

ALASKA LEGISLATURE COMMITTEES FILED 1900-1900 00/2

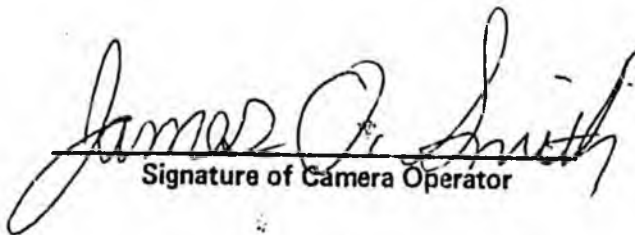
4425 CC/FCC SB 56 2ND CONFERENCE COMMITTEE - SB 140 1303

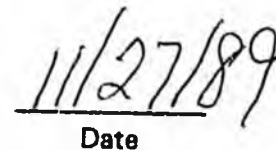


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CONFERENCE

COMMITTEE

SB 56

Original sponsors: Ray, Halford,
Bennett, et al

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IN THE SENATE

BY THE 2d CONFERENCE COMMITTEE

CONFERENCE CS FOR SENATE BILL NO. 56
IN THE LEGISLATURE OF THE STATE OF ALASKA
FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to a longevity bonus; and providing
for an effective date."

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

* Section 1. AS 47.45.010(a) is amended to read:

(a) A person who is 65 years of age on or before January 1, 1988
[OR OVER], who resides in the state for at least one year immediately
preceding application for a longevity bonus under this chapter may
apply to the commissioner of administration for qualification to
receive a monthly bonus of \$250 upon reaching age 65.

* Sec. 2. AS 43.23.005(c) is amended to read:

(c) A parent, guardian, or other authorized representative may
claim a permanent fund dividend on behalf of an unemancipated minor or
on behalf of an incompetent individual who is eligible to receive a
dividend [PAYMENT] under this section.

* Sec. 3. AS 43.23.005 is amended by adding a new subsection to read:

(d) A person who is eligible to receive a permanent fund divi-
dend under this section, or who is authorized to claim a dividend on
behalf of another under (c) of this section, may elect to receive the
dividend either in cash or as an annuity credit. Alternatively, a
person may elect to receive 25 percent, 50 percent, or 75 percent of
the dividend in cash and the remainder as an annuity credit. A person
who is 65 years of age on or before January 1, 1988 may only receive
the permanent fund dividend in cash and may not elect to receive
an annuity credit.

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2 * Sec. 4. AS 43.23.015(a) is amended to read:

3 (a) The commissioner shall adopt regulations under the Adminis-
4 trative Procedure Act (AS 44.62) establishing the process for de-
5 termining the eligibility of individuals for permanent fund dividends.
6 The commissioner may require an individual to provide proof of eli-
7 gibility, and the commissioner may use other information available
8 from other state departments or agencies to determine the eligibility
9 of an individual.

10 * Sec. 5. AS 43.23.015(b) is amended to read:

11 (b) The department shall prescribe and furnish an application
12 form for claiming a permanent fund dividend. The application must
13 contain a statement of eligibility and a certification of residency in
14 substantially the following form:

15 I certify that

16 () I am a state resident on the date of this application
17 and I have been a state resident for at least six months immediately
18 preceding the date of this application; or

19 () (name), the individual on whose behalf I am applying,
20 is a state resident and has been a state resident for at least six
21 months immediately preceding the date of this application.

22 I understand that a false claim of residency to obtain a perma-
23 nent fund dividend for myself or for another is a criminal offense and
24 that if convicted I will forfeit future permanent fund dividends and
25 that I will lose or must repay all permanent fund dividends that have
26 been credited or paid to me, and any accrued interest in my annuity
27 account. I understand that this penalty is in addition to any crimi-
28 nal penalties imposed.

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(signature of individual, parent,

guardian, or other authorized
representative)

* Sec. 6. AS 43.23.015(e) is amended to read:

(e) If a public agency claims a [PERMANENT FUND] dividend on behalf of an individual under this section, the public agency shall elect 100 percent cash under AS 43.23.005(d) and hold the dividend in trust for the individual. Money held in trust under this subsection shall be invested by the commissioner in accordance with AS 37.10.070.

* Sec. 7. AS 43.23.015(f) is amended to read:

(f) A minor or an incompetent individual may not maintain a claim against the state or an officer or employee of the state based either on the manner in which the parent, guardian, or authorized representative other than a public agency of the state managed or disposed of permanent fund dividends received on behalf of the minor or incompetent, or an election made or not made on that individual's behalf under AS 43.23.005(d) [INDIVIDUAL].

* Sec. 8. AS 43.23.015 is amended by adding a new subsection to read:

(i) The permanent fund dividend application form shall be prepared to allow an applicant, other than a person who is exempt under AS 47.45.015(b), to elect to receive the dividend either in cash or as an annuity credit.

* Sec. 9. AS 43.23.035 is amended to read:

Sec. 43.23.035. PENALTIES AND ENFORCEMENT. (a) In addition to any criminal penalties imposed by state law, if an individual is convicted of a crime in connection with a false statement made in a certification required under AS 43.23.015, and the conviction is not reversed, that individual forfeits all permanent fund dividends credited or paid, together with any interest credited to that individual's annuity account and is not eligible for a future permanent fund divi-

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(b) If the commissioner determines that a cash [PERMANENT FUND] dividend should not have been claimed by or paid to an individual, the commissioner may use all collection procedures or remedies available for collection of taxes under this title to recover the payment of a permanent fund dividend that was improperly made. A notice of an improperly paid dividend must be sent to the individual within 10 years after the improper payment. If notice is not sent within the 10-year period, proceedings may not be commenced in court for recovery of the improper payment.

* Sec. 10. AS 43.23.035 is amended by adding a new subsection to read:

(c) If the commissioner determines that a permanent fund dividend should not have been credited to an individual's annuity account, the commissioner may, after notice and opportunity for hearing, direct the commissioner of administration to debit the individual's annuity account for the amount wrongly credited. If the credit is the fault of the individual, the debit must be made within 10 years. If the credit is the fault of the state, the debit must be made within three years.

* Sec. 11. AS 43.23.055 is amended to read:

Sec. 43.23.055. DUTIES OF THE DEPARTMENT. The department shall

(1) annually make payments to individuals who elect to receive cash under AS 43.23.005(d) [PAY PERMANENT FUND DIVIDENDS FROM THE DIVIDEND FUND];

(2) adopt regulations under the Administrative Procedure Act (AS 44.62) that establish procedures and time limits for claiming a permanent fund dividend or for electing an annuity credit; the department shall set the time limit for applications for permanent fund dividends so that the number of eligible applicants is determined by

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October 1 of the year for which the dividend is declared and permanent fund dividends for a year are paid before April 30 of the year following that year;

(3) adopt regulations under the Administrative Procedure Act (AS 44.62) that establish procedures and time limits for an individual upon emancipation or upon reaching majority to apply for permanent fund dividends not credited or received during minority because the parent, guardian, or other authorized representative did not apply on behalf of the individual; [AND]

(4) assist residents of the state, particularly in rural areas, who because of language, disability, or inaccessibility to public transportation need assistance to establish eligibility and to apply for permanent fund dividends; and

(5) provide the commissioner of administration with information necessary to maintain individual annuity account records and administer the annuity program.

* Sec. 12. AS 43.23.065 is amended to read:

Sec. 43.23.065. EXEMPTION OF PERMANENT FUND DIVIDENDS. Fifty percent of a cash [THE ANNUAL] permanent fund dividend payment [PAYABLE TO AN INDIVIDUAL] is exempt from levy, execution, garnishment, attachment, or any other remedy for the collection of debt. This exemption applies to an eligible individual's permanent fund dividend both before and after payment is made to the individual. An exemption is not available under this section for cash permanent fund dividend payments [DIVIDENDS] taken to satisfy (1) child support obligations required by court order or decision of the child support enforcement agency under AS 47.23.140 - 47.23.220; (2) a debt owed by an eligible individual to an agency of the state, unless the debt is contested and an appeal is pending, or the time limit for filing an appeal has not

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2 expired; or (3) court ordered restitution under AS 12.55.045 - 12.55.-
3 051 or 12.55.100. A child support obligation under (1) of this sec-
4 tion has priority over a debt owed to an agency of the state, and a
5 permanent fund dividend may not be taken to satisfy a debt under (2)
6 of this section until any portion of the dividend necessary to satisfy
7 a child support obligation has been taken.

