

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 86/2

2448 HJ HB 312 - HB 338 2998

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 21, 1983

SUBJECT: Harming police dogs
(CSHB 312 (Judiciary))

TO: Representative Charlie Bussell
Chairman, House Judiciary Committee

FROM: James H. Lear
Legislative Counsel *JHL*

You have asked our office to compare the penalties under the existing law and the penalties under CSHB 312 (Judiciary) associated with the crime of harming a police dog. Under AS 11.46.486 (Criminal mischief in the fourth degree) the prosecution would have to establish that the offender "tampered" with a police dog with reckless disregard for the risk of harm or with intent to cause substantial inconvenience to another person; or that the offender damaged a police dog in an amount less than \$50 and with the intent to cause such damage. Criminal mischief in the fourth degree is a class B misdemeanor.

Comparing criminal mischief in the fourth degree with proposed Sec. 11.56.710 (Harming a police dog in the second degree), one would observe that under the proposed statute it would be unnecessary to establish damage to a police dog. It would be sufficient for the prosecution to establish that the offender tormented, kicked, struck, stoned, or tampered with a police dog, knowing the dog to be a police dog. Such conduct would be punishable as a class A misdemeanor, a greater penalty than that imposed for criminal mischief in the fourth degree.

Under AS 11.46.484 (Criminal mischief in the third degree) the prosecution would have to establish that the offender intentionally damaged a police dog in an amount of \$50 or more but less than \$500. If the prosecution were successful, the offender would be facing a class A misdemeanor charge. Again, comparing this with the proposed section of harming a police dog in the second degree, the prosecution

must establish damage to the police dog to prevail under the existing law, while under the new provision the offender may be punished even though he inflicts no physical injury to the police dog.

Under AS 11.46.482 (Criminal mischief in the second degree) the prosecution would have to establish that the offender intentionally damaged a police dog in an amount of \$500 or more in order to impose penalties as a class C felony. Compared with Sec. 11.56.705 (Harming a police dog in the first degree), one would observe that an offender is subject to penalties for a class C felony violation if the offender intentionally kills or causes serious physical injury to a police dog. Under the existing law the prosecution would have to establish that the intentional killing or infliction of serious physical injury amounted to more than \$500 in damages.

In short, a comparison of existing law with proposed CSHB 312 (Judiciary) shows that it would be easier to prosecute an offender under the proposed bill and in certain instances higher penalties could be attached upon conviction.

If you have any further questions, please feel free to contact our office.

JHL:ljb
15/026

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 312
 Title: "Act Relating to Harming a Police Dog"
 Sponsor: Representative Adams
 Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Public Safety
 Program Category Affected: Crime ID
 BRU, Program of Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis No fiscal impact anticipated

Prepared By: Paul Conger Phone: 465-4338
 Division: Administrative Services Date: 4/14/83
 Approved by Commissioner: [Signature] Date: 4-15-83
 Department: Public Safety

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)



STATE OF ALASKA

BILL ANALYSIS

Department Public Safety	Sponsor (Principal) Adams	Bill Number HB 312
Department Position Support		
Division Director Col. M. C. Kolivosky <i>mck</i>	Date 4-8-83	Signature <i>R. J. Sundberg</i> R. J. Sundberg
		Date 4-15-83

Comments:

<input type="checkbox"/> Position Noted	By	Date
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SUMMARY

1. a) Related Bills (Similar or Conflicting)	1. b) Other Agencies Affected by Bill All law enforcement agencies statewide.
2. a) Organizational Support for Bill	2. b) Organizational Opposition to Bill

3. Program Effects of Bill

Passage of this bill will help to protect these valuable assets in police work. These animals are used not only for general police work but also in narcotics enforcement.

4. Fiscal Impact: None Fiscal Note Attached

5. Amendments Proposed:

6. Comments:

CITY OF KOTZEBUE

P.O. BOX 46
KOTZEBUE, ALASKA 99752

KOTZEBUE POLICE DEPARTMENT
907-442-3351

March 23, 1983

Representative Al Adams
Pouch V
State Capital
Juneau, Alaska 99811

HB312

RE: POLICE DOG PROTECTION BILL

I was given a copy of your draft bill amending AS 11.56 to protect police dogs.

I and the Police Department, and I am sure the City Fathers, thank you for this much needed legislation.

It is definitely a measure of protection for the dog and a protection to the large investment made by the City of Kotzebue and hopefully will act as a deterrent.

In reviewing the draft legislation, the two stumbling blocks I see is the phrase "knowing the dog to be a police dog" and the language following to the end of the sentence in Section 11.56.705 and Section 11.56.710.

By necessity the dog becomes a part of the Officers family and it is generally agreed that this is when the dog is most vulnerable. Police Department that have used dogs over a great period of time have found that the dogs are poisoned, shot at and injured mostly when "off duty".

All Police dogs are the property of the handlers employer and like an Officer, are "on duty" 24 hours a day.

Might it be possible to revise the language to reflect these concerns.

Sincerely,



DONALD E. BUEHLER
Chief of Police

cc: Representative Adams' file
City Manager
City Manager file
Sgt Jcnes

"GATEWAY TO NORTHWEST ALASKA"

Bill would protect police dogs

NEWS 5-8-83

The Associated Press

JUNEAU — The House has sent to the Senate a measure to penalize anyone who killed or tried to harm a police dog.

The measure (HB312) was introduced by Rep. Al Adams, D-Kotzebue, because of a problem in his area. The police dog has been threatened several times, according to testimony in the House Judiciary Committee.

Rep. Don Clocksin, D-Anchorage, said the measure was unnecessary because penalties for killing a dog were covered by criminal mischief statutes.

Adams countered that the bill was needed, because it would specifically identify a crime.

He said the dogs provide public protection and crime detection and should be protected.

Killing a police dog would be a Class C felony, punisha-

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ble by up to five years imprisonment and a fine of up to \$50,000.

Harming a police dog would be a Class A misdemeanor, punishable by up to a year in jail and a fine of up to \$5,000.

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COMMITTEE REPORT

HOUSE

FINANCE

FURTHER:

4/20/83

Date: 3/14/82

Mr. Speaker:

The Committee on JUDICIARY has had HR 373

"An Act relating to residency and residency requirements; and providing for an effective date."

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HR 323 (100) same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Walter S. Russell
 CHAIRMAN

INTERIM OFFICE:
1024 WEST SIXTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 274-2843

IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 463-4983

Alaska State Legislature



Representative Mitch Abode
CHAIRMAN

House Committee on State Affairs

SECTIONAL ANALYSIS OF: HB 323

"An Act relating to residency and residency requirements; and providing for an effective date."

Section 1 amends AS 01.10 by adding a new section defining bona fide residency in the State of Alaska. A person establishes residency in the State by being physically present in Alaska with the intent to remain in Alaska indefinitely and to make a home in the State. Under (b)(1) in the section, a person must maintain a principal place of abode in the state for at least 30 days or for a longer period if a longer period is required by law or regulation.

Section 2 repeals and reenacts AS 08.04.110, relating to the personal requirements of certified public accountants. The present residency requirement has been deleted to correct a constitutional problem.

Section 3 amends AS 08.08.207 (a), by removing the requirement that an individual be a resident of Alaska in order to be a law clerk.

Section 4 amends AS 08.88.171, for receiving a real estate broker's license; an associate broker's license, or a real estate salesman's license. The one-year residency requirement has been deleted to correct a constitutional problem.

Section 5 amends AS 09.55.130, deleting the one-year residency requirement for the annulment of a marriage. Under current law, if a person was not married in Alaska, that marriage could only be annulled if the plaintiff had been a resident for at least one year prior to the commencement of an action. The one-year requirement is probably unconstitutional.

Section 6 amends AS 16.05.400(b), by deleting the 30-year consecutive residency requirement to a one-year requirement for a hunting, fishing or trapping license exemption for persons 60 years of age. The 30-year requirement is clearly unconstitutional.

Section 7 amends AS 16.35.130, by deleting the one-year residency requirement in the section dealing with the non-payment of bounty on certain animals. Presently, in order for bounty to be paid, an individual was required to maintain a place of abode inside the game management unit or in part of the game management unit for one year preceding the time the animal was taken and the bounty paid, or, no bounty would be paid to a person who had not continually maintained his legal residence in Alaska. The one-year residency requirement has been replaced by simple residence (30 days) in order to correct a constitutional problem.

Section 8 amends AS 18.56.101 (1)(B), dealing with the eligibility for the one-percent veteran's interest rates, by deleting the five-year residency requirement and substituting a one-year requirement. The present law requires a person who was not a resident of Alaska at the time of entry into the service, to be a resident of Alaska for one year at the time of the date of application for a loan and also requires the applicant to have been a resident of Alaska for five years. There were constitutional problems with those requirements.

Section 9 amends AS 21.27.090 (a)(2), dealing with the qualifications for insurance agent and broker licenses, by deleting the one-year residency requirement and substituting simple residence (30 days). Presently, an individual must reside continuously in Alaska for one year immediately prior to the issuance of an agent or broker's license. There is no change in fee differential.

Section 10 amends AS 26.15.130 (a), dealing with the eligibility for veteran's loans, by deleting the five-year residency requirement and inserting a one-year requirement. To receive a loan under current law if a veteran was not a bona fide resident of the State or Territory of Alaska at the time of entry into the service, the veteran was required to have been a resident of the State or territory for five years. There was a constitutional problem with that requirement.

Section 11 amends AS 38.08.030 (a)(2), dealing with applications for the homesite entry, by deleting the three-year residency requirement and the 20-year requirement, and substituting a one-year requirement. Under current law an individual must submit proof that he/she has been a resident of Alaska for three years immediately preceding the date of application, or, that the person has been an Alaskan resident for a total of 20 years. There were constitutional problems with those requirements.

Section 12 amends AS 44.81.210 (a)(20), dealing with limited entry permit loans (CFAB), by deleting the five-year residency requirement and substituting a two-year requirement. Under current law, a person

must be a resident of Alaska for a continuous period of five years immediately preceding the date of application for the loan and who has had a crew license or commercial fishing license under AS 16.05.480 or a permit under AS 16.43.010 - 380, for any one of the past five years. That person must also have actively participated in the fishery during that period. There are constitutional problems with these requirements.

Section 13 repeals the following laws:

AS 08.54.110(2), relating to the qualifications for obtaining a registered guide license.

Action Taken:

" (2) is a resident of the state and maintains a permanent place of abode in the state," is repealed in order to correct a constitutional problem.

AS 08.54.140(2), relating to the qualifications for obtaining an assistant guide license.

Action Taken:

" (2) is a resident of the state;" is repealed in order to correct a constitutional problem.

AS 08.54.142 (a)(1), relating to the qualifications for obtaining a transporter license.

Action Taken:

"(1) is a resident of the state;" is repealed in order to correct a constitutional problem.

AS 14.54.142 (a)(1), relating to the qualifications for obtaining a registered guide license.

Action Taken:

The granting of loans based on accumulated points as determined by the length of residency in Alaska is repealed in order to correct a constitutional problem.

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AS 18.55.470 (4), relating to low-cost housing preference.

Action Taken:

In the definitions section: "(4) 'resident' means a person who has lived in the state continuously for any one year;" is repealed. The one-year requirement is probably unconstitutional. Simple residence (30 days) will apply in this section.

AS 21.27.220 (1), relating to the qualifications for issuing an insurance solicitor license.

Action Taken:

" (1) is a bona fide resident of Alaska and has been a continuous resident for at least one year immediately before issuance of a license;" is repealed in order to correct a constitutional problem.

AS 29.63.065.(d)(1), relating to the senior citizen special assessment exemption.

Action Taken:

" (1) 'resident' means a person who for 12 consecutive months has maintained his permanent place of abode in the state;" is repealed in order to correct a constitutional problem. Simple residence (30 days) will apply in this section.

AS 38.08.040 (b), relating to the issuance of homesite entry permits.

Action Taken:

" (b) If the number of applicants qualified for homesite entry exceeds the number of available homesites offered, or if several applicants apply and qualify for the same homesite, priority in award of an entry permit shall be accorded to that applicant showing proof of the longest residency in the state." is repealed in order to correct a constitutional problem.

AS 39.25.155 (g), relating to the vocational substitution program.

Action Taken:

" (9) In this section 'resident' means a person who has been domiciled in Alaska for at least one year immediately before filing his application." is repealed. The one-year requirement is probably unconstitutional. Simple residence (30 days) will apply in this section.

AS 38.05.058, the land purchase price discount program.

