all title of the individual in the premises sold to the pur-
21 chaser at the sale.

22 Sec. 09.38.015. PROPERTY EXEMPT WITHOUT LIMITATION. (a) An
23 individual is entitled to exemption of the following property:

- 24 (1) a burial plot for the individual and his family;
25 (2) health aids reasonably necessary to enable the individual
26 or a dependent to work or to sustain health;
27 (3) benefits paid or payable for medical, surgical, or hos-
28 pital care to the extent they are or will be used to pay for the care;
29 (4) an award under AS 18.67 (Violent Crimes Compensation

1 Board) or a crime victim's reparations Act of another jurisdiction;

2 (5) benefits paid or payable as a longevity bonus under
3 AS 47.45;

4 (6) compensation or benefits paid or payable and exempt
5 under federal law.

6 (b) Except as provided in AS 09.38.055, a person is entitled to
7 exemption of the following transferable business rights:

8 (7) ~~(1)~~ liquor licenses granted under AS 04;

9 *(8) (2) limited entry permits granted under AS 16.43, except as
provided in that chapter.*

10 (c) The right to benefits held by the state on behalf of an indi-
11 vidual which may become payable by reason of disability, unemployment
12 or illness, amounts held in the teachers' or public employees' retire-
13 ment system, and child support collections made by the child support
14 enforcement agency are exempt.

15 (d) Property of the state, a general law or home rule munici-
16 pality, the Alaska State Housing Authority, the Alaska Municipal Bond
17 Bank Authority, or other state public corporation is exempt.

18 (e) Real property held by a cemetery association established
19 under AS 10.30 for the purpose of a cemetery and not exceeding 80 acres
20 is exempt.

21 Sec. 09.38.020. EXEMPTIONS OF PERSONAL PROPERTY SUBJECT TO VALUE
22 LIMITATIONS. (a) An individual is entitled to an exemption in property
23 not to exceed an aggregate value of \$1,500 chosen by him from the fol-
24 lowing categories of property:

25 (1) household goods and wearing apparel reasonably necessary
26 for one household;

27 (2) if reasonably held for the personal use of the individual
28 or a dependent, books and musical instruments; and

29 (3) family portraits and heirlooms of particular sentimental

1 value to the individual.

2 (b) An individual is entitled to exemption of jewelry, not ex-
3 ceeding \$500 in aggregate value, if held for the personal use of the
4 individual or a dependent.

5 (c) An individual is entitled to exemption, not exceeding 1,400
6 in aggregate value, of implements, professional books, and tools of the
7 trade.

8 (d) An individual is entitled to the exemption of pets to the
9 extent of a value not exceeding 300 ~~\$3,600~~.

10 (e) An individual is entitled to an exemption of one motor vehicle
11 to the extent of a value not exceeding \$1,500 if the full value of the
12 motor vehicle does not exceed \$10,000.

13 Sec. 09.38.025. EXEMPTION OF UNMATURED LIFE INSURANCE AND ANNUITY
14 CONTRACTS. (a) Except as provided in this section, an individual is
15 entitled to exemption of unmatured life insurance and annuity contracts
16 owned by him. If the contracts have accrued dividends and loan values
17 available to the individual aggregating more than \$5,000, a creditor
18 may obtain a court order requiring the individual debtor to pay the
19 creditor, and authorizing the creditor on the debtor's behalf to obtain
20 payment of, the amount of the accrued dividends and loan values in
21 excess of \$5,000 or the amount of the creditor's claim, whichever is
22 less.

23 (b) A judgment creditor or other claimant of an insurer may not
24 levy upon any of the assets or securities held in this state as a de-
25 posit for the protection of the insurer's policyholders or policyholders
26 and creditors. Deposits under AS 21.09.270 may be levied upon if pro-
27 vided in the order of the director of insurance, Department of Commerce
28 and Economic Development, under which the deposit is made.

29 Sec. 09.38.030. EXEMPTION OF EARNINGS AND LIQUID ASSETS. (a)

1 Except as provided in (b) and (c) of this section and AS 09.38.050, an
2 individual debtor is entitled to an exemption of his weekly net earnings
3 not to exceed ¹⁷⁵\$125. The weekly net earnings of an individual are
4 determined by subtracting from the weekly gross earnings all sums
5 required by law or court order to be withheld. The weekly net earnings
6 of an individual paid on a monthly basis are determined by subtracting
7 from the monthly gross earnings of the individual all sums required by
8 law or court order to be withheld and dividing the remainder by 4.3.
9 The weekly net earnings of an individual paid on a semi-monthly basis
10 are determined by subtracting from the semi-monthly gross earnings all
11 sums required by law or court order to be withheld and dividing the
12 remainder by 2.17.

13 (b) An individual who does not receive earnings either weekly,
14 semi-monthly or monthly is entitled to a maximum exemption for the
15 aggregate value of cash and other liquid assets available in any month
16 of \$500, except as provided in AS 09.38.050. The term "liquid assets"
17 includes deposits, securities, notes, drafts, accrued vacation pay,
18 refunds, prepayments, and receivables.

19 (c) A creditor may levy upon earnings exempt under (a) and (b) of
20 this section if his claim is

21 (1) enforceable against exempt property under AS 09.38.-
22 065(a)(1); or

23 (2) enforceable under an order of a court of bankruptcy
24 under chapter XIII of the Bankruptcy Act (11 U.S.C., sec. 1001 et
25 seq.).

26 (d) If the individual debtor is a nonresident, the limitations on
27 garnishment imposed under 15 U.S.C. 1673 shall apply.

28 (e) The following property, unless exempt without limitation
29 under AS 09.38.015, upon receipt by and while it is in the possession

1 of the individual, shall be treated as earnings, income, cash, or other
2 liquid assets under this section:

3 (1) benefits paid by reason of disability, illness, or unem-
4 ployment;

5 (2) money or property received for alimony ~~support~~ or
6 separate maintenance;

7 (3) proceeds of insurance, a judgment, or a settlement, or
8 other rights accruing as a result of bodily injury of the individual or
9 of the wrongful death or bodily injury of another individual of whom
10 the individual was or is a dependent;

11 (4) proceeds or benefits paid or payable on the death of an
12 insured, if the individual was the spouse or a dependent of the insured;
13 and

14 (5) amounts paid under a stock bonus, pension, profit-
15 sharing, annuity, or similar plan or contract, providing benefits by
16 reason of age, illness, disability, or length of service.

17 Sec 09.38.035. CONTINUING LIEN ON WAGES. (a) In the case of a
18 garnishment of earnings, when the garnishee's answer reflects that the
19 defendant is employed by him, the judgment or balance due as reflected
20 on the writ of garnishment shall become a lien on earnings due at the
21 time of service of the writ to the extent that they are not exempt from
22 garnishment, and that lien shall continue as to subsequent nonexempt
23 earnings until the total subject to the lien equals the amount stated
24 on the writ of garnishment, except that the lien on subsequent earnings
25 shall terminate sooner if the employment relationship is terminated, if
26 the underlying judgment is vacated, modified, or satisfied in full, or
27 if the writ is dismissed.

28 (b) A garnishee shall pay into court all nonexempt earnings of
29 the defendant subject to the continuing lien under (a) of this section.

1 Accrued interest on the judgment or balance due as reflected on the
2 writ of attachment may be garnished under a supplemental writ of
3 garnishment after the principal amount stated on the original writ of
4 garnishment has been paid.

5 Sec. 09.38.040. PRIORITIES BETWEEN CONTINUING LIENS. A lien
6 obtained under AS 09.38.035 shall have priority over any subsequent
7 garnishment lien or wage assignment. Any writ creating a continuing
8 lien served upon an employer while a continuing lien imposed by a pre-
9 vious writ is still in effect shall be answered by the employer with a
10 statement that he is holding no funds and with a further statement
11 stating when all previous liens are expected to terminate. The subse-
12 quent writ shall have full effect from the termination of all prior
13 liens or until it is otherwise terminated under AS 09.38.035; however,
14 a subsequent writ is not effective if a writ in the same cause of
15 action is pending at the time of service of garnishment.