8 * Sec. 13. AS 43.23.065 is amended by adding new subsections to read:

9 (b) The department shall require an individual to take 100
10 percent of the permanent fund dividend in cash if the department
11 receives a levy, execution, garnishment, attachment or other legal
12 remedy for the collection of a past due debt described in (a)(1) or
13 (2) of this section.

14 (c) The courts of this state may, as a condition of any civil
15 judgment or restitution order under AS 12.55.045 - 12.55.051 or 12.-
16 55.100, require the defendant to take the defendant's permanent fund
17 dividend in cash.

18 * Sec. 14. AS 43.23.075 is amended to read:

19 Sec. 43.23.075. ELIGIBILITY FOR PUBLIC ASSISTANCE. (a) In
20 determining the eligibility of an individual under a public assistance
21 program administered by the Department of Health and Social Services
22 in which eligibility for assistance is based on financial need, the
23 Department of Health and Social Services may not consider a permanent
24 fund dividend as income or resources received by the recipient of
25 public assistance or by a member of the recipient's household unless
26 required to do so by federal law or regulation. The Department of
27 Health and Social Services shall notify all recipients of public
28 assistance of the effects of [RECEIVING] a permanent fund dividend
29 credit or cash payment.

(b) An individual who is denied medical assistance under 42

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2 U.S.C. 1396 - 1396p (Social Security Act, Title XIX) solely because of
3 the credit or receipt of a permanent fund dividend by the individual
4 or by a member of the individual's household is eligible for state-
5 funded medical assistance under the general relief assistance program
6 (AS 47.25.120 - 47.25.300). The individual is entitled to receive,
7 for a period not to exceed four months, the same level of medical
8 assistance as the individual would have received under 42 U.S.C.
9 1396 - 1396p (Social Security Act, Title XIX) had there been no perma-
10 nent fund dividend program.

11 (c) An individual who is denied assistance solely because perma-
12 nent fund dividends credited to or received by the individual or by a
13 member of the individual's household are counted as income or re-
14 sources under federal law or regulation is eligible for cash assis-
15 tance under the general relief assistance program (AS 47.25.120 -
16 47.25.300). Notwithstanding the limit in AS 47.25.130, the individual
17 is entitled to receive, for a period not to exceed four months, the
18 same amount as the individual would have received under other public
19 assistance programs had there been no permanent fund dividend program.

20 * Sec. 15. AS 43.23.095(6) is repealed and reenacted to read:

21 (6) "permanent fund dividend" means a credit to an annuity
22 account or a cash payment under this chapter;

23 * Sec. 16. AS 43.23 is amended by adding new sections to read:

24 ARTICLE 2. ANNUITY PROGRAM.

25 Sec. 43.23 110. ANNUITY INVESTMENT FUND. (a) The annuity
26 investment fund is established as a separate fund in the state trea-
27 sury. The annuity investment fund consists of money transferred from
28 the dividend fund and income earned by the annuity investment fund.
29 Notwithstanding AS 37.13.145, an amount equal to the permanent fund
dividends taken as annuity credits under this chapter shall be annual-

1 ly transferred from the dividend fund to the annuity investment fund.

2 (b) Money in the annuity investment fund shall be invested by
3 the commissioner of revenue in investments authorized under AS 39.-
4 35.110. The commissioner of administration shall credit the net
5 income of the annuity investment fund to the individual annuity
6 accounts.

7 (c) The legislature may annually appropriate to the Department
8 of Administration an amount sufficient to pay monthly annuity payments
9 for the subsequent fiscal year under AS 43.23.130 from the annuity
10 investment fund. Funds appropriated under this subsection shall be
11 transferred from the annuity investment fund to the Department of
12 Administration in order to meet the current demands of the annuity
13 program.

14 (d) The legislature may annually appropriate from the annuity
15 investment fund an amount sufficient to administer the annuity pro-
16 gram. Any costs of administration funded under this subsection shall
17 be allocated equitably among all individual annuity accounts.

18 (e) Notwithstanding AS 39.35.110 or (b) of this section, the
19 commissioner of revenue may invest all or part of the annuity invest-
20 ment fund in commercial insurance contracts purchased from insurance
21 companies that have a Best's policyholders' rating of A or better and
22 belong to Best's financial size Group XV at the time of purchase.

23 Sec. 43.23.120. ANNUITY PROGRAM. (a) The annuity program is
24 administered by the commissioner of administration. The commissioner
25 of administration shall adopt regulations necessary to implement the
26 annuity program.

27 (b) The commissioner of administration shall maintain records of
28 individual annuity accounts and make annuity payments under AS 43.23.-
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Sec. 43.23.130. PAYMENT OF ANNUITIES. (a) An individual with one or more annuity credits may receive an annuity upon reaching the age of 65.

(b) An annuity under this section is a monthly payment based upon the principal and accrued interest in the person's annuity account. An annuity shall be paid as a straight life annuity or other payment plan authorized by the commissioner of the Department of Administration. The size of the annuity may not vary on account of the individual's sex.

(c) An individual need not be a resident of the state to be eligible to received an annuity payment from the individual's account.

(d) Except as provided in (b) and (e) of this section, an annuity account may not be assigned, sold, or otherwise transferred from one individual to another.

(e) If a person elects to credit a permanent fund dividend to an annuity account in a particular year, that person may make an irrevocable choice regarding death benefits with respect to that credit. If a person dies before age 65 and that person has selected death benefits in at least one year, a lump sum payment shall, subject to appropriation, be paid to the surviving spouse by right of survivorship unless a different beneficiary was designated. When no spouse survives and no beneficiary is designated, the lump sum shall be paid to the decedent's estate. The lump sum payment includes all dividends credited to the person's annuity account in years in which death benefits were selected and interest on those dividends. Dividends credited to a person's annuity account in years for which death benefits were not selected and interest on those dividends shall, if the person dies before age 65, be distributed equitably among the annuity accounts of all individuals for which death benefits were not select-

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3 (f) An individual does not receive a vested property right in an
4 annuity payment until that payment is made. Notwithstanding this
5 section, the state is not obligated to provide annuity payments for
6 annuity credits granted under AS 43.23.005.

7 * Sec. 17. AS 47.45.010(a) is amended to read:

8 (a) A person who is 65 years of age or over, who resides in the
9 state for at least one year immediately preceding application for a
10 longevity bonus under this chapter may apply to the commissioner of
11 administration for qualification to receive a monthly bonus [OF \$250].

12 * Sec. 18. AS 47.45 is amended by adding a new section to read:

13 Sec. 47.45.015. AMOUNT OF BONUS. (a) Except as provided in (b)
14 of this section, the monthly longevity bonus is equal to \$250, minus
15 the maximum possible straight life annuity for a person 65 years of
16 age under the annuity program (AS 43.23.110 - 43.23.130), as deter-
17 mined by the commissioner of administration.

18 (b) A person who is 65 years of age on or before January 1,
19 1988, is entitled to the full longevity bonus payment without reduc-
20 tion for the annuity program.