Action Taken :

The land purchase price discount program, which is the discount on the purchase price of land at the rate of five per cent of the purchase price for each full year that an individual is a resident of Alaska is repealed. The residency-based program is probably unconstitutional.

AS 43.26.095, (b)(3), relating to industrial tax credits.

Action Taken:

" 'resident,' at the end of the first year of tax credit, means a person who has been domiciled in Alaska for at least one year immediately before the granting of the tax credit to the business; 'resident,' at the end of the second and third year of tax credit, means a person who has been domiciled in Alaska for at least one year either immediately before the granting of the tax credit to the business." is repealed. The residency requirement is probably unconstitutional. Simple residence (30 days) will now apply in this section.

LAW OFFICES
GROSS & BURKE
A PROFESSIONAL CORPORATION
424 NORTH FRANKLIN STREET
JUNEAU, ALASKA 99801

AVRUM M. GROSS
SUSAN A. BURKE

(907) 586-2777

March 22, 1983

MEMORANDUM

TO: Honorable Mitch Abood
Chairman, House State Affairs Committee

FROM: Susan A. Burke *SAB*

RE: Residency Requirements

You have asked me to review the Alaska statutes that presently impose residency requirements and to recommend to the Committee the amendment or repeal of those residency requirements that more than likely would be held unconstitutional if challenged in court. You have also asked me to draft a statute defining "bona fide" residence. That draft is attached, along with comments.

In reviewing the residency requirements imposed under current law, I was primarily concerned with two questions -- first, whether it is constitutionally permissible to impose any kind of residency requirement having the effect of excluding nonresidents, and second where the statute imposes a durational residency requirement longer than 30 days, whether the period of residency specified is within

constitutional limits.^{1/} The statutes which contain residency provisions fall into several broad subject matter categories. Attached is a chart prepared by the Department of Law which lists all of the statutes containing residency requirements, with the statutes organized according to subject matter. The chart also includes an assessment of the constitutional problems, if any, presented by each statute. Rather than duplicate this work, I have used this chart as the basis for my review. The review will discuss the statutes listed in each subject matter category in the chart prepared by the Department of Law.

I. Residency Requirements for Eligibility to Hold Public Office

The durational residency requirements established for public office holding range from six months in the case of magistrates (AS 22.15.160(b)) to 10 years for members of the Judicial Qualifications Commission (Alaska Const. art IV, sec. 10; AS 22.30.010). Durational residency requirements for public

^{1/} In general, a person is entitled to claim residency in Alaska if the person is physically present in the state with the intent to remain here indefinitely and make a home here. With rare exceptions, a durational residency requirement will be valid only if it used as a way of testing whether the person actually has the necessary "residential" intent. For some programs, like welfare or medical care, and for fundamental rights such as voting, the state may impose only the shortest durational period necessary to make residency determinations. This period has been held to be no more than 30 days for voting and welfare. For other programs, as discussed below, a longer period of residency is permissible to require.

office holding have been challenged both in Alaska and elsewhere.^{1a/} These durational residency requirements have almost universally been upheld (even fairly lengthy ones), on the theory that they are a legitimate way to measure whether a person has sufficient knowledge of local problems and concerns to be qualified for public office and to insure that the voters have had a sufficient period of time in which to become familiar with the candidate. This same rationale would apply with equal force to durational residency requirements imposed for eligibility to serve on certain boards and commissions. While some questions

^{1a/} Gilbert v. State, 526 P.2d 1131 (Alaska 1974); Chimento v. Start, 414 U.S. 802 (1973).

might be raised as to the reasonableness of the length of residency required in a particular instance, it is probable that none would be struck down if challenged. I do not recommend that any amendments be made to these statutes.

II. Residency Requirements for Occupational Licensing

With only a few exceptions, I agree with the conclusions contained in the Department of Law's survey as to the serious constitutional problems presented by the statutes which require persons to be residents in order to be licensed to engage in certain professions. The recent Alaska Supreme Court decision in Noll v. Alaska Bar Association, 649 P.2d 241 (Alaska 1982), makes it almost certain that these requirements would be struck down if challenged. Close review of the statutes, however, suggests that in some instances, the residency requirements may have been prompted by perfectly legitimate concerns -- such as the difficulty or added expense of disciplining nonresident practitioners. Further, it appears that in some instances residency requirements may have been imposed as a "quick" way of insuring that persons who practiced certain professions in the state had some degree of "local" knowledge. After Noll, it seems likely that even though these are legitimate problems, they may not be solved by simply barring nonresidents from licensure. By the same token, there may be ways of dealing with these problems that do not raise constitutional questions. For instance, in the case of disciplining nonresidents, a higher fee could be charged to nonresidents to

offset additional costs that may be associated with disciplining nonresidents. "Local knowledge" concerns could be addressed through additional testing procedures. In any event, despite the serious constitutional problems with these statutes, it may be undesirable simply to repeal the residency requirements without providing solutions to whatever problems may be posed by granting licenses to nonresidents. The Committee might want to consider repealing the residency requirements, but having a delayed effective date until perhaps June 30 of 1984. Persons who wish to recommend alternative ways of addressing the kinds of concerns I have suggested would then have time to bring their recommendations to the legislature next year before the repeal of the residency requirements took effect.

III. Public Rights and Benefits

A. General

I agree with the Department of Law's conclusion that a one year durational residency requirement for annulment of marriage may be unconstitutional, though I would rate this as "probably" rather than "maybe" unconstitutional. The Alaska Supreme Court in 1974 struck down a one year durational requirement for obtaining a divorce. State v. Adams, 522 P.2d 1125 (Alaska 1974). The state's interests in requiring one year residence to obtain an annulment of a marriage are more than likely identical to those advanced in support of the one year requirement for divorce. The court did not find

those interests sufficiently important to justify a one year requirement for divorce. Although the Alaska Supreme Court seems to be moving toward a much less restrictive view of durational residency requirements,^{2/} it is unlikely that it would overrule its earlier decision in Adams, if the annulment statute were challenged. I would recommend that this statute be amended to require that a person simply be a resident.

I also agree with the Department's assessment of the other statutes listed in the "General" category, which impose one year durational requirements, and recommend that these statutes be amended to require that a person simply be a resident.

B. Loan and Grant Programs

The statutes governing the various loan programs impose durational residency requirements ranging from one to five years. I agree that the five year requirements are almost

^{2/} In State v. Adams, 522 P.2d 1125, 1131 (Alaska 1974), the Alaska Supreme Court stated:

. . . all such [durational residency] requirements are prima facie invalid and will be countenanced only when they serve a compelling state interest.

However, in Williams v. Zobel, 619 P.2d 448 (Alaska 1980) (permanent fund dividends), the court retreated from its earlier view in Adams, and indicated that unless the requirement affected fundamental rights (such as voting) or basic necessities of life (like welfare or medical care), the court would henceforth use a "balancing" approach to durational residency statutes. The importance of the state's interests will be weighed against the importance of the benefit denied or delayed by the durational requirement.

certainly unconstitutional.^{3/} The question is whether a durational requirement beyond 30 days would be constitutional, and if so, what is the maximum length that could be imposed within constitutional limits. Apart from public office holding, the United States Supreme Court has upheld durational residency requirements of up to one year in two cases -- eligibility for preferential resident tuition at state universities, and as a prerequisite to filing for divorce.^{4/} These cases were decided under the United States Constitution, and the Alaska Supreme Court may, and has, interpreted the Alaska Constitution in similar cases as imposing stricter requirements.^{5/} As noted above, the Alaska Supreme Court has until recently maintained the view that any durational residency requirement will be struck down unless the state can demonstrate that the requirement is necessary to further a compelling state interest. This is an extremely difficult burden to meet, and except in very rare instances it is an impossible burden. Because it appears that the Alaska court

^{3/} A different question is presented by the five year local mining experience requirement for mining loans under AS 27.09.020. This may be a permissible requirement, particularly if it is demonstrated that it does not operate as a practical matter to exclude persons who are currently residents, but who gained their Alaska mining experience as nonresidents.

^{4/} Vlandis v. Kline, 412 U.S. 441 (1973) (university tuition); Sosna v. Iowa, 419 U.S. 393 (1975) (divorce).

^{5/} For example, the Alaska court struck down a one-year residency requirement for divorce under the Alaska constitution, State v. Adams, 522 P.2d 1125 (Alaska 1974). One year later the U.S. Supreme Court upheld an identical requirement in Iowa's statute. Sosna v. Iowa, supra, note 4.

is moving toward a less restrictive approach toward durational residency, our court would probably uphold durational residency requirements of reasonable length for loan programs.

Under this less restrictive approach, the Alaska Court would balance the state's interests in imposing a durational residency requirement for a state loan against the importance of the challenger's interest in obtaining a loan before the requirement had been met. In the case of the loan programs, the state's interest is in assuring that state funds are not used to benefit nonresidents. Since resident status depends in large part on a person's state of mind, it is extremely difficult to know with certainty whether a recent arrival in fact has the requisite "residential" intent, and it is extremely difficult to disprove a false claim of residency. Further, it is costly to require the state to make individualized determinations of residency. There are in most instances alternative sources of loan funds through commercial lenders, and it is likely that our court would find that the state's interest in assuring that its benefits are not granted to persons who are not bona fide Alaska residents outweigh the slight inconvenience that a newly arrived resident might suffer by having to wait for some period of time in order to qualify for a state loan.

A more difficult question is what period of residency would be permissible. The state is currently in litigation in the Federal District Court in Alaska, defending the two

year durational residency requirement under the student loan program. The state has argued that the two year requirement is reasonable in light of the transience of student populations, the generous loan amounts under the Alaska program and the fact that there is no requirement that the loan funds be used at an Alaska institution. The plaintiff in that case has conceded that a one year requirement would be reasonable. Assuming the Alaska Supreme Court continues in its present trend in durational residency cases, a one year durational residency requirement for the loan programs would more than likely be upheld.^{6/} A two year requirement might be upheld, but it carries a much higher risk of being struck down than would a one year requirement. The Committee may want to defer proposing any amendments to the two year residency requirement for student loans until the pending litigation is resolved. The Committee may also want to defer action on the other loan programs until after the Alaska Supreme Court renders its decision on the one year residency requirement for participation in the Kenai land disposal lottery (Gilman v. Martin). That decision may provide some indication as to how our court would rule on a one year residency requirement for state loans.

^{6/} The one loan program for which a one year residency requirement would most likely not be upheld is the AHFC program for home mortgages -- at least as long as there continues to be a requirement that the loans will be made only for owner-occupied dwellings. As has been noted earlier in this memorandum, with rare exceptions, durational residency requirements may be used only as a way of measuring whether a person has the intent to remain in the state and make his or her home there. Purchasing a dwelling under a loan program requiring owner occupancy as a condition of the loan is such a strong indication that a person's claimed residential intent actually exists, that a court would most likely find that there was no valid state purpose in imposing an additional one year residency requirement.

I would, however, recommend that the sliding scale preference for accepting student loan applications that is based on years of residency be repealed, even though it has apparently never been applied. This provision is so similar to the dividend plan struck down in Zobel v. Williams that it is virtually certain to be struck down on the same constitutional grounds. On the other hand, the provisions of AS 14.40.763(j), providing for graduated forgiveness of portions of student loans based on continued residence in Alaska after graduation seem to be based on an entirely different rationale. Those provisions are not based on past residency, but seek to affect future behavior. Providing graduated loan forgiveness seems closely tied to the purpose of encouraging students to return to or remain in Alaska after they have received their educations. I believe that that provision would most likely be upheld if it were to be challenged, and that there is no need to repeal it because of constitutional vulnerability.

C. Land Disposal Programs

As mentioned above, the Alaska Supreme Court now has under consideration a case in which the Kenai land disposal program has been challenged. (Gilman v. Martin.) The Kenai ordinances governing its program are almost identical to the state's land lottery provisions in AS 38.05.057 and AS 38.05.058. Thus, the decision in Gilman will almost

certainly answer any constitutional questions that might be raised concerning the state's program. I agree with the assessment of the constitutional problems with these statutes contained in the Department of Law's chart. I believe that a one year residency requirement to participate in either the land lottery or the homesite entry program would probably be upheld. I have serious doubts about the constitutionality of the provision under which discounts of the purchase price are granted based on years of residency in the state. The committee may, however, wish to defer proposing amendments to this provision until after the decision in Gilman is rendered, since the residency based discounts are also at issue in that case.