16 Sec. 09.38.045. EFFECTIVE DATE OF CONTINUING LIEN. The effective
17 date of a writ creating a continuing lien is the date of service upon
18 the garnishee; however, if there are, on that date, liens by virtue of
19 previous writs, the effective date is the date all previous writs
20 terminate.

21 Sec. 09.38.050. INCREASED EXEMPTION AMOUNT. (a) An individual
22 debtor who is in possession of money which was obtained as payment for
23 an injury or disability may request the court to order an increase in
24 the exemption amounts under AS 09.38.030. The individual debtor shall
25 submit affidavits or offer testimony in support of his request as re-
26 quired by the court. The court shall determine the exemption amount
27 after consideration of the individual's responsibilities and all the
28 present and anticipated property and income of the individual, including
29 that which is exempt.

1 (b) The exemption amounts under AS 09.38.030 may be increased
2 when the individual submits an affidavit, under penalty of perjury,
3 stating that his earnings alone support his household; by so doing, the
4 maximum part of his aggregate disposable earnings for any week subject
5 to execution may not exceed the amount by which his disposable earnings
6 for that week exceed ~~\$200,~~ ²⁷⁵ or, if the individual is claiming an exemp-
7 tion for cash or other liquid assets under AS 09.38.030(b), a maximum
8 amount of ~~\$800~~ ^{1,100} available in any month is exempt.

9 Sec. 09.38.055. BANKRUPTCY PROCEEDINGS. In a proceeding under
10 the Bankruptcy Act (11 U.S.C.) only the exemptions under AS 09.38.010,
11 09.38.015(a), 09.38.020, 09.38.025 and 09.38.030 apply. The exemption
12 of certain permits, licenses, and certificates provided in AS 09.38.-
13 015(b) does not apply in a proceeding under chapter VII of the Bank-
14 ruptcy Act (11 U.S.C.).

15 Sec. 09.38.060. TRACING EXEMPT PROPERTY. (a) If property, or a
16 part of it, that could have been claimed as an exempt homestead under
17 AS 09.38.010, a burial plot under AS 09.38.015(a)(1), a health aid
18 under AS 09.38.015(a)(2), or personal property subject to a value
19 limitation under AS 09.38.020(a)(1), (2) or 09.38.020(c), has been
20 taken or sold by condemnation, or has been lost, damaged, or destroyed
21 and the owner has been indemnified for it, the individual is entitled
22 to an exemption of proceeds that are traceable for 12 months after the
23 proceeds are received. An individual is entitled to an exemption of
24 proceeds from the voluntary sale of an exempt homestead under AS 09.38.-
25 010 that are traceable for ~~three~~ ^{six} months after the proceeds are received.
26 The exemption of proceeds under this subsection does not entitle the
27 individual to claim an aggregate exemption in excess of the value
28 limitation otherwise allowable under AS 09.38.010 or 09.38.020.

29 (b) Money or other property and proceeds exempt under this chapter

1 are traceable under this section by application of the principle of
2 first-in first-out, last-in first-out, or any other reasonable basis
3 for tracing selected by the individual claiming the exemption.

4 Sec. 09.38.065. CLAIMS ENFORCEABLE AGAINST EXEMPT PROPERTY. (a)
5 Notwithstanding other provisions of this chapter,

6 (1) a creditor may make a levy against exempt property of
7 any kind to enforce a claim for

8 (A) ^{Child} ~~alimony~~ support, ~~or separate maintenance~~

9 (B) unpaid earnings of up to one month's compensation
10 or the full-time equivalent of one month's compensation for per-
11 sonal services of an employee; or

12 (C) state or local taxes; and

13 (2) a creditor may make a levy against exempt property to
14 enforce a claim for

15 (A) the purchase price of the property or a loan made
16 for the express purpose of enabling an individual to purchase the prop-
17 erty and used for that purpose;

18 (B) labor or materials furnished to make, repair,
19 improve, preserve, store, or transport the property; and

20 (C) a special assessment imposed to defray costs of a
21 public improvement benefiting the property.

22 (b) Except as provided in AS 09.38.070, limiting the enforcement
23 of certain security interests, this chapter does not affect any statu-
24 tory lien or security interest in exempt property.

25 (c) A creditor having a claim enforceable under (a) of this
26 section against exempt property, before, at the time of, or a reasonable
27 time after making a levy on property of an individual, shall serve on
28 the individual a notice of the levy and of the basis for the creditor's
29 right to make a levy on exempt property.

1 Sec. 09.38.070. LIMITATION ON ENFORCEMENT OF CERTAIN SECURITY
2 INTERESTS IN EXEMPT GOODS. (a) This section applies to a security
3 interest, except a purchase-money security interest, or a security
4 interest in a motor vehicle, in an item of goods (1) possessed by an
5 individual, (2) being used by him or a dependent, and (3) exempt under
6 AS 09.38.020(a) - 09.38.020(d).

7 (b) Unless the individual, after written notice to him of his
8 rights under this section, voluntarily surrenders to the secured credi-
9 tor possession of an item of goods to which this section applies, the
10 creditor may not take possession of the item or otherwise enforce the
11 security interest according to its terms without an order or process of
12 court.

13 (c) The court may order or authorize process respecting any item
14 of goods to which this section applies only after a hearing, upon
15 notice to the individual of the hearing and of his rights at it. The
16 notice shall be as directed by the court. The order or authorization
17 may prescribe appropriate conditions as to payments upon the debt
18 secured or otherwise. The court may not order or authorize process
19 respecting the item if it finds upon the hearing both that the indivi-
20 dual lacks the means to pay all or part of the debt secured and that
21 continued possession or use of the item is necessary to avoid undue
22 hardship for the individual or a dependent.

23 (d) The court, upon application of the creditor or the individual
24 and notice to the other and after a hearing and finding of changed
25 circumstances, may vacate or modify an order or authorization under
26 this section.

27 Sec. 09.38.075. SPECIAL PROCEDURES RELATING TO LIMITED VALUE
28 EXEMPTIONS. (a) Unless he is seeking collection of a claim enforceable
29 against exempt property under AS 09.38.065, a creditor may obtain a

1 levy on an individual's property of a kind listed in AS 09.38.020 only
2 by complying with this section. Before levy, the creditor shall file
3 with the court out of which the process issues

4 (1) an affidavit stating that he has reason to believe the
5 individual has property of a kind listed in AS 09.38.020 that is not
6 exempt, identifying the property, setting out facts constituting the
7 basis for believing the property is not exempt; and

8 (2) a request for an order by the court notifying the indi-
9 vidual

10 (A) of the creditor's claim of a right to levy on the
11 property identified as nonexempt,

12 (B) of the individual's right to contest the creditor's
13 claim of a right to levy by filing with the clerk of the court, on
14 or before a date fixed by the court, but not exceeding 15 days
15 after the issuance of the order, a written objection to the pro-
16 posed levy and a statement of the grounds for the objection and of
17 his right to describe the property in lieu of setting its value,

18 ~~and~~

19 (C) of the possible consequences of failure to respond
20 to the notice as provided in (c) of this section.

21 → (b) Notice of ^{(D) of the information required by AS 09.38.085(a).} an order issued in accordance with a request under
22 (a) of this section, together with the creditor's affidavit, shall be
23 served on the individual. The order shall restrain the individual from
24 removing, encumbering, damaging, or disposing of any property of the
25 kind listed in AS 09.38.020 for 30 days after receipt of the order,
26 unless the court reduces, extends, or otherwise modifies the restraining
27 order during the 30-day period.