21 * Sec. 19. AS 47.45.030 is amended to read:

22 Sec. 47.45.030. ABSENCE FROM THE STATE. After qualification, a
23 recipient shall notify the commissioner of administration when the
24 recipient expects to be absent from the state if the absence is for a
25 continuous period that exceeds 30 days. After that notification, the
26 recipient may no longer receive bonuses from the Department of Admin-
27 istration after the last regularly approved monthly application. Upon
28 returning to the state, the recipient may again make application for a
29 bonus. Whenever the absence is for a continuous period that exceeds 90
[180] days the recipient shall be disqualified from receiving bonuses

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* Sec. 20. AS 47.45.070 is amended to read:

Sec. 47.45.070. UNQUALIFIED PERSONS. An unqualified person is one who

(1) does not meet the age or residence requirements as provided for under this chapter;

(2) meets the age and residence requirements of this chapter but either is confined in a state or federal mental health institution or facility and is certified by the state as unable to manage personal affairs, or resides in a nursing home as that term is defined in AS 08.70.180; however, if that person at the time of commencement or commencement of residence, provided the principal support of a spouse, the commissioner of administration may determine to pay the confined person's bonus to the person's spouse until the spouse is qualified for a bonus;

(3) is otherwise qualified but confined in a penal or correctional institution or facility; upon completion of sentence or upon the conferral of a pardon, parole or probation, the person may make application; confinement outside the state shall be considered as residence in the state if a person was convicted and sentenced from a court in Alaska; revocation of parole or probation shall be cause for immediate disqualification until release from confinement is again effected;

Levy

5-11-85

Original sponsors: Ray, Halford,
Bennett, et al

Ray

1 IN THE SENATE

BY THE 2d CONFERENCE COMMITTEE

2 CONFERENCE CS FOR SENATE BILL NO. 56

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to a longevity bonus; and providing
7 for an effective date."

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

9 * Section 1. AS 47.45.070(a) is amended to read:

10 (a) A person who is 65 years of age on or before January 1, 1988
11 [OR OVER], who resides in the state for at least one year immediately
12 preceding application for a longevity bonus under this chapter may
13 apply to the commissioner of administration for qualification to
14 receive a monthly bonus of \$250 upon reaching age 65.

15 * Sec. 2. AS 43.23.005(c) is amended to read:

16 (c) A parent, guardian, or other authorized representative may
17 claim a permanent fund dividend on behalf of an unemancipated minor or
18 on behalf of an incompetent individual who is eligible to receive a
19 dividend [PAYMENT] under this section.

20 * Sec. 3. AS 43.23.005 is amended by adding a new subsection to read:

21 (d) A person who is eligible to receive a permanent fund divi-
22 dend under this section, or who is authorized to claim a dividend on
23 behalf of another under (c) of this section, may elect to receive the
24 dividend either in cash or as an annuity credit. Alternatively, a
25 person may elect to receive 25 percent, 50 percent, or 75 percent of
26 the dividend in cash and the remainder as an annuity credit. A person
27 who is 65 years of age on or before January 1, 1988 may only receive
28 the permanent fund dividend in cash and may not elect to receive
29 an annuity credit.

1 * Sec. 4. AS 43.23.015(a) is amended to read:

2 (a) The commissioner shall adopt regulations under the Adminis-
3 trative Procedure Act (AS 44.62) establishing the process for de-
4 termining the eligibility of individuals for permanent fund dividends.
5 The commissioner may require an individual to provide proof of eli-
6 gibility, and the commissioner may use other information available
7 from other state departments or agencies to determine the eligibility
8 of an individual.

9 * Sec. 5. AS 43.23.015(b) is amended to read:

10 (b) The department shall prescribe and furnish an application
11 form for claiming a permanent fund dividend. The application must
12 contain a statement of eligibility and a certification of residency in
13 substantially the following form:

14 I certify that

15 () I am a state resident on the date of this application
16 and I have been a state resident for at least six months immediately
17 preceding the date of this application; or

18 () (name), the individual on whose behalf I am applying,
19 is a state resident and has been a state resident for at least six
20 months immediately preceding the date of this application.

21 I understand that a false claim of residency to obtain a perma-
22 nent fund dividend for myself or for another is a criminal offense and
23 that if convicted I will forfeit future permanent fund dividends and
24 that I will lose or must repay all permanent fund dividends that have
25 been credited or paid to me, and any accrued interest in my annuity
26 account. I understand that this penalty is in addition to any crimi-
27 nal penalties imposed.

28 _____
29 (signature of individual, parent,

1 guardian, or other authorized
2 representative)

3 * Sec. 6. AS 43.23.015(e) is amended to read:

4 (e) If a public agency claims a [PERMANENT FUND] dividend
5 behalf of an individual under this section, the public agency s
6 elect 100 percent cash under AS 43.23.005(d) and hold the dividend
7 trust for the individual. Money held in trust under this subsec
8 shall be invested by the commissioner in accordance with AS 37.10

9 * Sec. 7. AS 43.23.015(f) is amended to read:

10 (f) A minor or an incompetent individual may not mainta
11 claim against the state or an officer or employee of the state
12 either on the manner in which the parent, guardian, or autho
13 representative other than a public agency of the state managa
14 disposed of permanent fund dividends received on behalf of the
15 or incompetent, or an election made or not made on that individ
16 behalf under AS 43.23.005(d) [INDIVIDUAL].

17 * Sec. 8. AS 43.23.015 is amended by adding a new subsection to r

18 (i) The permanent fund dividend application form shall be
19 pared to allow an applicant, other than a person who is exempt
20 AS 47.45.015(b), to elect to receive the dividend either in cash
21 an annuity credit.

22 * Sec. 9. AS 43.23.035 is amended to read:

23 Sec. 43.23.035. PENALTIES AND ENFORCEMENT. (a) In addit
24 any criminal penalties imposed by state law, if an individ
25 convicted of a crime in connection with a false statement mad
26 certification required under AS 43.23.015, and the conviction
27 reversed, that individual forfeits all permanent fund dividend
28 ited or paid, together with any interest credited to that indiv
29 annuity account and is not eligible for a future permanent fur

If the commissioner determines that a cash [PERMANENT FUND] should not have been claimed by or paid to an individual, the commissioner may use all collection procedures or remedies available under this title to recover the payment of a permanent fund dividend that was improperly made. A notice of an improperly paid dividend must be sent to the individual within 10 years after the improper payment. If notice is not sent within the 10 year period, proceedings may not be commenced in court for recovery of the improper payment.

AS 43.23.035 is amended by adding a new subsection to read:

If the commissioner determines that a permanent fund dividend should not have been credited to an individual's annuity account, the commissioner may, after notice and opportunity for hearing, direct the commissioner of administration to debit the individual's annuity account for the amount wrongly credited. If the credit is the fault of the individual, the debit must be made within 10 years. If the credit is the fault of the state, the debit must be made within three years.

AS 43.23.055 is amended to read:

43.23.055. DUTIES OF THE DEPARTMENT. The department shall

- (1) annually make payments to individuals who elect to receive a cash dividend under AS 43.23.005(d) [PAY PERMANENT FUND DIVIDENDS FROM PERMANENT FUND];

- (2) adopt regulations under the Administrative Procedure Act (AS 44.62) that establish procedures and time limits for claiming a permanent fund dividend or for electing an annuity credit; the department shall set the time limit for applications for permanent fund dividends so that the number of eligible applicants is determined by

1 October 1 of the year for which the dividend is declared and permanent
2 fund dividends for a year are paid before April 30 of the year follow-
3 ing that year;

4 (3) adopt regulations under the Administrative Procedure
5 Act (AS 44.62) that establish procedures and time limits for an indi-
6 vidual upon emancipation or upon reaching majority to apply for perma-
7 nent fund dividends not credited or received during minority because
8 the parent, guardian, or other authorized representative did not apply
9 on behalf of the individual; [AND]

10 (4) assist residents of the state, particularly in rural
11 areas, who because of language, disability, or inaccessibility to
12 public transportation need assistance to establish eligibility and to
13 apply for permanent fund dividends; and

14 (5) provide the commissioner of administration with infor-
15 mation necessary to maintain individual annuity account records and
16 administer the annuity program.

17 * Sec. 12. AS 43.23.065 is amended to read:

18 Sec. 43.23.065. EXEMPTION OF PERMANENT FUND DIVIDENDS. Fifty
19 percent of a cash [THE ANNUAL] permanent fund dividend payment [PAY-
20 ABLE TO AN INDIVIDUAL] is exempt from levy, execution, garnishment,
21 attachment, or any other remedy for the collection of debt. This
22 exemption applies to an eligible individual's permanent fund dividend
23 both before and after payment is made to the individual. An exemption
24 is not available under this section for cash permanent fund dividend
25 payments [DIVIDENDS] taken to satisfy (1) child support obligations
26 required by court order or decision of the child support enforcement
27 agency under AS 47.23.140 - 47.23.220; (2) a debt owed by an eligible
28 individual to an agency of the state, unless the debt is contested and
29 an appeal is pending, or the time limit for filing an appeal has not

1 expired; or (3) court ordered restitution under AS 12.55.045 - 12.55.-
2 051 or 12.55.100. A child support obligation under (1) of this sec-
3 tion has priority over a debt owed to an agency of the state, and a
4 permanent fund dividend may not be taken to satisfy a debt under (2)
5 of this section until any portion of the dividend necessary to satisfy
6 a child support obligation has been taken.