D. Special Old Age Programs

I also agree with the assessment made by the Department of Law as to the durational residency requirements contained in the programs providing benefits or preferences to older residents of the state. With respect to the one year residency requirement for the senior citizen special assessment exemption under AS 29.63.065(d)(1), I have doubts about whether that requirement would be upheld, for the same reasons I outlined concerning a one year residency requirement for AHFC loans in footnote 6, above. A one year requirement for the senior citizen exemption from the fishing license requirement would probably be upheld; a 30 year requirement is clearly unconstitutional.

I also agree that the residency requirements for the longevity bonus are almost certainly unconstitutional. There are arguments that could be made in defense of the Pioneers' Home residency provisions, but it is far from certain that those requirements would be upheld. (The arguments in support of the Pioneers' Home residency requirements are contained in the November 26, 1982 opinion by Wilson Condon, a copy of which is among the Committee's files.) However, any recommendation as to how the residency requirements for these two programs might be amended to meet constitutional requirements necessarily has tremendous fiscal implications. The residency questions in these two programs are so intertwined with the structure and operation of the programs, that they cannot be dealt with separately, but can be addressed only as part of a total structural and operational review of those programs. That kind of review is, as I understand it, beyond the scope of the work that the Committee has asked me to perform.

SAB:yw

A

Amend AS 08.04.260 to read:

If an applicant for a certificate as a certified public accountant meets all the requirements for a certificate and the applicant's application is pending or if an applicant meets all the requirements for a certificate except [THE RESIDENCE REQUIREMENT, OR] the requirement that the applicant has a place of business in the state or be an employee regularly employed in this state, the board may issue a temporary certificate as a certified public accountant. This certificate is effective until the board notifies the applicant that the applicant's application has been granted or rejected. A temporary certificate is effective for a period not exceeding six months. No fee may be charged for the issuance of a temporary certificate.

Amend AS 08.42.050(a) (4) to read:

Have completed at least one year of apprenticeship as a [RESIDENT] trainee under a licensed embalmer.

Amend AS 08.42.110(4) to read:

"[RESIDENT] trainee" means a person who has met the qualifications set out in AS 08.42.050(a)(1) and (2) and is engaged in learning the practice of embalming under the direction and control of a person properly licensed to practice embalming, or a person who has met the qualifications set out in AS 08.42.050(b)(1) and (2) and is engaged in learning the practice of funeral directing

under the direction and control of a person properly licensed to practice funeral directing.

AS 08.24.110(1) and AS 08.54.240(3) are repealed.

Amend AS 26.10.080(d)(1)(B) to read:

Who, not being a bona fide resident of the territory or the state at the time of entry into the service, had been a resident of the territory or state for at least one year at the time of death [AND HAD BEEN A RESIDENT OF THE TERRITORY OR STATE FOR AT LEAST FIVE YEARS]; and

Make Section 8 consistent with HB 302.

I. REQUEST

Bill/Resolution No.: HB 323
 Title: Act Re: Residency
 Sponsor: House State Affairs Committee
 Requestor: House State Affairs Committee

II. FISCAL DETAIL

Agency Affected: Education
 Program Category Affected: Postsecondary Comm.
 BRU, Program of Subprogram(s) Affected: Student Loan Program

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING						

CAPITAL	N.A.	-0-	-0-	-0-	-0-	-0-
---------	------	-----	-----	-----	-----	-----

REVENUE	N.A.	-0-	-0-	-0-	-0-	-0-
---------	------	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND	N.A.	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Kerry D. Romesburg
 Division: Commission on Postsecondary Education

Phone: 465-2854
 Date: 4/6/83

Approved by Commissioner: _____
 Department: _____

Date: _____

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
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STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 323
 Title: Relating to Residency
 Sponsor: State Affairs
 Requestor: State Affairs

II. FISCAL DETAIL

Agency Affected: Revenue
 Program Category Affected: Econ Devel
 BRU, Program of Subprogram(s) Affected: Alaska Housing Finance Corporation

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-					
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-					
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

No fiscal impact

IV. ANALYSIS: Attach a separate page for any Analysis - See Attached

Prepared By: [Signature] Phone: 276-5599
 Division: Alaska Housing Finance Corporation Date: April 12, 1983
 Approved by Commissioner: Joseph K. Donohue Date: 4/15/83
 Department: Revenue

Distribution:

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I. REQUEST

Bill/Resolution No: HB 323
Title: Residency & Residency Requirements
Sponsor: House State Affairs
Requestor: House State Affairs

II. FISCAL DETAIL

Agency Affected: Revenue
Program Category Affected: Coll. & Mgt.
BRU, Program of Subprogram(s) Affected: Administration & Support

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	1.0	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 COMMODITIES	-	3.0	1.3	1.4	1.5	-
500 EQUIPMENT	-	2.0	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS, ETC.	-	-	-	-	-	-
TOTAL OPERATING	-0-	6.0	1.3	1.4	1.5	-

CAPITAL	-	-	-	-	-	-
---------	---	---	---	---	---	---

REVENUE	-	-	-	-	-	-
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	6.0	1.3	1.4	1.5	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (Specify Source)	-	-	-	-	-	-
Sport Fish Fund	-0-	(18.2)	(38.5)	(40.8)	(43.4)	-
Game Fund	-	(14.1)	(30.0)	(31.8)	(33.6)	-

POSITIONS:

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

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis.

Prepared By: Cecilia A. Wagener
Division: Public Services

Phone: 465-2376
Date: 4/13/83

Approved by Commissioner: Robert D. Heath
Department: Revenue

Date: 4/14/83

Distribution:

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IV. ANALYSIS (HB 323) Page 2 of 2

Three thousand is needed to initially design and print applications and the permanent I.D. card and to order enough laminating jackets for the fiscal year. Each subsequent fiscal year, we will have the cost of additional laminating jackets. The equipment cost is for three laminating machines; one for the Public Services Counter in Anchorage, one for Fairbanks, and one for Juneau. The travel expenditure is for the Records & Licensing Supervisor to go to Anchorage and Fairbanks and instruct the counter employees.

According to data received from the Department of Labor and the Committee for Older Alaskans, the percentage rate of senior citizens in our state is fairly stable from year to year.

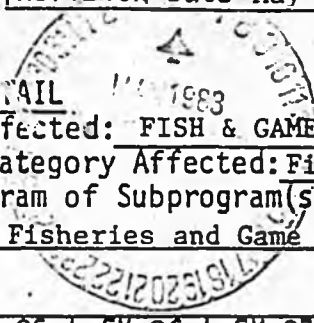
Using FY 82 as the base, it is estimated that there will be a six percent increase in resident sales every year. It is also estimated that three percent of the resident sales are sold to residents sixty years or older.

We are recommending that this bill be amended to include an effective date of January 1, 1984, because license changes traditionally take place at the beginning of a calendar year. If implemented in the middle of the year, some licensees who could be eligible would have already purchased their license. Middle of the year implementation would also require special printing and mailing costs. Time is also needed to properly inform the public of the new law so that all who are eligible can apply.

Assuming that the bill goes into effect 1/1/84, there will be no effect in FY 83. There will be losses to both the Sport Fish and Game Funds in each subsequent fiscal year. FY 84 has a much smaller loss because only half of the fiscal year will be effected.

STATE OF ALASKA
FISCAL NOTE

Revision Date May 2, 1983



I. REQUEST

Bill/Resolution No.: CS HB 323
 Title: "Residency & Residency Requirements"
 Sponsor: State Affairs Committee
 Requestor: House Judiciary Committee

II. FISCAL DETAIL

Agency Affected: FISH & GAME
 Program Category Affected: Fisheries & Game
 BRU, Program of Subprogram(s) Affected: Sport Fisheries and Game

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING						
CAPITAL						
REVENUE	-0-	(80.6)	(88.0)	(95.5)		

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

General Fund - in light of declining General Fund revenue, this may be very difficult.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Beverly Reaume *Beverly Reaume* Phone: 465-4120
 Division: Administration *Don W. Collinsworth* Date: May 2, 1983
 Approved by Commissioner: Don W. Collinsworth Date: 5-2-83
 Department: FISH & GAME

Distribution:

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- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
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CS HB 323 Addendum

The 1980 Census showed 19,640 Alaskans ages 60 and over. It also showed 32,260 Alaskans aged 55 and over. Assuming the age spread is even, 2524 Alaskans will reach age 60 each year between 1980 and 1985. Population estimates adding the Alaskans reaching 60 and an overall 5% population growth would be as follows:

FY 84	28,573
FY 85	31,223
FY 86	33,873

Using a conservative estimate, assume that 15% of the population fishes and 11% hunts, we would forego the following revenue.

	<u>Sport Fish</u> \$10. license	<u>Game</u> \$12. license
FY 84	42.9	37.7
FY 85	46.8	41.2
FY 86	50.8	44.7

COMMITTEE REPORT

4/20

HOUSE

JUDICIARY

(7)

FURTHER:

Final 4/20

4/5/83

Date:

4-19-83

Mr. Speaker:

The Committee on STATE AFFAIRS has had HB 323

An Act relating to residency and residency requirements; and providing for an effective date.

under consideration and reports it back as follows:

do pass do not pass

do pass with attached amendments(s)

replace with CS for HB 323 (SA) same title new title

and recommends _____

AND attaches a "Letter of Intent" New Fiscal Note Sept 43

reports it back without recommendation Zero Fiscal Note Attached

referred to the Finance Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

[Signature]
John J. Cauden
Walt Furnace
Ronald J. [Signature]

[Signature] N.D. REC

[Signature]
CHAIRMAN

H B

3 2 4

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: HB 324
 Title: "Act making it unlawful to tape-record"
 Sponsor: House Judiciary
 Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Public Safety
 Program Category Affected: Crime ID
 BRU, Program of Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING			-0-	-0-	-0-	
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis No fiscal impact anticipated

Prepared By: Paul A. Conger Phone: 465-4338
 Division: Administrative Services Date: _____
 Approved by Commissioner: [Signature] Date: 4/25/83
 Department: Public Safety

Distribution:

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STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY
OFFICE OF THE COMMISSIONER

Gregory Reinal
BILL SHEFFIELD, GOVERNOR

POUCH N
JUNEAU, ALASKA 99811
PHONE: 465-4322

April 27, 1983

The Honorable Charlie Bussell
Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811



Dear Representative Bussell:

The Department of Public Safety is opposed to HB 324, as written, for the following reasons:

As proposed, House Bill 324 would eliminate the ability of any police department to record a conversation without a search warrant. This would include the 911 emergency lines which come into police departments throughout this state. To first stop a caller to advise them that they are being tape recorded is both disruptive and may cause the caller to lose their train of thought. Most of these calls are an emergency. The reason the calls are recorded is to be able to supervise the manner in which the call was handled, respond to citizens complaints when they feel the dispatchers were rude, and to re-check addresses and phone numbers in the event that they were mis-written by the dispatcher. They are also used as evidence in court for filing false reports (hoax phone calls) or an individual making threatening or terroristic comments.

It appears that if a person is contacted by phone, is threatened, bribed, or is harassed with an obscene phone call, the call cannot be recorded. Certainly, none other than the intended call recipient may listen to a phone call or radio message. The impact on a potential kidnapping or hostage situation is obvious, additionally, it would appear that under the language of AS 42.20.300(b) that even if the call is not recorded, the conversation cannot be divulged without the authorization of all parties.

The Honorable
Charlie Bussell

- 2 -

April 27, 1983

In section 42.20.310(1), the police are prohibited from using an eaves dropping device without the consent of all parties. This would eliminate our use of video recording for drunk drivers. It would eliminate the use of recording devices during interrogation.

The courts throughout the United States have ruled that persons that speak to Police Officers have no right to an expectation of privacy. The best evidence as to the conversation which occurred is a tape recording.

Our officers are often accused of soliciting bribes or abusing suspects. Suspects often state that they have not fully been advised of their rights. If a tape recording of this conversation was made this evidence can be presented to the jury for their determination. Without this type of evidence it's one person's word against another's.

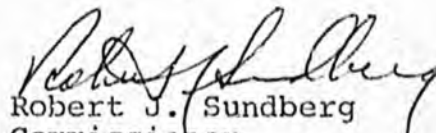
Recently a case was made in another jurisdiction which made the national news. In this particular case an individual had been harassed by his fiancée's ex-husband. Because of this harassment he hid a tape recorder on his person when the ex-husband was coming to visit his child. The ex-husband killed the man and his fiancée. Due to the tape recorder running, the entire murder was recorded and was used against the suspect. This bill would prohibit that from occurring.

The Alaska Supreme Court has strongly suggested that all confessions be recorded. This is to provide proof beyond a doubt that the individual made the statement voluntarily after being fully advised of his rights by the police.