28 (c) If exemption of property identified in a notice served on an
29 individual under (b) of this section depends on its value, the indi-

1 individual may describe the property in his responsive statement and indi-
2 cate the amount of any indebtedness chargeable against it. If the
3 individual, within the time allowed by the order of the court, fails to
4 respond to a notice served under (b) of this section that the creditor
5 believes the debtor has nonexempt property of a kind listed under
6 AS 09.38.020, the court may order the individual to appear and disclose
7 the description, location, and value of his property. If the individual
8 fails to appear and disclose the information specified in the order, he
9 waives objection to the creditor's levy on property of that kind.

10 (d) Except to the extent the procedure is prescribed by this
11 section, AS 09.38.080(e) governs a proceeding for the determination of
12 a contest in respect to a claim to exemption of property under AS 09.-
13 38.020.

14 (e) Costs incurred in making, or proposing to make, a levy on
15 property of a kind listed in AS 09.38.020 shall be paid out of the
16 proceeds of a sale of property of that kind. If the proceeds of a sale
17 of the property are insufficient to cover the costs incurred in pro-
18 ceedings commenced under this section, the creditor shall pay the costs
19 and may not recover them from the individual, notwithstanding any
20 agreement of the parties to the contrary.

21 (f) The burden of proving the validity of an exemption by a pre-
22 ponderance of the evidence is upon the individual claiming the exemp-
23 tion.

24 Sec. 09.38.080. PROCEDURES APPLICABLE TO A LEVY ON PROPERTY OF AN
25 INDIVIDUAL. (a) Except in a proceeding under AS 09.38.065, a creditor
26 shall comply with this section in obtaining a levy on property of an
27 individual. In a proceeding to levy on personal property of a kind
28 listed in AS 09.38.020, a creditor shall comply with this section and
29 AS 09.38.075.

1 (b) Before, at the time of, or within three days after levy
2 against property of an individual, the creditor shall file with the
3 court from which the process issued an affidavit stating that he has
4 reason to believe the individual has property that is not exempt, iden-
5 tifying the property, and stating facts constituting the basis for that
6 belief.

7 (c) Before, at the time of, or within three days after levy, the
8 creditor shall serve on the individual a notice under AS 09.38.085,
9 including a copy of the affidavit filed under (b) of this section.

10 (d) A bid for property that is less than the amount of the exempt
11 value is not acceptable at a sale of property under a levy. If in-
12 debtedness secured by a valid lien is chargeable against the proceeds
13 of the sale, the bid must exceed the amount of the indebtedness secured
14 plus the amount of the exempt value. If a sufficient bid is not re-
15 ceived, the officer shall file a notation of the fact with the clerk of
16 the court and return the property to the individual. The costs incurred
17 during levy, offering the property for sale, and returning the property
18 shall be assessed against the creditor and are not recoverable from the
19 individual, notwithstanding any agreement of the parties to the con-
20 trary.

21 (e) If any question arises as to the rights of an individual
22 entitled to an exemption under this chapter, an interested person may
23 file with the clerk of the court from which the process issued a state-
24 ment of the claim of exemptions and the question raised. The statement
25 shall be referred to the court as soon as practicable thereafter. The
26 court shall order that notice of a hearing be given. After hearing the
27 matter, the court shall make findings and issue an appropriate order.
28 The court may award to the prevailing party costs of a proceeding under
29 this subsection.

1 (f) An objection to levy on the ground that the property seized
2 is exempt must be filed with the clerk of the court within 15 days
3 after the levy. The burden of proving the validity of an exemption by
4 a preponderance of the evidence is upon the individual claiming the
5 exemption. Failure to file a timely objection may be held to be a
6 waiver of a claim to exemption in the property, unless for cause shown
7 the court excuses the failure.

8 ~~Sec. 09.38.085.~~

CONTENTS OF NOTICE. (a) The notice required by

9 ~~AS 09.38.075(b) and~~
AS 09.38.080(c) shall include the following information:

- 10 (1) the amount and date of the judgment to be enforced by
11 levy and sale or other mode of appropriating the individual's property;
12 (2) the name and address of the clerk of the court with whom
13 objections must be filed;
14 (3) the name and address of the creditor and of his attorney,
15 if any;
16 (4) a copy of the affidavit filed under AS 09.38.080(b);
17 (5) a summary statement in lay terminology of the exemptions
18 provided by the laws of this state;
19 (6) a summary statement in lay terminology of the procedures
20 for claiming exemptions, objecting to a levy on exempt property, ^{change of venue,} and
21 exercising the right to repurchase homestead property from a sale
22 before its confirmation; and
23 (7) a statement in lay terminology of the rights of persons
24 other than the individual as provided in AS 09.38.090.

25 (b) The supreme court may prescribe forms to be used by creditors,
26 debtors and court officers under this chapter. A notice substantially
27 complying with this section is effective even though the notice contains
28 errors if those errors do not result in substantial prejudice to the
29 rights of the individual debtor or his dependents.

1 Sec. 09.38.090. ASSERTION OF RIGHTS BY ANOTHER. If an individual
2 fails to select property entitled to be claimed as exempt or to object
3 to a levy on the property or to assert any other right under this chap-
4 ter, the spouse or a dependent of the individual or any other person
5 authorized by law may make the claim or objection or assert the rights
6 provided by this chapter.

7 Sec. 09.38.095. JUDICIAL RELIEF. (a) An individual or the
8 spouse, a dependent of the individual, or any other person authorized
9 by law is entitled to injunctive relief, damages, or both, against a
10 creditor or other person to prevent or redress a violation of this
11 chapter as provided in the Alaska Rules of Civil Procedure. A court
12 may award costs and reasonable attorney fees to a party entitled to
13 injunctive relief or damages.

14 (b) For cause shown the court may relieve a person from the
15 consequences of failing to take timely action to assert rights under
16 this chapter.

17 Sec. 09.38.100. DEBTOR'S PROPERTY OWNED WITH ANOTHER. (a) If an
18 individual and another own property in this state as tenants in common
19 or tenants by the entirety, a creditor of the individual, subject to
20 the individual's right to claim an exemption under this chapter, may
21 obtain a levy on and sale of the interest of the individual in the
22 property. A creditor who has obtained a levy, or a purchaser who has
23 purchased the individual's interest at the sale, may have the property
24 partitioned or the individual's interest severed.

25 (b) A partner's right in specific partnership property is exempt
26 except on a claim against the partnership; when partnership property is
27 attached for a partnership debt, the partners or any of them or the
28 representatives of a deceased partner may not claim an exemption for
29 that property under this chapter.

1 Sec. 09.38.105. WAIVER OF EXEMPTION. A waiver of exemption exe-
2 cuted in favor of an unsecured creditor before levy on an individual's
3 property is unenforceable, but a valid security interest may be given
4 in exempt property.

5 Sec. 09.38.110. FEDERAL REQUIREMENTS. If a federal department or
6 agency issues a formal ruling that a section of this chapter relating
7 to public assistance will cause a state plan for the delivery of ser-
8 vices or benefits to be out of conformity with federal requirements,
9 the section will not apply to the extent that it causes the program to
10 be out of conformity with federal requirements.

11 Sec. 09.38.115. ADJUSTMENT OF DOLLAR AMOUNTS. (a) The dollar
12 amounts in this chapter change, as provided in this section, according
13 to and to the extent of changes in the Consumer Price Index for ^{All Urban Consumers for} the
14 Anchorage Metropolitan Area ~~Consumer Price Index~~ compiled by the Bureau
15 of Labor Statistics, United States Department of Labor (the index).
16 The index for ~~November~~ ^{January} of the year ~~preceding the year~~ in which this
17 section becomes effective is the reference base index.