7 * Sec. 13. AS 43.23.065 is amended by adding new subsections to read:

8 (b) The department shall require an individual to take 100
9 percent of the permanent fund dividend in cash if the department
10 receives a levy, execution, garnishment, attachment or other legal
11 remedy for the collection of a past due debt described in (a)(1) or
12 (2) of this section.

13 (c) The courts of this state may, as a condition of any civil
14 judgment or restitution order under AS 12.55.045 - 12.55.051 or 12.-
15 55.100, require the defendant to take the defendant's permanent fund
16 dividend in cash.

17 * Sec. 14. AS 43.23.075 is amended to read:

18 Sec. 43.23.075. ELIGIBILITY FOR PUBLIC ASSISTANCE. (a) In
19 determining the eligibility of an individual under a public assistance
20 program administered by the Department of Health and Social Services
21 in which eligibility for assistance is based on financial need, the
22 Department of Health and Social Services may not consider a permanent
23 fund dividend as income or resources received by the recipient of
24 public assistance or by a member of the recipient's household unless
25 required to do so by federal law or regulation. The Department of
26 Health and Social Services shall notify all recipients of public
27 assistance of the effects of [RECEIVING] a permanent fund dividend
28 credit or cash payment.

29 (b) An individual who is denied medical assistance under 42

1 U.S.C. 1396 - 1396p (Social Security Act, Title XIX) solely because of
2 the credit or receipt of a permanent fund dividend by the individual
3 or by a member of the individual's household is eligible for state-
4 funded medical assistance under the general relief assistance program
5 (AS 47.25.120 - 47.25.300). The individual is entitled to receive,
6 for a period not to exceed four months, the same level of medical
7 assistance as the individual would have received under 42 U.S.C.
8 1396 - 1396p (Social Security Act, Title XIX) had there been no perma-
9 nent fund dividend program.

10 (c) An individual who is denied assistance solely because perma-
11 nent fund dividends credited to or received by the individual or by a
12 member of the individual's household are counted as income or re-
13 sources under federal law or regulation is eligible for cash assis-
14 tance under the general relief assistance program (AS 47.25.120 -
15 47.25.300). Notwithstanding the limit in AS 47.25.130, the individual
16 is entitled to receive, for a period not to exceed four months, the
17 same amount as the individual would have received under other public
18 assistance programs had there been no permanent fund dividend program.

19 * Sec. 15. AS 43.23.095(6) is repealed and reenacted to read:

20 (6) "permanent fund dividend" means a credit to an annuity
21 account or a cash payment under this chapter;

22 * Sec. 16. AS 43.23 is amended by adding new sections to read:

23 ARTICLE 2. ANNUITY PROGRAM.

24 Sec. 43.23.110. ANNUITY INVESTMENT FUND. (a) The annuity
25 investment fund is established as a separate fund in the state trea-
26 sury. The annuity investment fund consists of money transferred from
27 the dividend fund and income earned by the annuity investment fund.
28 Notwithstanding AS 37.13.145, an amount equal to the permanent fund
29 dividends taken as annuity credits under this chapter shall be annual-

1 ly transferred from the dividend fund to the annuity investment fund.

2 (b) Money in the annuity investment fund shall be invested by
3 the commissioner of revenue in investments authorized under AS 39.-
4 35.110. The commissioner of administration shall credit the net
5 income of the annuity investment fund to the individual annuity
6 accounts.

7 (c) The legislature may annually appropriate to the Department
8 of Administration an amount sufficient to pay monthly annuity payments
9 for the subsequent fiscal year under AS 43.23.130 from the annuity
10 investment fund. Funds appropriated under this subsection shall be
11 transferred from the annuity investment fund to the Department of
12 Administration in order to meet the current demands of the annuity
13 program.

14 (d) The legislature may annually appropriate from the annuity
15 investment fund an amount sufficient to administer the annuity pro-
16 gram. Any costs of administration funded under this subsection shall
17 be allocated equitably among all individual annuity accounts.

18 (e) Notwithstanding AS 39.35.110 or (b) of this section, the
19 commissioner of revenue may invest all or part of the annuity invest-
20 ment fund in commercial insurance contracts purchased from insurance
21 companies that have a Best's policyholders' rating of A or better and
22 belong to Best's financial size Group XV at the time of purchase.

23 Sec. 43.23.120. ANNUITY PROGRAM. (a) The annuity program is
24 administered by the commissioner of administration. The commissioner
25 of administration shall adopt regulations necessary to implement the
26 annuity program.

27 (b) The commissioner of administration shall maintain records of
28 individual annuity accounts and make annuity payments under AS 43.23.-
29 130.

1 Sec. 43.23.130. PAYMENT OF ANNUITIES. (a) An individual with
2 one or more annuity credits may receive an annuity upon reaching the
3 age of 65.

4 (b) An annuity under this section is a monthly payment based
5 upon the principal and accrued interest in the person's annuity
6 account. An annuity shall be paid as a straight life annuity or other
7 payment plan authorized by the commissioner of the Department of
8 Administration. The size of the annuity may not vary on account of
9 the individual's sex.

10 (c) An individual need not be a resident of the state to be
11 eligible to received an annuity payment from the individual's account.

12 (d) Except as provided in (b) and (e) of this section, an annu-
13 ity account may not be assigned, sold, or otherwise transferred from
14 one individual to another.

15 (e) If a person elects to credit a permanent fund dividend to an
16 annuity account in a particular year, that person may make an irrevoc-
17 cable choice regarding death benefits with respect to that credit. If
18 a person dies before age 65 and that person has selected death bene-
19 fits in at least one year, a lump sum payment shall, subject to appro-
20 priation, be paid to the surviving spouse by right of survivorship
21 unless a different beneficiary was designated. When no spouse sur-
22 vives and no beneficiary is designated, the lump sum shall be paid to
23 the decedent's estate. The lump sum payment includes all dividends
24 credited to the person's annuity account in years in which death
25 benefits were selected and interest on those dividends. Dividends
26 credited to a person's annuity account in years for which death bene-
27 fits were not selected and interest on those dividends shall, if the
28 person dies before age 65, be distributed equitably among the annuity
29 accounts of all individuals for which death benefits were not select-

1 ed.

2 (f) An individual does not receive a vested property right in an
3 annuity payment until that payment is made. Notwithstanding this
4 section, the state is not obligated to provide annuity payments for
5 annuity credits granted under AS 43.23.005.

6 * Sec. 17. AS 47.45.010(a) is amended to read:

7 (a) A person who is 65 years of age or over, who resides in the
8 state for at least one year immediately preceding application for a
9 longevity bonus under this chapter may apply to the commissioner of
10 administration for qualification to receive a monthly bonus [OF \$250].

11 * Sec. 18. AS 47.45 is amended by adding a new section to read:

12 Sec. 47.45.015. AMOUNT OF BONUS. (a) Except as provided in (b)
13 of this section, the monthly longevity bonus is equal to \$250, minus
14 the maximum possible straight life annuity for a person 65 years of
15 age under the annuity program (AS 43.23.110 - 43.23.130), as deter-
16 mined by the commissioner of administration.

17 (b) A person who is 65 years of age on or before January 1,
18 1988, is entitled to the full longevity bonus payment without reduc-
19 tion for the annuity program.