We feel that the best evidence should be presented before a court of law to allow jurors to make the proper decision regarding any accusations. The best evidence may well be retained on electronic memory.

We do not feel that the police abuse the use of electronic recording equipment and we feel that the present law is adequate to protect the rights of the citizens.

Sincerely,


Robert J. Sundberg
Commissioner

H B

3 2 6

Queen of N., Inc. v. LeGrue, Sup. Ct. Op. No. 1670 (File No. 3512), 582 P.2d 144 (1978).

The effect of a valid confirmation order is to insulate the sale procedure from subsequent challenge based upon a mere irregularity in the conduct of the sale, e.g. that the conduct of the sale did not comply with AS 09.35.160. Lunsford v. Kaiser Gypsum Co., Sup. Ct. Op. No. 961 (File No. 1915), 516 P.2d 151 (1973).

Failure to list liquor license in public notice of sale and failure to sell license as directed by decree of foreclosure constitute a substantial irregularity in the

sale for purposes of this section. Queen of N., Inc. v. LeGrue, Sup. Ct. Op. No. 1670 (File No. 3512), 582 P.2d 144 (1978).

Burden of proving commercial reasonableness of a sale was on the secured party, especially where the creditor purchased the property. Queen of N., Inc. v. LeGrue, Sup. Ct. Op. No. 1670 (File No. 3512), 582 P.2d 144 (1978).

This section specifies no standard for appellate review of a trial court confirmation of sale. Queen of N., Inc. v. LeGrue, Sup. Ct. Op. No. 1670 (File No. 3512), 582 P.2d 144 (1978).

Chapter 38. Alaska Exemptions Act.

Section

- 10. Homestead exemption
- 15. Property exempt without limitation
- 20. Exemptions of personal property subject to value limitations
- 25. Exemption of unmaturing life insurance and annuity contracts
- 30. Exemption of earnings and liquid assets
- 35. Continuing lien on wages
- 40. Priorities between continuing liens
- 45. Effective date of continuing lien
- 50. Increased exemption amount
- 55. Bankruptcy proceedings
- 60. Tracing exempt property
- 65. Claims enforceable against exempt property
- 70. Limitation on enforcement of certain security interests in exempt goods

Section

- 75. Special procedures relating to limited value exemptions
- 80. Procedures applicable to a levy on property of an individual
- 85. Contents of notice
- 90. Assertion of rights by another
- 95. Judicial relief
- 100. Debtor's property owned with another
- 105. Waiver of exemption
- 110. Federal requirements
- 115. Adjustment of dollar amounts
- 120. Protection of property of residents and nonresidents
- 500. Definitions
- 510. Short title

Cross references. — For general provisions concerning execution, see AS 09.35.

Editor's notes. — Section 1, ch. 62, SLA 1982, provides: "It is the intent of the legislature to modernize the procedures for execution on a judgment and to afford to a judgment debtor adequate protection of the debtor's personal property and income necessary to provide for the debtor's own needs and the needs of the debtor's dependents while remaining independent of further public assistance."

Section 15, ch. 62, SLA 1982, provides: "All writs of execution, claims of exemption, sales, confirmations of sales, rights of redemption and priorities of redemption issued or filed under any law repealed under this Act and in full force and effect on the effective date of this Act [August 26, 1982], shall remain in full force and effect for the term issued or until revoked, vacated, or modified under the provisions of this Act."

Sec. 09.38.010. Hort...
tled to an exemption a...
property in this state u...
or the dependents of th...
exemption may not exc...

(b) If property owned...
more individual owner...
dence, each owner is en...
interest in the property...
value of multiple home...
single living unit may r...
of property exempt as a...
individual owner may...
portion of \$27,000.

(c) If property that in...
the sale becomes effecti...
court shall enter the or...
the sale, the individual...
the court extends the t...
motion by a party in int...
including that individ...
confirmation by paying...
of either (1) the differ...
the exemption in the pr...
If the individual does...
subsection, the clerk o...
mined to be exempt to...
balance less the cost o...
collecting an amount...
repurchase of property...
creditor or the creditor...
property repurchased.

(d) Upon entry of the...
and expiration of the ti...
a deed to the property...
convey all title of the i...
at the sale. (§ 2 ch 62)

Cross references. — F...
exempting homestead held...
the entirety from execution o...

Sec. 09.38.010. Homestead exemption. (a) An individual is entitled to an exemption as a homestead of the individual's interest in property in this state used as the principal residence of that individual or the dependents of that individual, but the value of the homestead exemption may not exceed \$27,000.

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

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

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

Cross references. — For provisions exempting homestead held by tenants by the entirety from execution on debts to the value specified under subsection (b) of this section, see AS 34.15.140(b).

NOTES TO DECISIONS

Construction of former statute, providing for rural and urban homesteads. — See Dalton v. Interior Credit Bureau, Inc., Sup. Ct. Op. No. 2158 (File No. 4265), 615 P.2d 631 (1980).

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

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

- (1) a burial plot for the individual and the individual's family;
- (2) health aids reasonably necessary to enable the individual or a dependent to work or to sustain health;
- (3) benefits paid or payable for medical, surgical, or hospital care to the extent they are or will be used to pay for the care;
- (4) an award under AS 13.67 (Violent Crimes Compensation Board) or a crime victim's reparations Act of another jurisdiction;
- ~~(5) benefits paid or payable as a longevity bonus under AS 47.45;~~
- ~~(6) compensation or benefits paid or payable and exempt under federal law;~~
- ~~(7) liquor licenses granted under AS 04;~~
- (8) limited entry permits granted under AS 16.43, except as provided in that chapter.

(b) The right to benefits held by the state on behalf of an individual which may become payable by reason of disability, unemployment or illness, amounts held in the teachers' or public employees' retirement system, and child support collections made by the child support enforcement agency are exempt.

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

(d) Real property held by a cemetery association established under AS 10.30 for the purpose of a cemetery and not exceeding 80 acres is exempt. (§ 2 ch 62 SLA 1982)

Cross references. — As to the applicability of the exemptions from execution in income assignment orders for child support, see AS 09.65.132(g). For provisions exempting teachers' retirement salaries and certain other amounts from garnishment, execution or levy, see AS 14.25.200. For provisions exempting unemployment compensation benefits from levy to enforce collection of a debt, see AS 23.20.405(e). For provisions exempting workers' compensation benefits from levy to enforce the collection of a debt, see AS 23.30.160(b). For provisions exempting amounts held in the public employee pen-

sion fund and public employee retirement benefits from levy to enforce the collection of a debt, see AS 39.35.500(b). For provisions exempting longevity bonuses from levy to enforce collection of a debt, see AS 47.45.120(b). As to applicability of the exemptions from execution in proceedings to enforce payment of child support, see AS 47.23.250.

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

NOTES

Legislative intent as to liquor licenses. — Former AS 09.35.087 (see note (a)(7) of this section) indicated an overall legislative intent that one general creditor of a liquor license holder should not be allowed to place himself in a preferred position over other general creditors. Cf. Inc. v. Brown, Sup. Ct. Op. No. 1569 (File No. 2781), 574 P.2d 1274 (1978).

Liquor licenses not exempted from coverage under Article 9 of the

Sec. 09.38.020. Exemptions value limitations. (a) An individual property not to exceed an aggregate value of the following categories:

- (1) household goods and wear one household;
- (2) if reasonably held for the dependent, books and musical instruments;
- (3) family portraits and heirlooms of the individual.

(b) An individual is entitled to \$500 in aggregate value, if held for the individual or a dependent.

(c) An individual is entitled to \$500 in aggregate value, of implements, tools, and trade.

(d) An individual is entitled to a value not exceeding \$500.

(e) An individual is entitled to a value not exceeding \$10,000, if the vehicle does not exceed \$10,000.

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 09.38.020.

NOTES TO

Editor's notes. — Gutterman v. First Nat'l Bank, Sup. Ct. Op. No. 1876 (File No. 3996), 597 P.2d 969 (1979), was decided under former AS 09.35.080.

Liberal construction. — Exemption laws are remedial in character and should be liberally construed in favor of the debtor. Gutterman v. First Nat'l Bank, Sup. Ct. Op. No. 1876 (File No. 3996), 597 P.2d 969 (1979).

NOTES TO DECISIONS

Legislative intent as to liquor licenses. — Former AS 09.35.087 [see now (a)(7) of this section] indicated an overall legislative intent that one general creditor of a liquor license holder should not be allowed to place himself in a preferred position over other general creditors. *C.Y., Inc. v. Brown*, Sup. Ct. Op. No. 1569 (File No. 2781), 574 P.2d 1274 (1978).

Liquor licenses not exempted from coverage under Article 9 of the

Uniform Commercial Code (AS 45.09). — See *Gibson v. Alaska Alcoholic Beverage Control Bd.*, 377 F. Supp. 151 (D. Alas. 1974), decided under former AS 09.35.087.

As to immunity of real property of University of Alaska from lien attachment or foreclosure, see *University of Alaska v. Simpson Bldg. Supply Co.*, Sup. Ct. Op. No. 1113 (File No. 2196), 530 P.2d 1317 (1975), decided under former AS 09.35.080.

Sec. 09.38.020. Exemptions of personal property subject to value limitations. (a) An individual is entitled to an exemption in property not to exceed an aggregate value of \$1,500 chosen by the individual from the following categories of property:

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

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

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

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

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

(d) An individual is entitled to the exemption of pets to the extent of a value not exceeding \$500.

(e) An individual is entitled to an exemption of one motor vehicle to the extent of a value not exceeding \$1,500 if the full value of the motor vehicle does not exceed \$10,000. (§ 2 ch 62 SLA 1982)

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity

with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

NOTES TO DECISIONS

Editor's notes. — *Guterman v. First Nat'l Bank*, Sup. Ct. Op. No. 1876 (File No. 3996), 597 P.2d 969 (1979), was decided under former AS 09.35.080.

Liberal construction. — Exemption laws are remedial in character and should be liberally construed in favor of the debtor. *Guterman v. First Nat'l Bank*, Sup. Ct. Op. No. 1876 (File No. 3996), 597 P.2d 969 (1979).

Exemption statute should not be interpreted in a way which completely eliminates a debtor's exemption rights in an item of property within an exempt category because that item's value exceeds the statutory allowance. *Guterman v. First Nat'l Bank*, Sup. Ct. Op. No. 1876 (File No. 3996), 597 P.2d 969 (1979).

Purpose of personal and household property exemptions. — Personal and

household property exemptions are designed to ensure that debtors will have necessary items for living in reasonable comfort and for earning a living. *Gutterman v. First Nat'l Bank, Sup. Ct. Op. No. 1876 (File No. 3996), 597 P.2d 969 (1979).*

The proceeds of exempt property are exempt to the debtor for a reasonable time, to enable him to invest the money in other exempt property. *Gutterman v. First Nat'l Bank, Sup. Ct. Op. No. 1876 (File No. 3996), 597 P.2d 969 (1979).*

Sec. 09.38.025. Exemption of unmaturred life insurance and annuity contracts. (a) Except as provided in this section, an individual is entitled to exemption of unmaturred life insurance and annuity contracts owned by the individual. If the contracts have accrued dividends and loan values available to the individual aggregating more than \$5,000, a creditor may obtain a court order requiring the individual debtor to pay the creditor, and authorizing the creditor on the debtor's behalf to obtain payment of, the amount of the accrued dividends and loan values in excess of \$5,000 or the amount of the creditor's claim, whichever is less.

(b) A judgment creditor or other claimant of an insurer may not levy upon any of the assets or securities held in this state as a deposit for the protection of the insurer's policyholders or policyholders and creditors. Deposits under AS 21.09.270 may be levied upon if provided in the order of the director of insurance, Department of Commerce and Economic Development, under which the deposit is made. (§ 2 ch 62 SLA 1982)

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58. SLA 1982.

Sec. 09.38.030. Exemption of earnings and liquid assets. (a) Except as provided in (b) and (c) of this section and AS 09.38.050, an individual debtor is entitled to an exemption of the individual debtor's weekly net earnings not to exceed \$175. The weekly net earnings of an individual are determined by subtracting from the weekly gross earnings all sums required by law or court order to be withheld. The weekly net earnings of an individual paid on a monthly basis are determined by subtracting from the monthly gross earnings of the individual all sums required by law or court order to be withheld and dividing the remainder by 4.3. The weekly net earnings of an individual paid on a semi-monthly basis are determined by subtracting from the semi-monthly gross earnings all sums required by law or court order to be withheld and dividing the remainder by 2.17.