18 (b) The dollar amount change on July 1 of each even-numbered year
19 if the percentage of change, calculated to the nearest whole percentage
20 point, between the index for December of the preceding year and the
21 reference base index, is 10 percent or more, but

22 (1) the portion of the percentage change in the index in
23 excess of a multiple of 10 percent is disregarded and the dollar amounts
24 change only in multiples of 10 percent of the amounts appearing in this
25 chapter on the effective date of this chapter; and

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

29 (c) If the index is revised, the percentage of change is calcu-

1 lated on the basis of the revised index. If a revision of the index
2 changes the reference base index, a revised reference base index is
3 determined by multiplying the reference base index applicable by the
4 rebasing factor furnished by the United States Bureau of Labor Statis-
5 tics. If the index is superseded, the index referred to in this section
6 is the one represented by the Bureau of Labor Statistics as reflecting
7 most accurately changes in the purchasing power of the dollar for Alas-
8 kan consumers.

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

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

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

17 (e) The Department of Labor shall also provide notification of a
18 change in exemption amounts required under (c) of this section to the
19 clerks of court in each judicial district of the state.

20 Sec. 09.38.120. PROTECTION OF PROPERTY OF RESIDENTS AND NONRESI-
21 DENTS. (a) Residents of this state are entitled to the exemptions
22 provided under this chapter. Nonresidents are entitled to the exemp-
23 tions provided by the law of the jurisdiction of their residence.

24 (b) The term "resident" means an individual who is physically
25 present in the state and who intends to maintain his permanent home in
26 Alaska.

27 Sec. 09.38.125. DEFINITIONS. As used in this chapter, unless the
28 context otherwise requires,

29 (1) "burial plot" means a parcel of real estate used for

1 burial of human remains and which is located within an area designated
2 for cemetery purposes by the state or a general law or home rule municipi-
3 pality;

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

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

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

12 (5) "exempt" means protected, and "exemption" means pro-
13 tection, from subjection to process or a proceeding to collect an unse-
14 cured debt;

15 (6) "household goods" includes those items that make a resi-
16 dence habitable according to modern standards;

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

20 (8) "levy" means the seizure of property under a writ of
21 attachment, garnishment, execution, or any similar legal or equitable
22 process issued for the purpose of collecting an unsecured debt;

23 (9) "lien" means a security interest, or a judicial,
24 statutory, or common-law lien, or any other interest in property secur-
25 ing payment of a debt or performance of an obligation;

26 (10) "principal residence" means the actual dwelling place of
27 the individual or his dependents and includes real and personal prop-
28 erty;

29 (11) "security interest" means an interest in property created

1 by contract to secure payment or performance of an obligation;

2 (12) "serve notice" means to give the person to be served a
3 written personal notice in the same manner a summons in a civil action
4 is served, or to mail the notice to the person's last known address by
5 first-class mail and by using a form of mail requiring a signed receipt;

6 (13) "statutory lien" means a lien arising by force of a
7 statute under specified circumstances or conditions, but does not in-
8 clude a security interest;

9 (14) "value" means fair market value of an individual's
10 interest in property, exclusive of liens of record;

11 (15) "wearing apparel" means clothing and garments intended
12 and adapted to be worn on the person to protect the person against the
13 elements or to provide personal comfort or decency, or serving to orna-
14 ment the person but does not include jewelry.

15 Sec. 09.38.130. SHORT TITLE. This chapter may be cited as the
16 Alaska Exemptions Act.

17 * Sec. 3. AS 14.25.200 is amended to read:

18 Sec. 14.25.200. EXEMPTION FROM TAXATION AND PROCESS. (a) Bene-
19 fits and other amounts held in the retirement fund on behalf of the
20 members are exempt from Alaska state and municipal taxes and are not
21 subject to anticipation, alienation, sale, transfer, assignment, pledge,
22 encumbrance, or charge [, GARNISHMENT, EXECUTION OR LEVY] of any kind,
23 either voluntary or involuntary, before they are received by the person
24 entitled to the amount under the terms of the system, and any attempt
25 to anticipate, alienate, sell, transfer, assign, pledge, encumber,
26 charge, or otherwise dispose of any right to amounts accrued in the
27 retirement fund is void.

28 (b) Teachers' retirement salaries and other amounts held in the
29 retirement fund on behalf of the members are exempt from garnishment,

1 execution or levy as provided in AS 09.38 (exemptions).

2 * Sec. 4. AS 23.20.405 is amended by adding a new subsection to read:

3 (e) Benefits paid or payable under this chapter are exempt from
4 levy to enforce the collection of a debt as provided in AS 09.38 (exemp-
5 tions).

6 * Sec. 5. AS 23.30.160 is amended to read:

7 Sec. 23.30.160. ASSIGNMENT AND EXEMPTION FROM CLAIMS OF CREDITORS.

8 (a) No assignment, release, or commutation of compensation or benefits
9 due or payable under this chapter, except as provided by this chapter,
10 is valid [, AND THE COMPENSATION AND BENEFITS ARE EXEMPT FROM ALL
11 CLAIMS OF CREDITORS AND FROM LEVY, EXECUTION, AND ATTACHMENT OR OTHER
12 REMEDY FOR RECOVERY OR COLLECTION OF A DEBT]. This exemption may not
13 be waived.

14 (b) Benefits payable under this chapter are exempt from levy to
15 enforce the collection of a debt as provided in AS 09.38 (exemptions).

16 * Sec. 6. AS 34.15.140(b) is repealed and reenacted to read:

17 (b) A homestead held by tenants by the entirety is exempt from
18 execution on a debt to the value specified under AS 09.38.010(b) and
19 may be liable for the debts of either tenant after partition of the
20 tenancy under AS 09.38.100.

21 * Sec. 7. AS 39.35.500 is amended to read:

22 Sec. 39.35.500. SAFEGUARD OF EMPLOYEE FUNDS HELD BY THE SYSTEM.

23 (a) Employee contributions and other amounts held in the pension fund
24 are exempt from Alaska state and local taxes. Amounts held on behalf
25 of, or payable to, any employee or other person who is or may become
26 eligible for benefits under the system are not subject to anticipation,
27 alienation, sale, transfer, assignment, pledge, encumbrance, or charge
28 [, GARNISHMENT, EXECUTION, OR LEVY] of any kind, either voluntary or
29 involuntary, before being received by the person entitled to the amount

1 under the terms of the system. An attempt to anticipate, alienate,
2 sell, transfer, assign, pledge, encumber, charge, or otherwise dispose
3 of a right to amounts held under the system is void.

4 (b) Employee contributions and other amounts held in the pension
5 fund and retirement benefits payable under this chapter are exempt from
6 levy to enforce the collection of a debt as provided in AS 09.38 (exemp-
7 tions).

8 * Sec. 8. AS 47.25.210 is amended to read:

9 Sec. 47.25.210. ALIENATION AND ATTACHMENT. Assistance granted
10 under AS 47.25.120 - 47.25.300 is inalienable by assignment or transfer
11 and is exempt from garnishment, levy, or execution as provided in
12 AS 09.38 (exemptions) [UNDER THE LAWS OF THIS STATE].

13 * Sec. 9. AS 47.25.395 is amended to read:

14 Sec. 47.25.395. ALIENATION AND ATTACHMENT. Assistance granted
15 under AS 47.25.310 - 47.25.420 is inalienable by assignment or transfer
16 and is exempt from garnishment, levy, or execution as provided in
17 AS 09.38 (exemptions) [UNDER THE LAWS OF THIS STATE].

18 * Sec. 10. AS 47.25.550 is amended to read:

19 Sec. 47.25.550. ALIENATION AND ATTACHMENT. Assistance granted
20 under AS 47.25.430 - 47.25.610 is inalienable by an assignment or
21 transfer and is exempt from garnishment, levy, or execution as provided
22 in AS 09.38 (exemptions) [UNDER THE LAWS OF THIS STATE].

23 * Sec. 11. AS 47.25.710 is amended to read:

24 Sec. 47.25.710. ALIENATION AND ATTACHMENT. Assistance granted
25 under AS 47.25.620 - 47.25.780 is inalienable by assignment or transfer
26 and is exempt from garnishment, levy, or execution as provided in
27 AS 09.38 (exemptions) [UNDER THE LAWS OF THE STATE].