20 * Sec. 19. AS 47.45.030 is amended to read:

21 Sec. 47.45.030. ABSENCE FROM THE STATE. After qualification, a
22 recipient shall notify the commissioner of administration when the
23 recipient expects to be absent from the state if the absence is for a
24 continuous period that exceeds 30 days. After that notification, the
25 recipient may no longer receive bonuses from the Department of Admin-
26 istration after the last regularly approved monthly application. Upon
27 returning to the state, the recipient may again make application for a
28 bonus. Whenever the absence is for a continuous period that exceeds 90
29 [180] days the recipient shall be disqualified from receiving bonuses

1 for the next 12 calendar months after returning to the state. However,
2 when the commissioner of administration determines a period of absence
3 is beyond the control of the recipient, the recipient may not be
4 disqualified if the recipient still otherwise qualifies upon returning
5 to the state. Continual absences from the state, even though
6 reported, and failure to notify the commissioner of an expected
7 absence may be grounds for disqualification.

8 * Sec. 20. AS 47.45.070 is amended to read:

9 Sec. 47.45.070. UNQUALIFIED PERSONS. An unqualified person is
10 one who

11 (1) does not meet the age or residence requirements as
12 provided for under this chapter;

13 (2) meets the age and residence requirements of this chap-
14 ter but either is confined in a state or federal mental health insti-
15 tution or facility and is certified by the state as unable to manage
16 personal affairs, or resides in a nursing home as that term is defined
17 in AS 08.70.180; however, if that person, at the time of commitment or
18 commencement of residence, provided the principal support of a spouse,
19 the commissioner of administration may determine to pay the confined
20 person's bonus to the person's spouse until the spouse is qualified
21 for a bonus;

22 (3) is otherwise qualified but confined in a penal or
23 correctional institution or facility; upon completion of sentence or
24 upon the conferral of a pardon, parole or probation, the person may
25 make application; confinement outside the state shall be considered as
26 residence in the state if a person was convicted and sentenced from a
27 court in Alaska; revocation of parole or probation shall be cause for
28 immediate disqualification until release from confinement is again
29 effected;

1 (4) voluntarily leaves the state and remains absent from
2 the state for a continuous period of more than 90 [180] days.

3 * Sec. 21. AS 47.45 is amended by adding a new section to read:

4 Sec. 47.45.122. ELIGIBILITY FOR PUBLIC ASSISTANCE. (a) An
5 individual whose public assistance is denied or reduced solely because
6 of the receipt of a bonus under this chapter by the individual or by a
7 member of the individual's household is eligible for assistance under
8 the general relief assistance program in AS 47.25.120 - 47.25.300.
9 Notwithstanding the limit in AS 47.25.130, the individual is entitled
10 to receive the same amount as the individual would have received under
11 other public assistance programs had the individual not received a
12 longevity bonus.

13 (b) In this section "other public assistance" means

14 (1) Supplemental Security Income (42 U.S.C. 1381 - 1385);

15 (2) Medicaid (42 U.S.C. 1396 - 1396p); and

16 (3) Adult Public Assistance (AS 47.25.430 - 47.25.615).

17 * Sec. 22. The lieutenant governor shall place before the qualified
18 voters of the state at the next general election the following question,
19 advisory to the legislature. The question shall appear on the ballot in
20 substantially the following form:

21 Q U E S T I O N

22 Under legislation proposed in 1985, only individuals who turn
23 65 on or before January 1, 1988, who have lived in Alaska
24 for at least one year, will be entitled to receive an Alaska
25 longevity bonus of \$250 a month.

26 The legislature is considering a program that would allow
27 younger Alaskans to use all or part of their permanent fund
28 dividend to purchase an annuity that they will receive when
29 they turn 65, since they will no longer receive the full

1 longevity bonus. In the early years of the program, the
2 annuity payment would have to be supplemented with a declin-
3 ing bonus payment paid for with state funds, since initially
4 the annuity payment would not on its own provide an amount
5 equal to \$250 a month.

6 Should the legislature adopt this program?

7 Yes []

No []

8 * Sec. 23. Section 11, ch. 38, SLA 1984 is amended to read:

9 Sec. 11. Sections 7 and 9 of this [THIS] Act [AND AS 47.45] are
10 repealed June 30, 1985.

11 * Sec. 24. AS 43.23.045(c) is repealed.

12 * Sec. 25. AS 47.45 is repealed July 1, 1987.

13 * Sec. 26. Sections 2 - 18 of this Act take effect on the date that
14 sec. 1 of this Act is repealed.

15 * Sec. 27. Section 1 of this Act takes effect on the date that secs.
16 2 - 18 of this Act are repealed.

17 * Sec. 28. Sections 19 - 25 of this Act take effect immediately in
18 accordance with AS 01.10.070(c).

Lewis
5/11/85

Rax
St. Paula

Original sponsors: Ray, Halford,
Bennett, et al

1 IN THE SENATE

BY THE 2d CONFERENCE COMMITTEE

2 CONFERENCE CS FOR SENATE BILL NO. 56

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to a longevity bonus, and providing
7 for an effective date."

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

9 * Section 1. AS 47.45.010(a) is amended to read:

10 (a) A person who is 65 years of age on or before January 1, 1988
11 [OR OVER], who resides in the state for at least one year immediately
12 preceding application for a longevity bonus under this chapter may
13 apply to the commissioner of administration for qualification to
14 receive a monthly bonus of \$250 upon reaching age 65.

15 * Sec. 2. AS 43.23.005(c) is amended to read:

16 (c) A parent, guardian, or other authorized representative may
17 claim a permanent fund dividend on behalf of an unemancipated minor or
18 on behalf of an incompetent individual who is eligible to receive a
19 dividend [PAYMENT] under this section.

20 * Sec. 3. AS 43.23.005 is amended by adding a new subsection to read:

21 (d) A person who is eligible to receive a permanent fund divi-
22 dend under this section, or who is authorized to claim a dividend on
23 behalf of another under (c) of this section, may elect to receive the
24 dividend either in cash or as an annuity credit. Alternatively, a
25 person may elect to receive 25 percent, 50 percent, or 75 percent of
26 the dividend in cash and the remainder as an annuity credit. A person
27 who is 65 years of age on or before January 1, 1988 may only receive
28 the permanent fund dividend in cash and may not elect to receive
29 an annuity credit.

1 * Sec. 4. AS 43.23.015(a) is amended to read:

2 (a) The commissioner shall adopt regulations under the Adminis-
3 trative Procedure Act (AS 44.62) establishing the process for de-
4 termining the eligibility of individuals for permanent fund dividends.
5 The commissioner may require an individual to provide proof of eli-
6 gibility, and the commissioner may use other information available
7 from other state departments or agencies to determine the eligibility
8 of an individual.

9 * Sec. 5. AS 43.23.015(b) is amended to read:

10 (b) The department shall prescribe and furnish an application
11 form for claiming a permanent fund dividend. The application must
12 contain a statement of eligibility and a certification of residency in
13 substantially the following form:

14 I certify that

15 () I am a state resident on the date of this application
16 and I have been a state resident for at least six months immediately
17 preceding the date of this application; or

18 () (name), the individual on whose behalf I am applying,
19 is a state resident and has been a state resident for at least six
20 months immediately preceding the date of this application.

21 I understand that a false claim of residency to obtain a perma-
22 nent fund dividend for myself or for another is a criminal offense and
23 that if convicted I will forfeit future permanent fund dividends and
24 that I will lose or must repay all permanent fund dividends that have
25 been credited or paid to me, and any accrued interest in my annuity
26 account. I understand that this penalty is in addition to any crimi-
27 nal penalties imposed.

28
29 _____
(signature of individual, parent,

1 guardian, or other authorized
2 representative)

3 * Sec. 6. AS 43.23.015(e) is amended to read:

4 (e) If a public agency claims a [PERMANENT FUND] dividend on
5 behalf of an individual under this section, the public agency shall
6 elect 100 percent cash under AS 43.23.005(d) and hold the dividend in
7 trust for the individual. Money held in trust under this subsection
8 shall be invested by the commissioner in accordance with AS 37.10.070.

9 * Sec. 7. AS 43.23.015(f) is amended to read:

10 (f) A minor or an incompetent individual may not maintain a
11 claim against the state or an officer or employee of the state based
12 either on the manner in which the parent, guardian, or authorized
13 representative other than a public agency of the state managed or
14 disposed of permanent fund dividends received on behalf of the minor
15 or incompetent, or an election made or not made on that individual's
16 behalf under AS 43.23.005(d) [INDIVIDUAL].