~~(b) An individual who does not receive earnings either weekly, semi-monthly or monthly is entitled to a maximum exemption for the aggregate value of cash and other liquid assets available in any month of \$700, except as provided in AS 09.38.050. The term "liquid assets" includes deposits, securities, notes, drafts, accrued vacation pay, refunds, prepayments, and receivables.~~

(c) A creditor may garnish the wages of a debtor in this section if the creditor has a (1) enforceable agreement or

(2) enforceable judgment under Article XIII of the Alaska Constitution.

(d) If the individual debtor is a minor, the garnishment imposed upon the individual shall be terminated.

(e) The following property is exempt from garnishment under AS 09.38.015, upon request of the individual, shall be exempt from the assets under this section:

(1) benefits paid by a life insurance policy;

(2) money or property held in trust for the individual;

(3) proceeds of insurance or annuity contracts, or other rights accruing as a result of a wrongful death or bodily injury to an individual was or is a dependent of the individual;

(4) proceeds or benefits from a pension plan, or if the individual was a participant in the plan;

(5) amounts paid under a health, disability, or similar plan of insurance, or similar plan of insurance, illness, disability, or death benefits.

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns.

Sec. 09.38.035. Garnishment of earnings. (a) If a garnishee is a defendant is employed by a garnishee as reflected on the writ of attachment due at the time of service of the writ, the garnishee is exempt from garnishment of the defendant's subsequent nonexempt earnings in the amount stated on the writ of attachment. If the relationship is terminated, modified, or satisfied in whole or in part, the writ of attachment may be modified or satisfied in whole or in part.

(b) A garnishee shall not be liable for the defendant subject to the writ of attachment may be garnished after the writ of attachment has been served on the garnishee.

~~(b)~~ A creditor may levy upon earnings exempt under (a) and (b) of this section if the creditor's claim is

(1) enforceable against exempt property under AS 09.38.065(a)(1);

or

(2) enforceable under an order of a court of bankruptcy under chapter XIII of the Bankruptcy Act (11 U.S.C., sec. 1301 et seq.).

~~(c)~~ If the individual debtor is a nonresident, the limitations on garnishment imposed under 15 U.S.C. 1673 apply.

~~(d)~~ The following property, unless exempt without limitation under AS 09.38.015, ~~upon receipt by and while it is in the possession of the individual, shall be treated as earnings, income, cash, or other liquid assets under this section:~~

- (1) benefits paid by reason of disability, illness, or unemployment;
- (2) money or property received for alimony or separate maintenance;
- (3) proceeds of insurance, a judgment, or a settlement, or other rights accruing as a result of bodily injury of the individual or of the wrongful death or bodily injury of another individual of whom the individual was or is a dependent;
- (4) proceeds or benefits paid or payable on the death of an insured, if the individual was the spouse or a dependent of the insured; and
- (5) amounts paid under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract, providing benefits by reason of age, illness, disability, or length of service. (§ 2 ch 62 SLA 1982)

Editor's notes. — This section was with AS 01.05.031(c) and § 4, Chapter 58, redrafted by the revisor of statutes to SLA 1982. remove personal pronouns in conformity

Sec. 09.38.035. Continuing lien on wages. (a) In the case of a garnishment of earnings, when the garnishee's answer reflects that the defendant is employed by the garnishee, the judgment or balance due as reflected on the writ of garnishment shall become a lien on earnings due at the time of service of the writ to the extent that they are not exempt from garnishment, and that lien shall continue as to subsequent nonexempt earnings until the total subject to the lien equals the amount stated on the writ of garnishment, except that the lien on subsequent earnings shall terminate sooner if the employment relationship is terminated, if the underlying judgment is vacated, modified, or satisfied in full, or if the writ is dismissed.

(b) A garnishee shall pay into court all nonexempt earnings of the defendant subject to the continuing lien under (a) of this section. Accrued interest on the judgment or balance due as reflected on the writ of attachment may be garnished under a supplemental writ of garnishment after the principal amount stated on the original writ of garnishment has been paid. (§ 2 ch 62 SLA 1982)

Sec. 09.38.055. Bankruptcy proceedings. In a proceeding under the Bankruptcy Act (11 U.S.C.) only the exemptions under AS 09.38.010, 09.38.015(a), 09.38.020, 09.38.025 and 09.38.030 apply. (§ 2 ch 62 SLA 1982)

Sec. 09.38.060. Tracing exempt property. (a) If property, or a part of it, that could have been claimed as an exempt homestead under AS 09.38.010, a burial plot under AS 09.38.015(a)(1), a health aid under AS 09.38.015(a)(2), or personal property subject to a value limitation under AS 09.38.020(a)(1), (2) or 09.38.020(c), has been taken or sold by condemnation, or has been lost, damaged, or destroyed and the owner has been indemnified for it, the individual is entitled to an exemption of proceeds that are traceable for ~~12~~¹⁸ months after the proceeds are received. An individual is entitled to an exemption of proceeds from the voluntary sale of an exempt homestead under AS 09.38.010 that are traceable for ~~one~~^{three} months after the proceeds are received. The exemption of proceeds under this subsection does not entitle the individual to claim an aggregate exemption in excess of the value limitation otherwise allowable under AS 09.38.010 or 09.38.020.

~~(b) Money or other property and proceeds exempt under this chapter are traceable under this section by application of the principle of first in first out, last in first out, or any other reasonable basis for tracing selected by the individual claiming the exemption. (§ 2 ch 62 SLA 1982)~~

Sec. 09.38.065. Claims enforceable against exempt property.

(a) Notwithstanding other provisions of this chapter,

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

(A) child support;

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

(C) state or local taxes; and

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

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

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

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

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

~~(c) A creditor having a claim enforceable under (a) of this section against exempt property, before, at the time of, or a reasonable time after making a levy on property of an individual, shall serve on the individual a notice of the levy and of the basis for the creditor's right to make a levy on exempt property. (§ 2 ch 62 SLA 1982)~~

~~Sec. 09.38.070. Limitation on enforcement of certain security interests in exempt goods. (a) This section applies to a security interest, except a purchase-money security interest, or a security interest in a motor vehicle, in an item of goods (1) possessed by an individual, (2) being used by that individual or a dependent, and (3) exempt under AS 09.38.020(a) (d).~~

~~(b) Unless the individual, after receiving written notice of the individual's rights under this section, voluntarily surrenders to the secured creditor possession of an item of goods to which this section applies, the creditor may not take possession of the item or otherwise enforce the security interest according to its terms without an order or process of court.~~

~~(c) The court may order or authorize process respecting any item of goods to which this section applies only after a hearing, upon notice to the individual of the hearing and of the individual's rights at it. The notice shall be as directed by the court. The order or authorization may prescribe appropriate conditions as to payments upon the debt secured or otherwise. The court may not order or authorize process respecting the item if it finds upon the hearing both that the individual lacks the means to pay all or part of the debt secured and that continued possession or use of the item is necessary to avoid undue hardship for the individual or a dependent.~~

~~(d) The court, upon application of the creditor or the individual and notice to the other and after a hearing and finding of changed circumstances, may vacate or modify an order or authorization under this section. (§ 2 ch 62 SLA 1982)~~

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

~~Sec. 09.38.075. Special procedures relating to limited value exemptions. (a) Unless a creditor is seeking collection of a claim enforceable against exempt property under AS 09.38.065, the creditor may obtain a levy on an individual's property of a kind listed in AS 09.38.020 only by complying with this section. Before levy, the creditor shall file with the court out of which the process issues~~

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

(2) a request for an order (A) of the creditor's claim as nonexempt,

(B) of the individual's right to levy by filing with the clerk of the court, but not exceeding 10 days after the written objection to the property, for the objection and of the setting its value,

(C) of the possible consequences provided in (c) of this section

(D) of the information received under (b) Notice of an order issued under this section, together with the individual. The order shall not encumbering, damaging, or otherwise affecting the property in AS 09.38.020 for 30 days. If the order reduces, extends, or otherwise affects the 30-day period.

(c) If exemption of property is granted under (b) of this section, the order shall describe the property in the amount of any indebtedness within the time allowed by the notice served under (b) of this section. If the debtor has nonexempt property, the court may order the individual to appear and disclose the location, and value of the individual's nonexempt property. If the individual waives objection to the order, the court may order the individual to appear and disclose the location, and value of the individual's nonexempt property.

(d) Except to the extent that AS 09.38.080(e) governs a procedure in respect to a claim to exempt property,

(e) Costs incurred in making a sale of property of a kind listed in AS 09.38.020 are insufficient to cover the costs of a sale of property of that kind under this section, the creditor may recover them from the individual, or other parties to the contrary.

(f) The burden of proving the exemption of the property is on the creditor. The burden of proving the preponderance of the evidence is on the creditor. (§ 2 ch 62 SLA 1982)

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

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

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

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

~~(C) of the possible consequences of failure to respond to the notice as provided in (c) of this section, and~~

~~(D) of the information required by AS 09.38.085(a).~~

~~(b) Notice of an order issued in accordance with a request under (a) of this section, together with the creditor's affidavit, shall be served on the individual. The order shall restrain the individual from removing, encumbering, damaging, or disposing of any property of the kind listed in AS 09.38.020 for 30 days after receipt of the order, unless the court reduces, extends, or otherwise modifies the restraining order during the 30 day period.~~

~~(c) If exemption of property identified in a notice served on an individual under (b) of this section depends on its value, the individual may describe the property in the responsive statement and indicate the amount of any indebtedness chargeable against it. If the individual, within the time allowed by the order of the court, fails to respond to a notice served under (b) of this section that the creditor believes the debtor has nonexempt property of a kind listed under AS 09.38.020, the court may order the individual to appear and disclose the description, location, and value of the individual's property. If the individual fails to appear and disclose the information specified in the order, the individual waives objection to the creditor's levy on property of that kind.~~

~~(d) Except to the extent the procedure is prescribed by this section, AS 09.38.080(e) governs a proceeding for the determination of a contest in respect to a claim to exemption of property under AS 09.38.020.~~

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

~~(f) The burden of proving the validity of an exemption by a preponderance of the evidence is upon the individual claiming the exemption. (§ 2 ch 62 SLA 1982)~~

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity

with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 09.38.080. Procedures applicable to a levy on property of an individual. (a) Except in a proceeding under AS 09.38.065, a creditor shall comply with this section in obtaining a levy on property of an individual. In a proceeding to levy on personal property of a kind listed in AS 09.38.020, a creditor shall comply with this section and AS 09.38.075.

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

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

(d) A bid for property that is less than the amount of the exempt value is not acceptable at a sale of property under a levy. If indebtedness secured by a valid lien is chargeable against the proceeds of the sale, the bid must exceed the amount of the indebtedness secured plus the amount of the exempt value. If sufficient bid is not received, the officer shall file a notation of the fact with the clerk of the court and return the property to the individual. The costs incurred during levy, offering the property for sale, and returning the property shall be assessed against the creditor and are not recoverable from the individual, notwithstanding any agreement of the parties to the contrary.

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

(f) An objection to levy on the ground that the property seized is exempt must be filed with the clerk of the court within 15 days after the levy. The burden of proving the validity of an exemption by a preponderance of the evidence is upon the individual claiming the exemption. Failure to file a timely objection ^{shall} be held to be a waiver of a claim to exemption in the property, unless for cause shown the court excuses the failure. (§ 2 ch 62 SLA 1982) *Failure to file an objection prior to sale shall be an absolute waiver of exemption rights.*

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity

with AS 01.05.031(c) and § 4, Chapter 68, SLA 1982.

Sec. 09.38.085. Contents of 09.38.075(b) and 09.38.080(c) sh

(1) the amount and date of the sale or other mode of appropriation must be filed;

(2) the name and address of the parties must be filed;

(3) the name and address of the attorney, if any;

(4) a copy of the affidavit filed;

(5) a summary statement in conformity with the laws of this state;

(6) a summary statement in conformity with the laws of this state claiming exemptions, objecting to the venue, and exercising the right to a sale before its confirmation; a

(7) a statement in lay terminology of the rights of the individual as provided in AS 09.38.085.

(b) The supreme court may prohibit the sale of property of debtors and court officers under this chapter.

(c) A notice substantially conforming to the requirements of this section, even though the notice contains a substantial prejudice to the rights of dependents of the individual debtor, shall be valid.

Editor's notes. — Subsection (c) was enacted as the second sentence of subsection (b) but was redesignated by the revisor of statutes pursuant to AS 01.05.031(b).