28 * Sec. 12. AS 47.25.880 is amended to read:

29 Sec. 47.25.880. ALIENATION AND ATTACHMENT. Assistance granted

1 under AS 47.25.790 - 47.25.970 is inalienable by assignment or transfer
2 and is exempt from garnishment, levy, or execution as provided in
3 AS 09.38 (exemptions) [UNDER THE LAWS OF THIS STATE].

4 * Sec. 13. AS 47.45.120 is amended to read:

5 Sec. 47.45.120. EXEMPTION FROM TAXATION AND PROCESS. (a) Bonuses
6 received under this chapter are exempt from all state and political
7 subdivision taxes except sales and use taxes [AND ARE NOT SUBJECT TO
8 EXECUTION, ATTACHMENT, GARNISHMENT OR OTHER PROCESS]. No bonus received
9 under this chapter may be exempt from a federal tax requirement.

10 (b) Bonuses received under this chapter are exempt from levy to
11 enforce the collection of a debt as provided in AS 09.38 (exemptions).

12 * Sec. 14. AS ~~09.35.035, 09.35.040, 09.35.050, 09.35.080 - 09.35.090,~~
13 ~~AS 21.42.320 - 21.42.340, 21.42.350;~~
14 ~~AS 21.42.320 - 21.42.350;~~ AS 23.20.405(b) and (c);
and AS 32.05.200(b)(3) are repealed.

15 * Sec. 15. All writs of execution, claims of exemption, sales, confirma-
16 tions of sales, rights of redemption and priorities of redemption issued or
17 filed under any law repealed by this Act and in full force and effect on the
18 effective date of this Act, shall remain in full force and effect for the
19 term issued or until revoked, vacated, or modified under the provisions of
20 this Act.

FILE - INC FORDS

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CSHB 74 (Rls) am
 Title "An Act relating to the Rights of debtors and creditors"
 Requested by Home Rules Date 4/21/82

II. FISCAL DETAIL

Agency Affected Department of Revenue
 Program Category Affected Revenue Collection and Management
 BRU, Program, Or Subprogram(s) Affected Child Support Enforcement Division
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL None						

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
None						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME						
PART TIME						
TEMPORARY						
None						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)
 Statutes affecting child support enforcement AS 09.65.132(g) and AS 47.23.250(i) include reference to sections of current law AS 09.35 which section 14 of HB 74 moves to repeal. These references exempt certain child support enforcement actions from the restrictions from execution by judgment debtors under AS 09.35 and impose specific restrictions for child support actions. Language in HB 74 under AS 09.38.065 presents every indication that child support enforcement should continue to maintain this exemption.

With the reference changes from AS 09.35 to AS 09.38 in both AS 09.65.132(g) and AS 47.23.250(i), the child support agency and the obligor should experience the benefits of the procedures for execution on judgments. Without the reference changes the child support agency would experience additional legal expense in executing on judgments where two sets of requirements and restrictions are in effect.

IV. DATE 4/21/82 PREPARED BY Dan R. Copeland
 AGENCY Child Support Enforcement - Dept. of Revenue
 Original: Legislative Finance PHONE 276-3441
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH 5
JUNEAU, ALASKA 99811
PHONE: (907) 465-2360

March 3, 1982

The Honorable Patrick M. Rodey
Chairman
Senate Judiciary Committee
Room 125 - Capitol Building
Juneau, Alaska

Re: CS for House Bill No. 74 (Rules) am

Dear Senator Rodey:

On April 29, 1982, Senator Mulcahy, Chairman of the Labor and Commerce Committee moved and asked unanimous consent that the Labor and Commerce Committee referral on CS for House Bill No. 74 (Rules) am, be waived.

Without objection, it was so ordered and the bill was referred to the Senate Judiciary Committee.

For the consideration of the Senate Judiciary Committee, I am enclosing copies of Fiscal Notes prepared by Mr. Dan R. Copeland, Director, Child Support Enforcement Division, Anchorage and Ms. Marilla L. Gemmer, Director, Enforcement Division of the Department of Revenue concerning the Committee Substitute.

Sincerely,



R. D. Stevenson
Special Assistant

Enclosures

cc: Joseph K. Donohue
Deputy Commissioner
Department of Revenue

Dan R. Copeland, Director
Child Support Enforcement
Department of Revenue

Marilla L. Gemmer, Director
Enforcement Division
Department of Revenue

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. CSHB 74 (Rules) am
 Title Act relating to the rights of debtors and creditors
 Requested by Senate Labor and Commerce Date 4/19/82

II. FISCAL DETAIL
 Agency Affected Department of Revenue
 Program Category Affected Revenue Collection & Management
 BRU, Program, Or Subprogram(s) Affected Enforcement Division
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

NONE	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

FUNDING (Thousands of Dollars)

NONE

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

NONE

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

IV. DATE April 19, 1982 PREPARED BY Marilla L. Gemner, Director
 AGENCY Department of Revenue - Enforcement Division
 Original: Legislative Finance PHONE 465-2366
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)





STATE OF ALASKA

Legislative Affairs Agency

A

PROPOSED

ALASKA EXEMPTIONS ACT .

PREPARED AND APPROVED FOR DISTRIBUTION

BY THE

"ALASKA CODE REVISION COMMISSION"

ALASKA STATE LEGISLATURE

Staff Preparation By the
Division of Legal Services
LEGISLATIVE AFFAIRS AGENCY

DECEMBER

1980

A Proposed

ALASKA EXEMPTIONS ACT

- D R A F T -

1980

Alaska Code Revision Commission
(AS 24.20.075)

Chairman:	John W. Abbott
Vice Chairman:	Susan A. Burke
Members:	Patrick M. Rodey Fred Brown L. S. (Jerry) Kurtz, Jr. Wm. Grant Callow
Executive Secretary:	Billy G. Berrier, Director Division of Legal Services Legislative Affairs Agency

Prepared and distributed for the
Alaska Code Revision Commission
by the
LEGISLATIVE AFFAIRS AGENCY
Pouch Y, State Capitol
Juneau, Alaska 99811

December 1980

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.

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APPENDIX

1 * Section 1. It is the intent of the legislature to modernize the pro-
2 cedures for execution of a judgment and to afford to a judgment debtor
3 adequate protection of his personal property and income necessary to provide
4 for his own needs and the needs of his dependents while remaining independent
5 of further public assistance.

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1 * Sec. 2. AS 09 is amended by adding a new chapter to read:

2 CHAPTER 38. ALASKA EXEMPTIONS ACT.

3 ARTICLE 1. GENERAL PROVISIONS.

4 Sec. 09.38.010. SHORT TITLE. This chapter may be cited as the
5 Alaska Exemptions Act.

1 Sec. 09.38.020. DEFINITIONS. As used in this chapter, unless the
2 context otherwise requires,

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

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

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

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

15 (5) "exempt" means protected, and "exemption" means pro-
16 tection, from subjection to process or a proceeding to collect an
17 unsecured debt;

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

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

23 (8) "levy" means the seizure of property under a writ of
24 attachment, garnishment, execution, or any similar legal or equitable
25 process issued for the purpose of collecting an unsecured debt;

26 (9) "lien" means a security interest, or a judicial
27 statutory, or common-law lien, or any other interest in property
28 securing payment of a debt or performance of an obligation;
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1 (10) "principal residence" means the actual dwelling place
2 of the individual or his dependents and includes real and personal
3 property;

4 (11) "security interest" means an interest in property
5 created by contract to secure payment or performance of an obligation;

6 (12) "serve notice" means to give the person to be served a
7 written personal notice in the same manner a summons in a civil action
8 is served, or to mail the notice to the person's last known address by
9 first-class mail and by using a form of mail requiring a signed
10 receipt;

11 (13) "statutory lien" means a lien arising by force of a
12 statute under specified circumstances or conditions, but does not
13 include a security interest;

14 (14) "value" means fair market value of an individual's
15 interest in property, exclusive of liens of record;

16 (15) "wearing apparel" means clothing and garments intended
17 and adapted to be worn on the person to protect the person against the
18 elements or to provide personal comfort or decency, or serving to
19 ornament the person but does not include jewelry.
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COMMENT

Sec. 09.38.020. 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 denominating 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 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); Rules of Bankruptcy Procedure 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).