17 * Sec. 8. AS 43.23.015 is amended by adding a new subsection to read:

18 (i) The permanent fund dividend application form shall be pre-
19 pared to allow an applicant, other than a person who is exempt under
20 AS 47.45.015(b), to elect to receive the dividend either in cash or as
21 an annuity credit.

22 * Sec. 9. AS 43.23.035 is amended to read:

23 Sec. 43.23.035. PENALTIES AND ENFORCEMENT. (z) In addition to
24 any criminal penalties imposed by state law, if an individual is
25 convicted of a crime in connection with a false statement made in a
26 certification required under AS 43.23.015, and the conviction is not
27 reversed, that individual forfeits all permanent fund dividends cred-
28 ited or paid, together with any interest credited to that individual's
29 annuity account and is not eligible for a future permanent fund divi-

1 dend.

2 (b) If the commissioner determines that a cash [PERMANENT FUND]
3 dividend should not have been claimed by or paid to an individual, the
4 commissioner may use all collection procedures or remedies available
5 for collection of taxes under this title to recover the payment of a
6 permanent fund dividend that was improperly made. A notice of an
7 improperly paid dividend must be sent to the individual within 10
8 years after the improper payment. If notice is not sent within the
9 10-year period, proceedings may not be commenced in court for recovery
10 of the improper payment.

11 * Sec. 10. AS 43.23.035 is amended by adding a new subsection to read:

12 (c) If the commissioner determines that a permanent fund divi-
13 dend should not have been credited to an individual's annuity account,
14 the commissioner may, after notice and opportunity for hearing, direct
15 the commissioner of administration to debit the individual's annuity
16 account for the amount wrongly credited. If the credit is the fault
17 of the individual, the debit must be made within 10 years. If the
18 credit is the fault of the state, the debit must be made within three
19 years.

20 * Sec. 11. AS 43.23.055 is amended to read:

21 Sec. 43.23.055. DUTIES OF THE DEPARTMENT. The department shall

22 (1) annually make payments to individuals who elect to
23 receive cash under AS 43.23.005(d) [PAY PERMANENT FUND DIVIDENDS FROM
24 THE DIVIDEND FUND];

25 (2) adopt regulations under the Administrative Procedure
26 Act (AS 44.60) that establish procedures and time limits for claiming
27 a permanent fund dividend or for electing an annuity credit; the de-
28 partment shall set the time limit for applications for permanent fund
29 dividends so that the number of eligible applicants is determined by

1 October 1 of the year for which the dividend is declared and permanent
2 fund dividends for a year are paid before April 30 of the year follow-
3 ing that year;

4 (3) adopt regulations under the Administrative Procedure
5 Act (AS 44.62) that establish procedures and time limits for an indi-
6 vidual upon emancipation or upon reaching majority to apply for perma-
7 nent fund dividends not credited or received during minority because
8 the parent, guardian, or other authorized representative did not apply
9 or behalf of the individual; [AND]

10 (4) assist residents of the state, particularly in rural
11 areas, who because of language, disability, or inaccessibility to
12 public transportation need assistance to establish eligibility and to
13 apply for permanent fund dividends; and

14 (5) provide the commissioner of administration with infor-
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16 administer the annuity program.

17 * Sec. 12. AS 43.23.065 is amended to read:

18 Sec. 43.23.065. EXEMPTION OF PERMANENT FUND DIVIDENDS. Fifty
19 percent of a cash [THE ANNUAL] permanent fund dividend payment [PAY-
20 ABLE TO AN INDIVIDUAL] is exempt from levy, execution, garnishment,
21 attachment, or any other remedy for the collection of debt. This
22 exemption applies to an eligible individual's permanent fund dividend
23 both before and after payment is made to the individual. An exemption
24 is not available under this section for cash permanent fund dividend
25 payments [DIVIDENDS] taken to satisfy (1) child support obligations
26 required by court order or decision of the child support enforcement
27 agency under AS 47.23.140 - 47.23.270; (2) a debt owed by an eligible
28 individual to an agency of the state, unless the debt is contested and
29 an appeal is pending, or the time limit for filing an appeal has not

1 expired; or (3) court ordered restitution under AS 12.55.045 - 12.55.-
2 051 or 12.55.100. A child support obligation under (1) of this sec-
3 tion has priority over a debt owed to an agency of the state, and a
4 permanent fund dividend may not be taken to satisfy a debt under (2)
5 of this section until any portion of the dividend necessary to satisfy
6 a child support obligation has been taken.

7 * Sec. 13. AS 43.23.065 is amended by adding new subsections to read:

8 (b) The department shall require an individual to take 100
9 percent of the permanent fund dividend in cash if the department
10 receives a levy, execution, garnishment, attachment or other legal
11 remedy for the collection of a past due debt described in (a)(1) or
12 (2) of this section.

13 (c) The courts of this state may, as a condition of any civil
14 judgment or restitution order under AS 12.55.045 - 12.55.051 or 12.-
15 55.100, require the defendant to take the defendant's permanent fund
16 dividend in cash.

17 * Sec. 14. AS 43.23.075 is amended to read:

18 Sec. 43.23.075. ELIGIBILITY FOR PUBLIC ASSISTANCE. (a) In
19 determining the eligibility of an individual under a public assistance
20 program administered by the Department of Health and Social Services
21 in which eligibility for assistance is based on financial need, the
22 Department of Health and Social Services may not consider a permanent
23 fund dividend as income or resources received by the recipient of
24 public assistance or by a member of the recipient's household unless
25 required to do so by federal law or regulation. The Department of
26 Health and Social Services shall notify all recipients of public
27 assistance of the effects of [RECEIVING] a permanent fund dividend
28 credit or cash payment.

29 (b) An individual who is denied medical assistance under 42

S.C. 1396 - 1396p (Social Security Act, Title XIX) solely because of a credit or receipt of a permanent fund dividend by the individual or by a member of the individual's household is eligible for state-aided medical assistance under the general relief assistance program (AS 47.25.120 - 47.25.300). The individual is entitled to receive, for a period not to exceed four months, the same level of medical assistance as the individual would have received under 42 U.S.C. 1396 - 1396p (Social Security Act, Title XIX) had there been no permanent fund dividend program.

(c) An individual who is denied assistance solely because permanent fund dividends credited to or received by the individual or by a member of the individual's household are counted as income or resources under federal law or regulation is eligible for cash assistance under the general relief assistance program (AS 47.25.120 - 47.25.300). Notwithstanding the limit in AS 47.25.130, the individual is entitled to receive, for a period not to exceed four months, the same amount as the individual would have received under other public assistance programs had there been no permanent fund dividend program.

15. AS 43.23.095(6) is repealed and re-enacted to read:

(6) "permanent fund dividend" means a credit to an annuity account or a cash payment under this chapter;

16. AS 43.23 is amended by adding new sections to read:

ARTICLE 2. ANNUITY PROGRAM.

Sec. 43.23.110. ANNUITY INVESTMENT FUND. (a) The annuity investment fund is established as a separate fund in the state treasury. The annuity investment fund consists of money transferred from the permanent fund dividend fund and income earned by the annuity investment fund. Notwithstanding AS 37.13.149, an amount equal to the permanent fund dividends taken as annuity credits under this chapter shall be annual-

1 ly transferred from the dividend fund to the annuity investment fund.

2 (b) Money in the annuity investment fund shall be invested by
3 the commissioner of revenue in investments authorized under AS 39.-
4 35.110. The commissioner of administration shall credit the net
5 income of the annuity investment fund to the individual annuity
6 accounts.

7 (c) The legislature may annually appropriate to the Department
8 of Administration an amount sufficient to pay monthly annuity payments
9 for the subsequent fiscal year under AS 43.23.130 from the annuity
10 investment fund. Funds appropriated under this subsection shall be
11 transferred from the annuity investment fund to the Department of
12 Administration in order to meet the current demands of the annuity
13 program.

14 (d) The legislature may annually appropriate from the annuity
15 investment fund an amount sufficient to administer the annuity pro-
16 gram. Any costs of administration funded under this subsection shall
17 be allocated equitably among all individual annuity accounts.