Sec. 09.38.090. Assertion of right to a levy on the property or to assert a claim against the spouse or a dependent of the individual

fails to select property entitled to a levy on the property or to assert a claim against the spouse or a dependent of the individual may make the claimant liable for the costs provided by this chapter. (§ 2 ch 62 SLA 1982)

(b) The court may prohibit the sale of property of debtors and court officers under this chapter.

Sec. 09.38.095. Judicial relief

dependent of the individual, or a person entitled to injunctive relief, damages, or other person to prevent or redress a claim provided in the Alaska Rules of Civil Procedure and reasonable attorney fees to the claimant.

(a) For cause shown the court may prohibit the sale of property of debtors and court officers under this chapter.

(b) For cause shown the court may prohibit the sale of property of debtors and court officers under this chapter.

(c) For cause shown the court may prohibit the sale of property of debtors and court officers under this chapter. (§ 2 ch 62 SLA 1982)

Sec. 09.38.085. Contents of notice. (a) The notice required by AS ~~09.38.075(b) and~~ 09.38.080(c) shall include the following information:

(1) the amount and date of the judgment to be enforced by levy and sale or other mode of appropriating the individual's property;

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

(3) the name and address of the creditor and of the creditor's attorney, if any;

~~(4) a copy of the affidavit filed under AS 09.38.080(b);~~

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

~~(6) a summary statement in lay terminology of the procedures for claiming exemptions, objecting to a levy on exempt property, changing venue, and exercising the right to repurchase homestead property from a sale before its confirmation; and~~

~~(7) a statement in lay terminology of the rights of persons other than the individual as provided in AS 09.38.090.~~

(b) The supreme court may prescribe forms to be used by creditors, debtors and court officers under this chapter.

(c) A notice substantially complying with this section is effective even though the notice contains errors if those errors do not result in substantial prejudice to the rights of the individual debtor or of the dependents of the individual debtor. (§ 2 ch 62 SLA 1982)

Editor's notes. — Subsection (c) was enacted as the second sentence of subsection (b) but was redesignated by the revisor of statutes pursuant to AS 01.05.031(b).

This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 09.38.090. Assertion of rights by another. If an individual fails to select property entitled to be claimed as exempt or to object to a levy on the property or to assert any other right under this chapter, the spouse or a dependent of the individual or any other person authorized by law may make the claim or objection or assert the rights provided by this chapter. (§ 2 ch 62 SLA 1982)

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

~~(b) For cause shown the court may relieve a person from the consequences of failing to take timely action to assert rights under this chapter. (§ 2 ch 62 SLA 1982)~~

Sec. 09.38.100. Debtor's property owned with another. (a) If an individual and another own property in this state as tenants in common or tenants by the entirety, a creditor of the individual, subject to the individual's right to claim an exemption under this chapter, may obtain a levy on and sale of the interest of the individual in the property. A creditor who has obtained a levy, or a purchaser who has purchased the individual's interest at the sale, may have the property partitioned or the individual's interest severed.

~~(b) A partner's right in specific partnership property is exempt except on a claim against the partnership. If partnership property is attached for a partnership debt, the partners or any of them or the representatives of a deceased partner may not claim an exemption for that property under this chapter. (§ 2 ch 62 SLA 1982)~~

Cross references. — For provisions ant after petition of tenancy, see AS making homestead held by tenants for the 34.15.140(b).
entirety liable for the debts of either ten-

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

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

~~**Sec. 09.38.115. Adjustment of dollar amounts.** (a) The dollar amounts in this chapter change, as provided in this section, according to and to the extent of changes in the Consumer Price Index for all Urban Consumers 101.31 - Anchorage Metropolitan Area compiled by the Bureau of Labor Statistics, United States Department of Labor (the index). The index for January of the year in which this section becomes effective is the reference base index.~~

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

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

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

(c) If the index is revised, the basis of the revised index reference base index, a revised multiplying the reference base furnished by the United States is superseded, the index represented by the Bureau of Labor changes in the purchase of consumer goods.

(d) The Department of Labor

(1) on or before April 30 of each change, the changes in dollar amount and

(2) promptly after the change by (c) of this section, including of the reference base index under designation or title of any individual

(e) The Department of Labor change in exemption amount for clerks of court in each judicial district

Sec. 09.38.120. Protection of nonresidents. (a) Residents provided under this chapter. (b) The term "resident" present in this state and who Alaska. (§ 2 ch 62 SLA 1982)

Editor's notes. — This section redrafted by the revisor of statutes to remove personal pronouns in conflict

Sec. 09.38.500. Definitions. context otherwise requires,

(1) "burial plot" means a human remains and which cemetery purposes by the stipulation;

(2) "debt" means a legally enforceable obligation of an individual, whether

(3) "dependent" means an individual who is dependent on another individual;

(4) "earnings" means money received for services and denominated as such;

(5) "exempt" means protected from subjection to process or

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

~~(d) The Department of Labor shall adopt a regulation announcing~~
~~(1) on or before April 30 of each year in which dollar amounts are to change, the changes in dollar amounts required by (b) of this section; and~~

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

~~(e) The Department of Labor shall also provide notification of a change in exemption amounts required under (c) of this section to the clerks of court in each judicial district of the state. (§ 2 ch 62 SLA 1982)~~

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

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

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4. Chapter 58, SLA 1982.

Sec. 09.38.500. Definitions. As used in this chapter, unless the context otherwise requires,

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

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

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

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

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

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

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

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

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

(10) "principal residence" means the actual dwelling place of an individual or dependents of the individual and includes real and personal property;

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

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

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

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

(15) "wearing apparel" means clothing and garments intended and adapted to be worn on the person to protect the person against the elements or to provide personal comfort or decency, or serving to ornament the person but does not include jewelry. (§ 2 ch 62 SLA 1982; AS 09.38.125)

Editor's notes. — This section was enacted as AS 09.38.125 but was renumbered by the revisor of statutes pursuant to AS 01.05.031(b).

This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Sec. 09.38.510. Short title. This chapter may be cited as the Alaska Exemptions Act. (§ 2 ch 62 SLA 1982; AS 09.38.130)

Editor's notes. — This section was enacted as AS 09.38.130 but was renumbered by the revisor of statutes pursuant to AS 01.05.031(b).

Chapter 40

Ar

Sec. 09.40.010. Action

N

Applied in Aleut Corp. v. Aleut Regional Corp., 424 F. Supp. 397 (1976).

Sec. 09.40.025. Appointing process.

Stated in Cowles v. Wolfe, Sup. Ct. No. 2512 (File No. 5731), 645 (1982).

Sec. 09.40.030. Property

Cross references. — For exemption of liquor license from attachment, see AS 09.35.087.

Sec. 09.40.040. Third party

Applied in Pennington v. Pennington Liab. Assurance Corp., Sup. Ct. No. 2512 (1982).

Sec. 09.40.120. Arrest

Applied in Aleut Corp. v. Aleut Regional Corp., 424 F. Supp. 397 (1976).

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: HB 326
 Title: Exemptions
 Sponsor: Bussell
 Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Alaska Court System
 Program Category Affected: Justice
 BRU, Program of Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard P. Barrier, Deputy Admin. Director Phone: 264-0545
 Division: Alaska Court System Date: 4/21/83

Approved by Commissioner: _____ Date: _____
 Department: _____

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

3/8/83

I. REQUEST

Bill/Resolution No.: HB 326
 Title: "...Alaska Exemption Act."
 Sponsor: Repr. Bussell
 Requestor: House Judiciary Committee

II. FISCAL DETAIL

Agency Affected: Department of Law
 Program Category Affected: General Govt.
 BRU, Program of Subprogram(s) Affected: Legal Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues, Director
 Division: Administrative Services Division

Phone: 465-3672
 Date: April 15, 1983

Approved by Commissioner: Norman C. Gorsuch, Attorney General
 Department: Department of Law

Date: April 15, 1983

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
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- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

HB 326
 Fiscal Note
 Analysis

This bill deals with commercial transactions, which are primarily between private parties. Because the number of these matters involving the Department of Law is relatively insignificant, there will not be a fiscal impact.

H

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MEMO

TO: Rep. Bussell, Chmn; Rep. Liska, Vice Chmn; Reps. Barnes, Clocksin, Hayes, Malone & Wendte

FROM: Staff Counsel

TOPIC: HB 334--"An Act relating to stays during appeals of administrative orders under the Administrative Procedures Act, (AS 44.62.570." --By Labor & Commerce Committee

1--This bill would amend paragraph (g) of existing law, AS 44.62.570, Scope of Review, which reads:

(g) No stay may be imposed or continued if the court is satisfied it is against the public interest.

2--In one form or another, the proposed language has been used or referred to in court decisions over the years. However, the most strikingly similar language is expressed in Powell v. City of Anchorage, 536 P. 2d 1228 (decided 1973).

(attached)
This case is Xeroxed and in Committee files. The language referred to is on the 2nd page, in footnote ¹2, which I bracketed and underlined for your reference. (I did not include the dissent which is twice as long as the opinion).

(The case dealt with topless and bottomless dancers which the city ordinance prohibited. The Superior Court first enjoined enforcement of the ordinance, later dissolved the injunction--so it would be enforced--and the dancers at The Embers appealed. The Supreme Court agreed with the Superior Court, and nude dancing in Anchorage was banned--for a while).

3--The bill simply clarifies and puts in legislation guidelines courts actually have been using in staying orders of lower tribunals.

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: HB 334
 Title: "An Act relating to stays..."
 Sponsor: House Labor & Commerce
 Requestor: House Judiciary Committee

II. FISCAL DETAIL

Agency Affected: Department of Law
 Program Category Affected: General Govt.
 BRU, Program of Subprogram(s) Affected: Legal Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues Director
 Division: Administrative Services Division
 Approved by Commissioner: Richard I. Pegues / for /
 Department: Department of Law

Phone: 465-3672
 Date: May 2, 1983
 Date: May 2, 1983

Distribution:

Original to Legislative Finance
 Copy to Office of Management and Budget (for Legislature introduced bills)
 Copy to Department (for Governor introduced bills)
 Copy to Sponsor
 Copy to Requestor (if different from Sponsor)

HB 334
Fiscal Note
Analysis

This bill clarifies the standards of review whereby the courts may grant stays during appeals of administrative orders under the Administrative Procedure Act. The Department of Law's legal staff believes that this clarification will assist the courts to make more timely and equitable rulings when stays are requested, saving both the public and regulatory agencies time and expense. This bill will not have a fiscal impact on the Department of Law.

Darlon POWELL et al., Petitioners,
v.
CITY OF ANCHORAGE, Respondent.
No. 2001.

Supreme Court of Alaska.

Decided June 27, 1973.

June 13, 1975.

Released for Publication June 13, 1975.

On appeal from an order of the Superior Court, Third Judicial District, Anchorage, Edmond W. Burke, J., dissolving a preliminary injunction against enforcement of a municipal ordinance which, in effect, prohibited nude dancing in premises licensed for sale or consumption of intoxicating liquor, appellant applied for an order staying the order of the Superior Court pending appeal. The Supreme Court, Rabinowitz, C. J., held that stay would be denied where appellants did not first present their application for a stay to the Superior Court and did not explain such failure.

Motion denied.

Connor, J., with whom Erwin, J., joined, dissented and filed opinion.

1. Appeal and Error ⇨458(1), 479(2)

Judgments in action for injunction are not stayable as of right; rather, whether a stay pending appeal of an order granting or dissolving an injunction will be granted is a question directed to the sound discretion of the court. Rules of Civil Procedure, rule 62(c); Rules of Appellate Procedure, rule 7(d)(2).

2. Appeal and Error ⇨478

In considering whether to grant a stay pending appeal, the lower court must consider criteria much the same as it would in determining whether to grant a preliminary injunction. Rules of Civil Procedure, rules 62(c), 65(d).

3. Appeal and Error ⇨478

In the unusual case when application for stay pending appeal is made in the Su-

preme Court without having previously been denied by the court below, there should be some explanation for failure to apply to the court below. Rules of Appellate Procedure, rules 7(d)(2), 25(b).

4. Appeal and Error ⇨477

In the usual case, the trial court should be given the first opportunity to consider an application for a stay of a judgment granting or denying an injunction, but exceptions should be made where the applicant makes a showing that relief in the superior court is unavailable, or that relief to be effective must be immediate and that it is improbable that the superior court can afford such immediate relief. Rules of Civil Procedure, rule 62(c); Rules of Appellate Procedure, rules 7(d)(2), 25(b).