1 Sec. 09.38.030. HOMESTEAD EXEMPTION. (a) An individual is
2 entitled to an exemption as a homestead of his interest in property in
3 this state used as the principal residence of that individual or his
4 dependents, but the value of the homestead exemption may not exceed
5 \$19,000.

6 (b) If property owned by the entirety or in common, is used by
7 one or more individual owners or their dependents as their principal
8 residence, each owner is entitled to a homestead exemption of his
9 interest in the property as provided in (a) of this section. The
10 aggregate value of multiple homestead exemptions allowable with
11 respect to a single living unit may not exceed \$28,000. If there are
12 multiple owners of property exempt as a homestead, the value of the
13 exemption of each individual owner may not exceed his pro rata portion
14 of \$28,000.

15 (c) If property that includes a homestead is sold under an
16 execution, the sale becomes effective upon confirmation by order of
17 the court. The court shall enter the order of confirmation unless,
18 within 60 days after the sale, the individual repurchases the property
19 under this section or the court extends the time for confirmation upon
20 the filing of a timely motion by a party in interest. The individual
21 may repurchase property, including his homestead, at a sale on exe-
22 cution before confirmation by paying into court the costs of the sale
23 plus the lesser of either (1) the difference between the highest bid
24 and the amount of the exemption in the property, or (2) the amount of
25 the creditor's claim. If the individual does not exercise his re-
26 purchase right under this subsection, the clerk of the court shall
27 first remit an amount determined to be exempt to him from the proceeds
28 of sale and the balance less the cost of the sale to the creditor.
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1 For the purpose of collecting an amount remaining unpaid on his
2 judgment after repurchase of property by an individual under this
3 subsection, the creditor or his assignee may not make another levy on
4 the property repurchased.

5 (d) Upon entry of the order of confirmation under (c) of this
6 section and expiration of the time period for repurchase, the clerk
7 may execute a deed to the property and when delivered it shall be
8 sufficient to convey all title of the individual in the premises sold
9 to the purchaser at the sale.
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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.

1 Sec. 09.38.040. PROPERTY EXEMPT WITHOUT LIMITATION. (a) An
2 individual is entitled to exemption of the following property:

3 (1) a burial plot for the individual and his family;

4 (2) health aids reasonably necessary to enable the indi-
5 vidual or a dependent to work or to sustain health;

6 (3) benefits paid or payable for medical, surgical, or
7 hospital care to the extent they are or will be used to pay for the
8 care;

9 (4) an award under AS 18.67 (Violent Crimes Compensation
10 Board) or a crime victim's reparations Act of another jurisdiction;

11 (5) benefits paid or payable as a longevity bonus under
12 AS 47.45;

13 (6) compensation or benefits paid or payable and exempt
14 under federal law.

15 (b) Except as provided in sec. 120 of this chapter, a person is
16 entitled to exemption of the following transferable business rights:

17 (1) liquor licenses granted under AS 04;

18 (2) limited entry permits granted under AS 16.43.

19 (c) The right to benefits held by the state on behalf of an
20 individual which may become payable by reason of disability, unemploy-
21 ment or illness, amounts held in the teachers' or public employees'
22 retirement system, and child support colleccions made by the child
23 support enforcement agency are exempt.

24 (d) Property of the state, a general law or home rule municipality
25 the Alaska State Housing Authority, the Alaska Municipal Bond Bank
26 Authority, or other state public corporation is exempt.

27 (e) Real property held by a cemetery association established
28 under AS 10.30 for the purpose of a ceretery and not exceeding 80 acres
29 is exempt.

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 09.35.80(a)(6) (property of a public or municipal corporation), AS 44.33.340 (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.

1 Sec. 09.38.050. EXEMPTIONS OF PERSONAL PROPERTY SUBJECT TO VALUE
2 LIMITATIONS. (a) An individual is entitled to an exemption in proper
3 not to exceed an aggregate value of \$1,500 chosen by him from the fol-
4 lowing categories of property:

5 (1) household goods and wearing apparel reasonably necessary
6 for one household;

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

9 (3) family portraits and heirlooms of particular sentimental
10 value to the individual.

11 (b) An individual is entitled to exemption of jewelry, not ex-
12 ceeding \$500 in aggregate value, if held for the personal use of the
13 individual or a dependent.

14 (c) An individual is entitled to exemption, not exceeding \$1,000
15 in aggregate value, of implements, professional books, and tools of the
16 trade.

17 (d) An individual is entitled to the exemption of pets to the
18 extent of a value not exceeding \$3,000.

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

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 the term "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. 2nd, 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.

1 Sec. 09.38.060. EXEMPTION OF UNMATURED LIFE INSURANCE AND ANNUITY
2 CONTRACTS. (a) Except as provided in this section, an individual is
3 entitled to exemption of unmatured life insurance and annuity contracts
4 owned by him. If the contracts have accrued dividends and loan values
5 available to the individual aggregating more than \$5,000, a creditor
6 may obtain a court order requiring the individual debtor to pay the
7 creditor, and authorizing the creditor on the debtor's behalf to obtain
8 payment of, the amount of the accrued dividends and loan values in
9 excess of \$5,000 or the amount of the creditor's claim, whichever is
10 less.

11 (b) A judgment creditor or other claimant of an insurer may not
12 levy upon any of the assets or securities held in this state as a
13 deposit for the protection of the insurer's policyholders or policy-
14 holders and creditors. Deposits under AS 21.09.270 may be levied upon
15 if provided in the order of the director of insurance, Department of
16 Commerce and Economic Development, under which the deposit is made.
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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 unmatured 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 en-

dowment 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.

1 Sec. 09.38.070. EXEMPTION OF EARNINGS AND LIQUID ASSETS. (a)

2 Except as provided in (b) and (c) of this section and sec. 110 of this
3 chapter, an individual debtor is entitled to an exemption of his weekly
4 net earnings not to exceed \$125. The weekly net earnings of an in-
5 dividual are determined by subtracting from the weekly gross earnings
6 all sums required by law or court order to be withheld. The weekly net
7 earnings of an individual paid on a monthly basis are determined by
8 subtracting from the monthly gross earnings of the individual all sums
9 required by law or court order to be withheld and dividing the remainder
10 by 4.3. The weekly net earnings of an individual paid on a semi-monthly
11 basis are determined by subtracting from the semi-monthly gross earnings
12 all sums required by law or court order to be withheld and dividing the
13 remainder by 2.17.

14 (b) An individual who does not receive earnings either weekly,
15 semi-monthly or monthly is entitled to a maximum exemption for the
16 aggregate value of cash and other liquid assets available in any month
17 of \$500, except as provided in sec. 110 of this chapter. The term
18 "liquid assets" includes deposits, securities, notes, drafts, accrued
19 vacation pay, refunds, prepayments, and receivables.

20 (c) A creditor may levy upon earnings exempt under (a) and (b) of
21 this section if his claim is

22 (1) enforceable against exempt property under sec. 140(a)(1)
23 of this section; or .:

24 (2) enforceable under an order of a court of bankruptcy under
25 chapter XIII of the Bankruptcy Act (11 U.S.C., sec. 1001 et seq.).