18 (e) Notwithstanding AS 39.35.110 or (b) of this section, the
19 commissioner of revenue may invest all or part of the annuity invest-
20 ment fund in commercial insurance contracts purchased from insurance
21 companies that have a Best's policyholders' rating of A or better and
22 belong to Best's financial size Group XV at the time of purchase.

23 Sec. 43.23.120. ANNUITY PROGRAM. (a) The annuity program is
24 administered by the commissioner of administration. The commissioner
25 of administration shall adopt regulations necessary to implement the
26 annuity program.

27 (b) The commissioner of administration shall maintain records of
28 individual annuity accounts and make annuity payments under AS 43.23.-
29 130.

1 Sec. 43.23.130. PAYMENT OF ANNUITIES. (a) An individual with
2 one or more annuity credits may receive an annuity upon reaching the
3 age of 65.

4 (b) An annuity under this section is a monthly payment based
5 upon the principal and accrued interest in the person's annuity
6 account. An annuity shall be paid as a straight life annuity or other
7 payment plan authorized by the commissioner of the Department of
8 Administration. The size of the annuity may not vary on account of
9 the individual's sex.

10 (c) An individual need not be a resident of the state to be
11 eligible to receive an annuity payment from the individual's account.

12 (d) Except as provided in (b) and (e) of this section, an annu-
13 ity account may not be assigned, sold, or otherwise transferred from
14 one individual to another.

15 (e) If a person elects to credit a permanent fund dividend to an
16 annuity account in a particular year, that person may make an irrevoc-
17 able choice regarding death benefits with respect to that credit. If
18 a person dies before age 65 and that person has selected death bene-
19 fits in at least one year, a lump sum payment shall, subject to appro-
20 priation, be paid to the surviving spouse by right of survivorship
21 unless a different beneficiary was designated. When no spouse sur-
22 vives and no beneficiary is designated, the lump sum shall be paid to
23 the decedent's estate. The lump sum payment includes all dividends
24 credited to the person's annuity account in years in which death
25 benefits were selected and interest on those dividends. Dividends
26 credited to a person's annuity account in years for which death bene-
27 fits were not selected and interest on those dividends shall, if the
28 person dies before age 65, be distributed equitably among the annuity
29 accounts of all individuals for which death benefits were not select-

1 ed.

2 (f) An individual does not receive a vested property right in an
3 annuity payment until that payment is made. Notwithstanding this
4 section, the state is not obligated to provide annuity payments for
5 annuity credits granted under AS 43.23.025.

6 * Sec. 17. AS 47.45.010(a) is amended to read:

7 (a) A person who is 65 years of age or over, who resides in the
8 state for at least one year immediately preceding application for a
9 longevity bonus under this chapter may apply to the commissioner of
10 administration for qualification to receive a monthly bonus [OF \$250].

11 * Sec. 18. AS 47.45 is amended by adding a new section to read:

12 Sec. 47.45.015. AMOUNT OF BONUS. (a) Except as provided in (b)
13 of this section, the monthly longevity bonus is equal to \$250, minus
14 the maximum possible straight life annuity for a person 65 years of
15 age under the annuity program (AS 43.23.110 - 43.23.130), as deter-
16 mined by the commissioner of administration.

17 (b) A person who is 65 years of age on or before January 1,
18 1988, is entitled to the full longevity bonus payment without reduc-
19 tion for the annuity program.

20 * Sec. 19. AS 47.45.030 is amended to read:

21 Sec. 47.45.030. ABSENCE FROM THE STATE. After qualification, a
22 recipient shall notify the commissioner of administration when the
23 recipient expects to be absent from the state if the absence is for a
24 continuous period that exceeds 30 days. After that notification, the
25 recipient may no longer receive bonuses from the Department of Admin-
26 istration after the last regularly approved monthly application. Upon
27 returning to the state, the recipient may again make application for a
28 bonus. Whenever the absence is for a continuous period that exceeds 90
29 [180] days the recipient shall be disqualified from receiving bonuses

1 for the next 12 calendar months after returning to the state. However,
2 when the commissioner of administration determines a period of absence
3 is beyond the control of the recipient, the recipient may not be
4 disqualified if the recipient still otherwise qualifies upon returning
5 to the state. Continual absences from the state, even though
6 reported, and failure to notify the commissioner of an expected
7 absence may be grounds for disqualification.

8 * Sec. 20. AS 47.45.070 is amended to read:

9 Sec. 47.45.070. UNQUALIFIED PERSONS. An unqualified person is
10 one who

11 (1) does not meet the age or residence requirements as
12 provided for under this chapter;

13 (2) meets the age and residence requirements of this chap-
14 ter but either is confined in a state or federal mental health insti-
15 tution or facility and is certified by the state as unable to manage
16 personal affairs, or resides in a nursing home as that term is defined
17 in AS 08.70.180; however, if that person, at the time of commitment or
18 commencement of residence, provided the principal support of a spouse,
19 the commissioner of administration may determine to pay the confined
20 person's bonus to the person's spouse until the spouse is qualified
21 for a bonus;

22 (3) is otherwise qualified but confined in a penal or
23 correctional institution or facility; upon completion of sentence or
24 upon the conferral of a pardon, parole or probation, the person may
25 make application; confinement outside the state shall be considered as
26 residence in the state if a person was convicted and sentenced from a
27 court in Alaska; revocation of parole or probation shall be cause for
28 immediate disqualification until release from confinement is again
29 effected;

1 (4) voluntarily leaves the state and remains absent from
2 the state for a continuous period of more than 90 [180] days.

3 * Sec. 21. AS 47.45 is amended by adding a new section to read:

4 Sec. 47.45.122. ELIGIBILITY FOR PUBLIC ASSISTANCE. (a) An
5 individual whose public assistance is denied or reduced solely because
6 of the receipt of a bonus under this chapter by the individual or by a
7 member of the individual's household is eligible for assistance under
8 the general relief assistance program in AS 47.25.120 - 47.25.300.
9 Notwithstanding the limit in AS 47.25.130, the individual is entitled
10 to receive the same amount as the individual would have received under
11 other public assistance programs had the individual not received a
12 longevity bonus.

13 (b) In this section "other public assistance" means

14 (1) Supplemental Security Income (42 U.S.C. 1381 - 1385);

15 (2) Medicaid (42 U.S.C. 1396 - 1396p); and

16 (3) Adult Public Assistance (AS 47.25.430 - 47.25.615).

17 * Sec. 22. The lieutenant governor shall place before the qualified
18 voters of the state at the next general election the following question,
19 advisory to the legislature. The question shall appear on the ballot in
20 substantially the following form:

21 Q U E S T I O N

22 Under legislation proposed in 1965, only individuals who turn
23 65 on or before January 1, 1968, who have lived in Alaska
24 for at least one year, will be entitled to receive an Alaska
25 longevity bonus of \$250 a month.

26 The legislature is considering a program that would allow
27 younger Alaskans to use all or part of their permanent fund
28 dividend to purchase an annuity that they will receive when
29 they turn 65, since they will no longer receive the full

1 longevity bonus. In the early years of the program, the
2 annuity payment would have to be supplemented with a declin-
3 ing bonus payment paid for with state funds, since initially
4 the annuity payment would not on its own provide an amount
5 equal to \$250 a month.

6 Should the legislature adopt this program?

7 Yes []

No []

8 * Sec. 23. Section 11, ch. 38, SLA 1984 is amended to read:

9 Sec. 11. Sections 7 and 9 of this [THIS] Act [AND AS 47.45] are
10 repealed June 30, 1985.

11 * Sec. 24. AS 43.23.045(c) is repealed.

12 * Sec. 25. Sections 2 - 18 of this Act take effect on the date that
13 sec. 1 of this Act is repealed.

14 * Sec. 26. Section 1 of this Act takes effect on the date that secs.
15 2 - 18 of this Act are repealed.

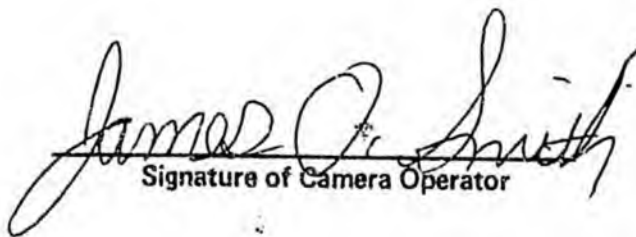
16 * Sec. 27. Sections 19 - 24 of this Act take effect immediately in
17 accordance with AS 01.10.070(c).