5. Appeal and Error ⇨478

Stay pending appeal of order dissolving preliminary injunction against enforcement of allegedly unconstitutional city ordinance prohibiting, in effect, nude dancing in premises licensed for sale or consumption of intoxicating liquor would be denied where application for stay was not first presented to the superior court and there was no explanation for such failure, particularly where there was an almost total lack of showing on issue of irreparable injury and no contention was made before the Supreme Court in briefs and affidavits that denial of stay pending appeal would infringe First Amendment Rights. Rules of Civil Procedure, rule 62(c); Rules of Appellate Procedure, rules 7(d)(2), 25(b); U.S.C.A. Const. Amend. 1.

Stanley P. Cornelius, Cornelius, Inc., Anchorage, for petitioners.

John R. Spencer, City Atty., Anchorage, for respondent.

Before RABINOWITZ, Chief Justice, and CONNOR, ERVIN, BOOCHEVER and FITZGERALD, Justices.

ORDER *

RABINOWITZ, Chief Justice.

Petitioner Darion Powell owns an Anchorage cocktail lounge known as The Embers. The Embers, and several other local bistros, have in recent times gained a measure of notoriety by providing for their customers' viewing pleasure "topless and bottomless" dancers. Section 4-3(g) and (r) of the Code of Ordinances of the City of Anchorage prohibits a person from either appearing or authorizing another person to appear "in a licensed premises in which intoxicating liquor is offered for sale or consumed" while so "costumed or dressed so that the genitalia or pubic area is wholly or substantially exposed to view." On October 28, 1972, Powell, Powell's bartender petitioner George Goolsby, and petitioner Sheila Diane Bell were all arrested following a dance by Ms. Bell. The complaint charged, *inter alia*, that Bell had performed her dance in a licensed liquor establishment while "dressed or costumed" in a fashion prohibited by the ordinances.

The petitioners, shortly thereafter, filed a civil action against the City of Anchorage in which they asked the court to declare the ordinances unconstitutional and to permanently enjoin the City from further arrests and prosecutions under those ordinances. The superior court granted peti-

tioners a preliminary injunction on November 27, 1972. Then on May 24, 1973, the superior court granted the City's motion for summary judgment, dismissed the petitioners' complaint with prejudice, and dissolved the preliminary injunction. Notice of appeal was filed on May 25, 1973. Petitioners have now presented this Court with an application for an order staying the May 24, 1973, order of the superior court. We deny petitioners' motion.

[1,2] Judgments in actions for injunctions are not stayable as of right. Under Alaska Rule of Civil Procedure 62(c) the superior court is empowered to "suspend, modify, restore or grant" an injunction pending an appeal from a final judgment granting or denying an injunction. Whether a stay of an injunction pending appeal will be granted is a question directed to the sound discretion of the court.¹ In considering whether to grant such an injunction, the lower court must consider criteria much the same as it would in determining whether to grant a preliminary injunction.²

[3] The Supreme Court may also, in the exercise of its jurisdiction and "as part of its traditional equipment for the administration of justice," stay the enforcement of a judgment pending the outcome of an appeal.³ Alaska Rule of Appellate Proce-

* This case was not placed in the Pacific Reporter at the time it was decided. Because various counsel have made reference to it in connection with other cases, it is now being published.

1. *Shinholt v. Angle*, 90 F.2d 297 (5th Cir. 1937); *Kim v. Chinn*, 20 Cal.2d 12, 123 P.2d 438 (Cal.1942).

2. See 7 J. Moore, *Federal Practice* ¶ 62.05, at 62-24 (2d ed. 1972). Professor Moore suggests a four factor test:

- (1) the likelihood that the petitioner will prevail on the merits of the appeal.
- (2) irreparable injury to the petitioner unless the stay is granted.
- (3) no substantial harm to other interested persons, and
- (4) no harm to the public interest.

7 J. Moore, *supra* ¶ 62.05, at 62-25. See also *Perry v. Perry*, 88 U.S.App.D.C. 337, 199

F.2d 601 (1951); *A. J. Industries, Inc. v. Alaska Public Service Commission*, 470 P.2d 537 (Alaska 1970). Professor Moore observes that it may be the unusual case in which the trial judge would arrive at the conclusion that appellant is likely to prevail on appeal. But, that may occur in areas of the law where doubt clouds the correctness of the decision; and, there the court may stay an injunctive order.

Civil Rule 65(d) requires that every order granting an injunction shall set forth the reasons for its issuance.

3. *State v. Norene*, 457 P.2d 926, 927 (Alaska 1969) (quoting with approval *Scripps-Howard Radio v. Federal Communications Comm'n*, 316 U.S. 4, 9-10, 63 S.Ct. 875, 870, 86 L.Ed. 1229, 1234 (1942)).

337

dure 7(d)(2) regulates the procedure for seeking stays of judgments of the superior court pending appeal. That rule requires that an application for a stay of a judgment should first be made to the superior court and that ordinarily an original application to this court for a stay of judgment pending appeal will not be entertained unless it has previously been denied by the court below.⁴ As we held in *State v. Norenc*,⁵

. . . [T]his rule does not require in all cases that applications for stay must be made to the superior court, . . . [nevertheless] departure from the rule should be accompanied by some explanation for the failure to apply to the superior court.⁶

No application was made to the superior court in this case, and the petitioners offer no explanation for their failure to do so.

[4, 5] As Professor Moore states, "[t]he stay or suspension of such judgments often involves a delicate balancing of the equities that only the court thoroughly familiar with the case is able to make."⁷ We think that in the usual case the trial court should first consider an application for a stay of a judgment granting or denying an injunction. The Supreme Court, in *Cumberland Telephone and Telegraph Co. v. Public Service Commission*,⁸ noted the desirability of having the trial court first pass on the application for a stay:

4. Appellate Rule 25(b) places the same requirement upon the party seeking a stay or an injunction of a judgment.

5. 457 P.2d 926 (Alaska 1969).

6. *Id.* at 929 (footnote omitted).

7. 9 J. Moore, Federal Practice ¶ 208.04, at 1409 (2d ed. 1973).

8. 260 U.S. 212, 43 S.Ct. 75, 67 L.Ed. 217 (1922).

9. *Id.* at 219, 43 S.Ct. at 77, 67 L.Ed. at 223. See also *People ex rel. San Francisco Bay Conservation and Development Commission v. Town of Emeryville*, 69 Cal.2d 533, 72 Cal. Rptr. 790, 446 P.2d 790 (Cal.1968).

[T]he court which is best and most conveniently able to exercise the nice discretion needed to determine this balance of convenience is the one which has considered the case on its merits, and therefore is familiar with the record.⁹

We think that it is a sound policy for the superior court to first consider applications for stays of judgment. Exceptions from this rule should be made where the applicant makes a showing that relief in the superior court is unavailable; or that relief to be effective must be immediate, and that it is improbable the superior court can afford such immediate relief.¹⁰ Since the petitioners did not present their application for stay to the superior court and since they did not explain this failure, we deny their motion.

We further note the almost total lack of showing offered by petitioners going to the issue of irreparable injury. Here there is no showing that economic hardship or artistic handicaps will flow to petitioners if, pending final resolution of the merits, Bell performs her dance routine in a somewhat more modest fashion than heretofore. Nor has any contention been made before this court by petitioners in their briefs and affidavits that the operation of the injunction pending disposition of the appeal will in any manner infringe First Amendment rights.¹¹

10. See 9 J. Moore, Federal Practice ¶ 208.07, at 1423 (2d ed. 1973).

11. We note in passing that applicants fail to make the following necessary allegations in support of an application for stay of judgment granting or denying injunctive relief: they do not argue the likelihood of success on appeal, nor do they assert that the balance of hardships tips in their direction. See *supra* n. 2.

However, nothing we have said in this order precludes petitioners from moving the superior court to stay its final order. In the event that such a motion is denied, they are free again to seek review from our court.

H B

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COMMITTEE REPORT

HOUSE

LABOR & COMMERCE

FURTHER:

(7)

4/3/83

Date: 5-4-83

Mr. Speaker:

The Committee on JUDICIARY has had HB 333

An Act relating to the payment for overtime; and providing for an effective date.

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
- and recommends _____ new title
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature]

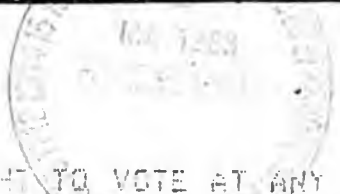
[Signature]

[Signature]

CHAIRMAN

FR: LEONARD HOFFITT
P O BOX 748
PALMER 99645

DR



QUOTING FROM THE U.S. CONSTITUTION, "BUT, WHEN THE RIGHT TO VOTE AT ANY ELECTION FOR THE CHOICE OF ELECTORS FOR PRESIDENT AND VICE PRESIDENT OF THE U.S., REPRESENTATIVES IN CONGRESS, THE EXECUTIVE AND JUDICIAL OFFICERS OF A STATE, OR THE MEMBERS OF A LEGISLAURE THEREOF, IS DENIED..." PLAINLY THAT INTENTION IN THIS SECION IS TO FORCE AN OPEN CHOICE OF ABOVE MENTIONED CANDIDATES IN ALL STATES. CAN WE AS CITIZENS OF THE U.S. IGNORE THE CONSTITUTION AND FEEL MORALLY CONTENT? PLEASE PROVIDE FOR ELECTION OF THE JUDICIAL OFFICERS. THANK YOU.

MEMO

TO: Rep. Bussell, Chmn.; Rep. Liska, Vice Chmn.; Reps. Barnes,
Clocksin, Hayes, Malone & Wendte

FROM: Staff Counsel

TOPIC: HB 338--by Rep. Fritz--"An Act relating to the payment
of overtime and providing for an effective date."

- 1--The bill would add an exemption to existing overtime payment law, (AS 23.10.060) relative to overtime...The letter from Al Gay of Seair in Committee files explains it would be intended to be used as "trade days" only, without the necessity of filing with the Dept. of Labor.
- 2--The Deputy Director, Monty Henninger, Div. of Labor Relations, Dept. of Administration, was to have a position paper here today (Wed., May 4) favoring the bill, but first has to check with Mrs. Rudd, Commissioner and was having hold-ups in the typing pool and paper flow.
- 3--The statute, 23.10.060, was amended in 1980 with subparagraphs (17) and (18)(A) and (B), but that appears to permit the 4-day, 10-hour work week only and refers to nothing else.
Note: The 1980 amendments speak of the "flexible work hour plan" not flexible work week.

(There might even be a good argument that the "flexible work hour plan" language in subparagraph (17), standing alone, could be construed, or stretched, into a flexible work week, but the likely Supreme Court interpretation would be contra, even though the Court noted in a decision there might be conflict with 23.10.060)
- 4--Note letter from Seair, Al Gay, indicates the "four tens" work week doesn't seem to work.



RECEIVED
MILO H. FRITZ, M. D.

MAR 22 1 04 PM '83

The Spirit of the Sky

March 18, 1983

*David: Can you look into this?
D*

The Honorable Milo Fritz
Alaska State Legislature
Pouch "V"
Juneau, Alaska 99811

Dear Mr. ~~Fritz~~ Milo

After talking to many employees in the airline industry, including other airlines than our own, we would like to have included in the Alaska statutes a "trade day", where employees could trade hours or days of work with another employee without falling under the overtime law now in effect (Section 23.10.060).

It is very difficult for an employee living in Alaska to go anywhere on a trip with only two days off (Saturday and Sunday), whereas if they could trade days with another employee, they could have three, four or more consecutive days off, thus allowing them more free time to travel outside or within Alaska. It is my understanding that the airlines which are presently under a separate bargaining agreement, such as a union, can do this now since they are not under the Alaska statutes. Enclosed is a copy of an employee request for substitution that is presently being used by Western Airlines.

I am told a simple paragraph can be inserted under Section 23.10.060, to read:

- (19) Work performed under a trade day work plan wherein employees may agree to trade time or days worked between themselves.
- (A) (The language necessary, such as the sample form, per attached.)

We have tried the ten-hour day, four-day week, and it simply does not work. The only reasonable and sensible substitute is an amendment to the Alaska statutes such as I have stated above.

Hopefully, you will sponsor a bill like this. I will give you all the support I can.

Best personal regards,

SEAIR

A. E. Gay, President

AEG:afm

Attachments

SEA AIRMOTIVE, INC.

EMPLOYEE REQUEST FOR ^{SHIFT} SUBSTITUTION
HOUR

_____ will substitute for _____

Shift # _____ FROM _____ TO _____ DAY DATE MONTH

_____ will substitute for _____

Shift # _____ FROM _____ TO _____ DAY DATE MONTH

The assigned areas are: _____

SIGNATURE - REQUESTING AGENT

SIGNATURE - SUBSTITUTING AGENT

Approved: _____ Posted: _____ Date: _____

al,

This is a copy of WPL trade-day form.