26 (d) If the individual debtor is a nonresident, the limitations on
27 garnishment imposed under 15 U.S.C. 1673 shall apply.
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1 (e) The following property, unless exempt without limitation under
2 sec. 40 of this chapter, upon receipt by and while it is in the pos-
3 session of the individual, shall be treated as earnings, income, cash,
4 or other liquid assets under this section:

5 (1) benefits paid by reason of disability, illness, or
6 unemployment;

7 (2) money or property received for alimony, support, or
8 separate maintenance;

9 (3) proceeds of insurance, a judgment, or a settlement, or
10 other rights accruing as a result of bodily injury of the individual or
11 of the wrongful death or bodily injury of another individual of whom the
12 individual was or is a dependent;

13 (4) proceeds or benefits paid or payable on the death of an
14 insured, if the individual was the spouse or a dependent of the insured;
15 and

16 (5) amounts paid under a stock bonus, pension, profit-
17 sharing, annuity, or similar plan or contract, providing benefits by
18 reason of age, illness, disability, or length of service.
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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 assistance benefits, support payments, insurance proceeds or settlements, death benefits, and retirement or disability benefits 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 determines 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).

1 Sec 09.38.080. CONTINUING LIEN ON WAGES. (a) In the case of a
2 garnishment of earnings, when the garnishee's answer reflects that the
3 defendant is employed by him, the judgment or balance due as reflected
4 on the writ of garnishment shall become a lien on earnings due at the
5 time of service of the writ to the extent that they are not exempt from
6 garnishment, and that lien shall continue as to subsequent nonexempt
7 earnings until the total subject to the lien equals the amount stated on
8 the writ of garnishment, except that the lien on subsequent earnings
9 shall terminate sooner if the employment relationship is terminated, if
10 the underlying judgment is vacated, modified, or satisfied in full, or
11 if the writ is dismissed.

12 (b) A garnishee shall pay into court all nonexempt earnings of the
13 defendant subject to the continuing lien under (a) of this section.
14 Accrued interest on the judgment or balance due as reflected on the writ
15 of attachment may be garnished under a supplemental writ of garnishment
16 after the principal amount stated on the original writ of garnishment
17 has been paid.
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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.

1 Sec. 09.38.090. PRIORITIES BETWEEN CONTINUING LIENS. A lien
2 obtained under sec. 80 of this chapter shall have priority over any
3 subsequent garnishment lien or wage assignment. Any writ creating a
4 continuing lien served upon an employer while a continuing lien imposed
5 by a previous writ is still in effect shall be answered by the employer
6 with a statement that he is holding no funds and with a further state-
7 ment stating when all previous liens are expected to terminate. The
8 subsequent writ shall have full effect from the termination of all
9 prior liens or until it is otherwise terminated under sec. 80 of this
10 chapter; however, a subsequent writ is not effective if a writ in the
11 same cause of action is pending at the time of service of garnishment.
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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.

1 Sec. 09.38.100. EFFECTIVE DATE OF CONTINUING LIEN. The effective
2 date of a writ creating a continuing lien is the date of service upon
3 the garnishee; however, if there are, on that date, liens by virtue of
4 previous writs, the effective date is the date all previous writs
5 terminate.

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.

1 Sec. 09.38.110. INCREASED EXEMPTION AMOUNT. (a) An individual
2 debtor who is in possession of money which was obtained as payment for
3 an injury or disability may request the court to order an increase in
4 the exemption amounts under sec. 70 of this chapter. The individual
5 debtor shall submit affidavits or offer testimony in support of his
6 request as required by the court. The court shall determine the ex-
7 emption amount after consideration of the individual's responsibilities
8 and all the present and anticipated property and income of the indi-
9 vidual, including that which is exempt.

10 (b) The exemption amounts under sec. 70 of this chapter may be
11 increased when the individual submits an affidavit, under penalty of
12 perjury, stating that his earnings alone support his household; by so
13 doing, the maximum part of his aggregate disposable earnings for any
14 week subject to execution may not exceed the amount by which his dis-
15 posable earnings for that week exceed \$200, or, if the individual is
16 claiming an exemption for cash or other liquid assets under sec. 70(b)
17 of this chapter, a maximum amount of \$800 available in any month is
18 exempt.
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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.

1 Sec. 09.38.120. BANKRUPTCY PROCEEDINGS. In a proceeding under
2 the Bankruptcy Act (11 U.S.C.) only the exemptions under secs. 30,
3 40(a), 50, 60, and 70 of this chapter apply. The exemption of certain
4 permits, licenses, and certificates provided in sec. 40(b) of this
5 chapter does not apply in a proceeding under chapter VII of the
6 Bankruptcy Act (11 U.S.C.).
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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.

1 Sec. 09.38.130. TRACING EXEMPT PROPERTY. (a) If property, or a
2 part of it, that could have been claimed as an exempt homestead under
3 sec. 30 of this chapter, a burial plot under sec. 40(1) of this chapter
4 a health aid under sec. 40(2) of this chapter, or personal property
5 subject to a value limitation under sec. 50(a)(1), (2) or (c) of this
6 chapter, has been taken or sold by condemnation, or has been lost,
7 damaged, or destroyed and the owner has been indemnified for it, the
8 individual is entitled to an exemption of proceeds that are traceable
9 for 12 months after the proceeds are received. An individual is
10 entitled to an exemption of proceeds from the voluntary sale of an
11 exempt homestead under sec. 30 of this chapter that are traceable for
12 three months after the proceeds are received. The exemption of proceeds
13 under this subsection does not entitle the individual to claim an
14 aggregate exemption in excess of the value limitation otherwise
15 allowable under sec. 30 or 50 of this chapter.

16 (b) Money or other property and proceeds exempt under this
17 chapter are traceable under this section by application of the prin-
18 ciple of first-in first-out, last-in first-out, or any other reasonable
19 basis for tracing selected by the individual claiming the exemption.
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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).

1 Sec. 09.38.140. CLAIMS ENFORCEABLE AGAINST EXEMPT PROPERTY. (a)
2 Notwithstanding other provisions of this chapter,

3 (1) a creditor may make a levy against exempt property of
4 any kind to enforce a claim for

5 (A) alimony, support, or separate maintenance;

6 (B) unpaid earnings of up to one month's compensation
7 or the full-time equivalent of one month's compensation for personal
8 services of an employee; or

9 (C) state or local taxes; and

10 (2) a creditor may make a levy against exempt property to
11 enforce a claim for

12 (A) the purchase price of the property or a loan made
13 for the express purpose of enabling an individual to purchase the
14 property and used for that purpose;

15 (B) labor or materials furnished to make, repair,
16 improve, preserve, store, or transport the property; and

17 (C) a special assessment imposed to defray costs of a
18 public improvement benefiting the property.

19 (b) Except as provided in sec. 150 of this chapter, limiting the
20 enforcement of certain security interests, this chapter does not
21 affect any statutory lien or security interest in exempt property.

22 (c) A creditor having a claim enforceable under (a) of this
23 section against exempt property, before, at the time of, or a reason-
24 able time after making a levy on property of an individual, shall
25 serve on the individual a notice of the levy and of the basis for the
26 creditor's right to make a levy on exempt property.
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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.

1 Sec. 09.38.150. LIMITATION ON ENFORCEMENT OF CERTAIN SECURITY
2 INTERESTS IN EXEMPT GOODS. (a) This section applies to a security
3 interest, except a purchase-money security interest, or a security
4 interest in a motor vehicle, in an item of goods (1) possessed by an
5 individual, (2) being used by him or a dependent, and (3) exempt under
6 sec. 50(a) - (d) of this chapter.

7 (b) Unless the individual, after written notice to him of his
8 rights under this section, voluntarily surrenders to the secured
9 creditor possession of an item of goods to which this section applies,
10 the creditor may not take possession of the item or otherwise enforce
11 the security interest according to its terms without an order or
12 process of court.

13 (c) The court may order or authorize process respecting any item
14 of goods to which this section applies only after a hearing, upon
15 notice to the individual of the hearing and of his rights at it. The
16 notice shall be as directed by the court. The order or authorization
17 may prescribe appropriate conditions as to payments upon the debt
18 secured or otherwise. The court may not order or authorize process
19 respecting the item if it finds upon the hearing both that the indi-
20 vidual lacks the means to pay all or part of the debt secured and that
21 continued possession or use of the item is necessary to avoid undue
22 hardship for the individual or a dependent.