STATE OF ALASKA
FISCAL NOTE

Revision Date April 25, 1983

I. REQUEST

Bill/Resolution No.: House Bill 338
 Title: "...payment of overtime..."
 Sponsor: Representative Fritz
 Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Labor
 Program Category Affected: Worker Protection
 BRU, Program of Subprogram(s) Affected: Labor Standards & Safety

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not applicable.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Robert J. Bacolas, Sr. *R. Bacolas* Phone: 465-4870
 Division: Labor Standards & Safety Date: April 25, 1983

Approved by Commissioner: Jim Robison *J. Robison* Date: April 25, 1983
 Department: Labor

LEG:A:44

Distribution:

Original to Legislative Finance
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 Copy to Department (for Governor introduced bills)
 Copy to Sponsor

H B

3 4 5

COMMITTEE REPORT

HOUSE

(7)

FURTHER:

4/11/83

Date: May 24, 1983

Mr. Speaker:

The Committee on JUDICIARY has had HB 345

An Act relating to a victim's rights in the sentencing and parole hearings and furlough determinations of a person convicted of a felony; and making changes in sentencing procedures.

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 345 (100) same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation Zero Fiscal Note Attached
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

[Signature] - No Rec

[Signature] - No Rec

[Signature]

CHAIRMAN

DEPARTMENT OF LAW

Proposed Amendment: *HB 345*

On Page 3, line 19 add a new sentence to read:

However, a failure to provide such rights does not give rise to a separate cause of action against law enforcement agencies, or other agencies of the state, or a political subdivision of the state.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CSHB 345 (JUD)
Title: "An act relating to victims rights."
Sponsor: Judiciary Committee
Requestor: _____
Date of Request: _____

FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Francis C. Allan *F.C.A. MCK* Phone: 260-5601
Division: Alaska State Troopers Date: 01/30/84
Approved by Commissioner: Robert J. Sundberg *RJS* Date: 2-3-84
Agency: Public Safety

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

12/1/83

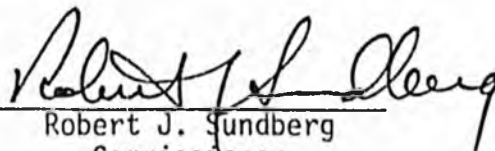
DEPARTMENT OF PUBLIC SAFETY
POSITION PAPER - CSHB 345 (JUD)

Neutral

January 30, 1984

CSHB 345 (JUD) - "An Act relating to victim's rights; and amending Rule 32(d)(2) of the Alaska Rules of Criminal Procedure."

AS 12.61.010 will force additional administrative efforts to assure that victims are notified of trials and dates of sentencing.


Robert J. Sundberg
Commissioner

PART VII. JUDGMENT

Rule 32. Sentence and Judgment.

(a) **Sentence.** Sentence shall be imposed without unreasonable delay. Pending sentence the court may commit the defendant or continue or alter bail as provided in Rule 41(a), Alaska Rules of Criminal Procedure. Before imposing sentence the court shall afford the defendant an opportunity to make a statement in his own behalf and to present any information in mitigation of punishment. If the defendant is being sentenced following a plea of guilty or nolo contendere the court shall question the defendant to ascertain that he understood the meaning of his plea, and that it was freely and voluntarily entered.

(b) Judgment—Execution.

(1) **Execution.** The judgment of conviction shall set forth the plea, the verdict or findings, and the adjudication and sentence. At the time of imposition of sentence, the judge or magistrate shall make a statement on the record explaining his reasons for imposition of the sentence. If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly. The judgment shall be signed by the judge or magistrate and entered by the clerk. When the judgment has been entered, the clerk shall forthwith deliver to a peace officer a certified copy of the judgment for execution. The peace officer shall note on the copy of the judgment the date of its delivery to him. When the judgment has been executed, the peace officer shall promptly return the copy to the clerk with his proceedings endorsed thereon.

(2) **Conviction of a Corporation.** If a corporation is convicted of any criminal offense the court may give judgment thereon and shall cause such judgment to be enforced in the same manner as a judgment in a civil action, or as otherwise provided by law.

(c) Pre-Sentence Investigation.

(1) **When Made.** The probation service shall make a pre-

sentence investigation and report before the court imposes sentence or grants probation. The report shall not be submitted to the court or its contents disclosed to any one except counsel unless the defendant has tendered a plea of guilty or *nolo contendere* or has been found guilty. The court may utilize the report in determining if a bargained sentence recommendation will be followed pursuant to Rule 11. In the event the attorneys for the parties request the preparation of a pre-sentence report to aid them in plea bargaining the court may order such report to be made prior to the time stated in this rule.

(2) *Report.* The report of the pre-sentence investigation shall contain any prior criminal conviction including a finding of delinquency of the defendant and such information about his characteristics, his financial condition, and the circumstances affecting his behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant, and such other information as may be required by the court. No record of arrest or other police contacts shall be included in the report. The report shall be made available to the state's attorney and to the defendant's attorney in all cases and to the defendant unless the court enters on the record findings of reasons why the report would prove detrimental to the rehabilitation of the defendant or safety of the public. Unless otherwise ordered, further disclosure of the report shall be limited to the reviewing court on appeal and to the agencies having charge of the defendant's rehabilitation.

(d) *Sentencing Referrals to Three-Judge Panel.*

(1) If the trial court finds that extraordinary circumstances exist under AS 12.55.165, the case shall be transferred forthwith to a three-judge sentencing panel of the superior court. All pertinent files, records and transcripts shall be transmitted to the sentencing panel by the clerk of the court within 30 days of the date of the order transferring the case.

(2) Three judges of the superior court shall be appointed by the chief justice to be the regular members of the sentencing panel. Two other judges of the superior court shall be appointed by the chief justice as first and second alternate mem-

bers of the sentencing panel. At least one of the three regular members and one of the two alternate members of the sentencing panel shall reside outside of Anchorage. The term of appointment of the regular and alternate members of the sentencing panel shall be two years, except that the first three regular members appointed shall serve staggered terms of one, two, and three years. The chief justice may appoint additional alternate members of the sentencing panel to serve on a case-by-case basis in the event of the disability or disqualification of more than two judges.

(3) The chief justice shall appoint one of the three regular members to be administrative head of the sentencing panel and his or her office shall serve as the administrative repository for all papers and documents pertaining to cases submitted to the sentencing panel.

(4) Both the prosecuting attorney and the defendant may exercise in a timely fashion a challenge for cause, or a peremptory challenge if not previously exercised, to one judge of the sentencing panel in accordance with AS 22.20.022 and Rule 25(d)(1), Alaska Rules of Criminal Procedure. In the event that a judge on the sentencing panel is the same judge who made the finding under subsection (1) of this rule, that judge shall be automatically disqualified.

(5) The sentencing panel shall either sentence the defendant or remand the case to the court within 60 days from the date that the case was transmitted to the sentencing panel. The sentencing panel shall provide a written statement of its findings and conclusions in support of any order remanding a case to the trial court.

(6) If the sentencing panel elects to take testimony or sentence the defendant under AS 12.55.175(b) or (c), both the prosecution and the defendant shall have the right to be present in court during the proceedings. The defendant shall have the right to address the sentencing panel personally before sentence is imposed. The proceedings shall be held in a location best suited to the convenience of the parties and the court as determined by the sentencing panel.

(7) If the three-judge sentencing panel imposes sentence on the defendant, any further sentencing proceedings, includ-

ing proceedings relating to sentence modification, shall occur before the same three-judge panel, who shall be considered the sentencing court. If at the time further proceedings are requested any of the three judges is no longer available, one or more alternate members shall sit in the same fashion as provided for in AS 12.55.175(a).

(8) The right to bail of a convicted defendant is neither conferred nor enlarged by this rule.

(e) Transcript of Sentencing Proceeding. A transcript of any sentencing proceeding at which the defendant is committed to serve in excess of 6 months on one or more charges shall be prepared and furnished to the state attorney, defendant, and the Alaska Parole Board. (Amended by Supreme Court Order 157 effective February 15, 1973; by Amendment No. 5 to Supreme Court Order 157 effective July 1, 1974; by Supreme Court Order 330 effective January 1, 1979; by Supreme Court Order 418 effective August 1, 1980; and by Supreme Court Order 436 effective October 21, 1980)

(a) CROSS REFERENCES: AS 12.55.010; Crim. Form 38

(d) CROSS REFERENCES: Crim. Forms 39, 40

**Rule 32.1 Appeal From Conviction of Sentence—
Notification of Right to Appeal.**

A person convicted of a crime after trial shall be advised by the judge or magistrate:

(a) That he has the right to appeal from the judgment of conviction within 30 days (or 15 days in appeals from the district court made under Rule 217, Alaska Rules of Appellate Procedure) from entry of the judgment of conviction by filing a notice of appeal with the clerk of court.

(b) That in accordance with Appellate Rule 215, the defendant may appeal the sentence on the ground that it is excessive, that upon such appeal the court may reduce or increase the sentence, and that by appealing the sentence, the defendant waives the right to plead that by a revision of the sentence resulting from the appeal he has twice been placed in jeopardy for the same offense.

(c) That if he wants counsel and is unable to pay for the services of an attorney, the court will appoint an attorney to represent him on the appeal. (Added by Supreme Court Order 157 effective February 15, 1974; amended by Supreme Court Order 218 effective January 15, 1976; and by Supreme Court Order 536 effective October 1, 1982)

Rule 32.2 Sentence Appeal.

(Added by Supreme Court Order 157 effective February 15, 1973. Rescinded by Supreme Court Order 218 effective January 15, 1976)

AMENDMENT

#1

Offered in the Judiciary Committee

By Clocksin

TO: HB 345

Page 1, line ¹⁴~~27~~ - page 2, line ~~8~~4-7
_{inserted} _{replace}

Delete all material and insert "(5) in the case of a conviction for a felony offense, verified information stated in a nonargumentative style assessing the financial, social, psychological, and medical impact upon and cost to any person who was the victim of the offense committed by the defendant. The report shall also include a statement of any need of the victim for restitution and and such other information as may be required by the court."

AMENDMENT

#2

Offered in the Judiciary Committee

By CLOCKSIN

TO: HB 345

Page 2, line 11 - page 3, line 6

Delete all material and insert:

Sec.3. AS 12 is amended by adding a new chapter to read:

CHAPTER 61. RIGHTS OF VICTIMS AND WITNESSES

Sec. 12.61.010. RIGHTS OF VICTIMS AND WITNESSES. . (a)

Victims and witnesses of crimes have the following rights:

(1) the right to be informed by the appropriate law enforcement agency or the prosecuting attorney of the final disposition of the case in which the victim or witness is involved;

(2) the right to be notified that a court proceeding to which the victim or witness has been subpoenaed will not occur as scheduled, in order to save the person an unnecessary trip to court;

(3) the right to receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available;

(4) the right to be informed of the procedure to be followed to apply for and receive any witness fees or victim compensation to which the person may be entitled;

(5) the right to have any stolen or other personal property expeditiously returned by the law enforcement agency unless it is unlawful to return the property;

(6) the right to cooperate with the criminal justice process without loss of pay and other employee benefits and without interference in any form by the employer of the victim or witness of crime; and

(7) the right to access to immediate medical assistance and not to be detained for an unreasonable length of time by a law enforcement agency before having medical assistance administered; however, an employee of the law enforcement agency may, if necessary accompany the person to a medical facility to question the person about the criminal incident if the questioning does not hinder the administration of medical assistance.

(b) Law enforcement agencies, prosecutors, and the courts shall make a reasonable effort to assure that victims and witnesses of crimes have the rights set out in (a) of this section.

(c) The family members of a homicide victim shall be afforded all of the rights established under (a)(1) - (7) of this section. For purposes of this subsection, "family members" include a spouse, child, brother, sister, parent, or legal guardian.

AMENDMENT

#5

Offered in the Judiciary Committee

TO: HB 345

Page 3, lines 7-12

Delete all material and insert:

Sec. 4. AS 12.55.185 is amended by adding a new paragraph to read:

(11) "victim" means the victim of the offense or, in the case in which the victim has died, the term includes a spouse, parent, child, brother, sister or legal guardian of the victim.

Page 3, lines 15-17

Delete "the evidence presented and opinions expressed by the victim or the victim's immediate family in accordance with AS 33.15.065," and insert "comments received from the victim as defined by AS 12.55.185(11),".