23 (d) The court, upon application of the creditor or the indi-
24 vidual and notice to the other and after a hearing and finding of
25 changed circumstances, may vacate or modify an order or authorization
26 under this section.
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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.

1 Sec. 09.38.160. SPECIAL PROCEDURES RELATING TO LIMITED VALUE
2 EXEMPTIONS. (a) If he is seeking collection of a claim enforceable
3 against exempt property under sec. 140 of this chapter, a creditor
4 may obtain a levy on an individual's property of a kind listed in
5 sec. 50 of this chapter only by complying with this section. Before
6 levy, the creditor shall file with the court out of which the process
7 issues

8 (1) an affidavit stating that he has reason to believe the
9 individual has property of a kind listed in sec. 50 of this chapter
10 that is not exempt, identifying the property, setting out facts con-
11 stituting the basis for believing the property is not exempt; and

12 (2) a request for an order by the court notifying the
13 individual

14 (A) of the creditor's claim of a right to levy on the
15 property identified as nonexempt,

16 (B) of the individual's right to contest the creditor's
17 claim of a right to levy by filing with the clerk of the court, on
18 or before a date fixed by the court, but not exceeding 15 days
19 after the issuance of the order, a written objection to the pro-
20 posed levy and a statement of the grounds for the objection and of
21 his right to describe the property in lieu of setting its value,
22 and

23 (C) of the possible consequences of failure to respond
24 to the notice as provided in (c) of this section.

25 (b) Notice of an order issued in accordance with a request under
26 (a) of this section, together with the creditor's affidavit, shall be
27 served on the individual. The order shall restrain the individual from
28 removing, encumbering, damaging, or disposing of any property of the
29 kind listed in sec. 50 of this chapter for 30 days after receipt of the

1 order, unless the court reduces, extends, or otherwise modifies the
2 restraining order during the 30-day period.

3 (c) If exemption of property identified in a notice served on an
4 individual under (b) of this section depends on its value, the indi-
5 vidual may describe the property in his responsive statement and indi-
6 cate the amount of any indebtedness chargeable against it. If the
7 individual, within the time allowed by the order of the court, fails to
8 respond to a notice served under (b) of this section that the creditor
9 believes the debtor has nonexempt property of a kind listed under
10 sec. 50 of this chapter, the court may order the individual to appear
11 and disclose the description, location, and value of his property. If
12 the individual fails to appear and disclose the information specified
13 in the order, he waives objection to the creditor's levy on property of
14 that kind.

15 (d) Except to the extent the procedure is prescribed by this
16 section, sec. 170(e) of this chapter governs a proceeding for the
17 determination of a contest in respect to a claim to exemption of
18 property under sec. 50 of this chapter.

19 (e) Costs incurred in making, or proposing to make, a levy on
20 property of a kind listed in sec. 50 of this chapter shall be paid out
21 of the proceeds of a sale of property of that kind. If the proceeds of
22 a sale of the property are insufficient to cover the costs incurred in
23 proceedings commenced under this section, the creditor shall pay the
24 costs and may not recover them from the individual, notwithstanding an
25 agreement of the parties to the contrary.

26 (f) The burden of proving the validity of an exemption by a
27 preponderance of the evidence is upon the individual claiming the
28 exemption.
29

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].

1 Sec. 09.38.170. PROCEDURES APPLICABLE TO A LEVY ON PROPERTY OF AN
2 INDIVIDUAL. (a) Except in a proceeding under sec. 140 of this chapter
3 a creditor shall comply with this section in obtaining a levy on
4 property of an individual. In a proceeding to levy on personal property
5 of a kind listed in sec. 50 of this chapter, a creditor shall comply
6 with this section and sec. 160 of this chapter.

7 (b) Before, at the time of, or within three days after levy
8 against property of an individual, the creditor shall file with the
9 court from which the process issued an affidavit stating that he has
10 reason to believe the individual has property that is not exempt,
11 identifying the property, and stating facts constituting the basis for
12 that belief.

13 (c) Before, at the time of, or within three days after levy, the
14 creditor shall serve on the individual a notice under sec. 180 of this
15 chapter, including a copy of the affidavit filed under (b) of this
16 section.

17 (d) A bid for property that is less than the amount of the exempt
18 value is not acceptable at a sale of property under a levy. If in-
19 debtedness secured by a valid lien is chargeable against the proceeds
20 of the sale, the bid must exceed the amount of the indebtedness secured
21 plus the amount of the exempt value. If a sufficient bid is not
22 received, the officer shall file a notation of the fact with the clerk
23 of the court and return the property to the individual. The costs
24 incurred during levy, offering the property for sale, and returning
25 the property shall be assessed against the creditor and are not recover-
26 able from the individual, notwithstanding any agreement of the parties
27 to the contrary.

28 (e) If any question arises as to the rights of an individual
29 entitled to an exemption under this chapter, an interested person may

1 file with the clerk of the court from which the process issued a
2 statement of the claim of exemptions and the question raised. The
3 statement shall be referred to the court as soon as practicable
4 thereafter. The court shall order that notice of a hearing be given.
5 After hearing the matter, the court shall make findings and issue an
6 appropriate order. The court may award to the prevailing party costs
7 of a proceeding under this subsection.

8 (f) An objection to levy on the ground that the property seized
9 is exempt must be filed with the clerk of the court within 15 days
10 after the levy. The burden of proving the validity of an exemption by
11 a preponderance of the evidence is upon the individual claiming the
12 exemption. Failure to file a timely objection may be held to be a
13 waiver of a claim to exemption in the property, unless for cause shown
14 the court excuses the failure.
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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.

1 Sec. 09.38.180. CONTENTS OF NOTICE. (a) The notice required by
2 sec. 170(c) of this chapter shall include the following information:

3 (1) the amount and date of the judgment to be enforced by
4 levy and sale or other mode of appropriating the individual's prop-
5 erty;

6 (2) the name and address of the clerk of the court with
7 whom objections must be filed;

8 (3) the name and address of the creditor and of his at-
9 torney, if any;

10 (4) a copy of the affidavit filed under sec. 170(b) of this
11 chapter;

12 (5) a summary statement in lay terminology of the exemptions
13 provided by the laws of this state;

14 (6) a summary statement in lay terminology of the pro-
15 cedures for claiming exemptions, objecting to a levy on exempt property
16 and exercising the right to repurchase homestead property from a sale
17 before its confirmation; and

18 (7) a statement in lay terminology of the rights of persons
19 other than the individual as provided in sec. 190 of this chapter.

20 (b) The supreme court may prescribe forms to be used by creditors,
21 debtors and court officers under this chapter. A notice substantially
22 complying with this section is effective even though the notice
23 contains errors that do not result in substantial prejudice to the
24 rights of the individual debtor or his dependents.
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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.

1 Sec. 09.38.190. ASSERTION OF RIGHTS BY ANOTHER. If an individual
2 fails to select property entitled to be claimed as exempt or to object
3 to a levy on the property or to assert any other right under this
4 chapter, the spouse or a dependent of the individual or any other
5 person authorized by law may make the claim or objection or assert the
6 rights provided by this chapter.
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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).

1 Sec. 09.38.200. JUDICIAL RELIEF. (a) An individual or the
2 spouse, a dependent of the individual, or any other person authorized
3 by law is entitled to injunctive relief, damages, or both, against a
4 creditor or other person to prevent or redress a violation of this
5 chapter as provided in the Alaska Rules of Civil Procedure. A court
6 may award costs and reasonable attorney fees to a party entitled to
7 injunctive relief or damages.

8 (b) For cause shown the court may relieve a person from the
9 consequences of failing to take timely action to assert rights under
10 this chapter.
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