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Date

CONFERENCE
COMMITTEE
SB 140

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 31, 1986

SUBJECT: Comparative section by section analysis of House and Senate versions of SB 140, an Act relating to rights of the terminally ill (HCS CSSB 140 (Jud) am H and CSSB 140 (HESS) am)

TO: Representative Don Clocksin

FROM: George Utermohle *GU*
Legislative Counsel

As per your request, the following is a comparative section by section analysis of House and Senate versions of SB 140, an Act relating to rights of the terminally ill. For the purposes of this analysis, the Senate version is CSSB 140 (HESS) am and the House version is HCS CSSB 140 (Jud) am H.

Section 1 Rights of the Terminally Ill

AS 18.12.010(a) BOTH VERSIONS: Any person who is legally competent and who is at least 18 years old may complete a declaration indicating that person's intent that life sustaining procedures be withdrawn in certain circumstances. The declaration is effective only if the declarant is unable to make treatment decisions and the declarant has a terminal medical condition.

SENATE VERSION: The declaration must be signed by the declarant, or at his direction, and witnessed by two persons. The witnesses must be at least 18 years old and not related to the declarant by blood or marriage.

The physician or health care provider who receives a declaration may presume that the declaration is valid unless there is evidence to the contrary. The physician and health care provider do not have a duty to investigate whether a declaration is legally sufficient. They may rely on representations of the declarant.

HOUSE VERSION: The declaration must be signed by the declarant or, at the declarant's direction, and witnessed by two persons or a person who can take acknowledgments. Any legally competent person may witness a declaration without regard to relationship to the declarant.

A person may not charge a fee for preparing a declaration.

AS 18.12.010(b)

SENATE VERSION: The declarant is responsible for notifying the physician that a declaration exists.

A physician or health care provider who receives a copy of the declaration must insert it into the declarant's medical record.

HOUSE VERSION: The declarant is responsible for providing a copy of the declaration to the physician.

A physician or health care provider who receives a copy of the declaration must insert it into the declarant's medical record.

AS 18.12.010(c) This subsection contains a suggested form of the declaration.

SENATE VERSION: The form provides that the declarant authorizes the attending physician to withdraw life-sustaining medical procedures, if the declarant is unable to participate in medical treatment decisions and is terminally ill.

The form provides for the signature of the declarant and the witnesses.

HOUSE VERSION: The form provides that the declarant authorizes the attending physician to withdraw life-sustaining medical procedures, if the declarant is unable to participate in medical treatment decisions and is terminally ill.

The form provides language by which the declarant may elect whether to receive nutrition or hydration by gastric tube or intravenously.

The form provides for the signature of the declarant and the witnesses. As an alternative to the witnessing provisions

AS 18.12.040(b)

SENATE VERSION: When life-sustaining procedures have been withdrawn according to the intent of the declaration, certain medical procedures necessary to prevent pain or to provide comfort to the patient may still be administered. Nutrition and hydration may be provided to the patient, even though life-sustaining procedures are withdrawn.

HOUSE VERSION: The House version is similar to the Senate version except that it allows a declarant to specify in the declaration that nutrition and hydration is not to be provided by gastric tube or intravenously.

AS 18.12.040(c)

SENATE VERSION: A qualified patient who is known to the attending physician to be pregnant must receive life-sustaining treatment as long as it is probable that the fetus could develop to the point of live birth. The declaration of a pregnant woman is not effective while it is probable that the fetus will survive.

HOUSE VERSION: The declaration of a woman known to be pregnant is not effective as long as the fetus is alive.

AS 18.12.050(a) House and Senate versions are identical.

A physician who refuses to record a patient's declaration in the medical record or who refuses to comply with the declaration shall withdraw as the patient's attending physician. The physician remains responsible for the patient until another physician is obtained.

AS 18.12.050(b)

SENATE VERSION: A health care facility which refuses to follow a patient's declaration must take all reasonable steps to transfer the patient to a facility that will follow the patient's declaration.

HOUSE VERSION: If a health care facility refuses to comply with a patient's declaration, the facility must inform the patient, or in certain circumstances the patient's guardian, of the facility's policy. The health care facility must also take reasonable steps to transfer the patient to a

facility that will follow the patient's declaration or to the patient's home.

AS 18.12.060(a) House and Senate versions are identical.

Physicians, health care facilities, and persons who assist in withholding of life-sustaining procedures are not liable if they withhold life-sustaining procedures in compliance with a declaration and if they are not aware of any revocation of the declaration. The immunity granted in this section extends to civil, criminal, and professional liability that may otherwise arise when life-sustaining procedures are withdrawn in good faith although by mistake.

AS 18.12.060(b) Under House and Senate versions, certain persons or facilities are not subject to civil or criminal liability if they follow reasonable medical standards. This provision does not prevent a person from suing these persons or facilities for actions under this Act, however the plaintiff must prove that the defendant acted unreasonably.

The Senate version refers to physicians, health care facilities, and health care providers while the House version refers to physicians, health care facilities and health care professionals.

AS 18.12.070

SENATE VERSION: A physician who refuses to comply with a declaration and who refuses to withdraw as attending physician is guilty of a class A misdemeanor.

A physician who refuses to record a determination of terminal condition is guilty of a class A misdemeanor.

A person who conceals or destroys the declaration of another or who falsifies the revocation of a declaration of another is guilty of a class A misdemeanor.

A person who intends to cause the withdrawal of life-sustaining procedures from another person and thus causes the death of that person, by forging a declaration or destroying a revocation of a declaration is guilty of first degree murder.

HOUSE VERSION: A physician who fails to comply with the patient's declaration or to transfer a patient to a facility where the declaration can be effected

(1) has no right to compensation for medical services provided after the withdrawal should have been effective or the transfer should have occurred and

(2) is liable to the patient or the patient's heirs for a civil penalty of \$1,000 and the actual costs arising from the failure to comply with the declaration. This is the exclusive remedy at law for failure to comply with the declaration. This limitation on actions for damages applies only to physicians and not to health care providers or health care facilities.

A person who conceals or destroys a declaration of another or who falsifies a revocation of a declaration may be liable to the declarant or the heirs of the declarant in a civil action.

AS 18.12.080(a)

SENATE VERSION: Except for those actions described in AS 18.12.070(d) of the Senate version, a death resulting from the withholding or withdrawal of life-sustaining procedures under this Act is not murder or suicide.

HOUSE VERSION: A death resulting from the withholding or withdrawal of life-sustaining procedures under this Act is not murder or suicide. The House version does not make specific reference to acts that are punishable under the murder statutes.

AS 18.12.080 (b) - (f) House and Senate versions are identical.

The execution of a declaration does not affect the sale of insurance to the declarant. The withholding or withdrawal of life-sustaining procedures in compliance with this bill does not impair or invalidate a life insurance policy on the declarant.

A person cannot be required to execute a declaration as a condition for receiving health insurance or medical care.

The fact that a person has not executed a declaration does not create any presumption as to the person's intent if the person should ever be in a terminal condition and unable to make treatment decisions.

Nothing in this bill in any way limits the rights of a person to control medical treatment and the use of life-sustaining procedures as long as the person is able to do so.

Nothing in this bill condones, authorizes, or approves euthanasia.

AS 18.12.090 House and Senate versions are essentially the same except that the Senate version recognizes declarations validly executed in other states while the House version recognizes declarations validly executed in other states, territories, or possessions of the United States.

AS 18.12.100 Terms defined for the purposes of the bill are: "attending physician", "declaration", "health care provider", "life-sustaining procedure", "physician", "qualified patient", and "terminal condition".

Except for the definition of "terminal condition", definitions in House and Senate versions are identical.

SENATE VERSION: "Terminal condition" means an incurable or irreversible condition that would result in death within a relatively short time if life-sustaining procedures are not administered. The determination of when a terminal condition exists is made by the attending physician.

HOUSE VERSION: "Terminal condition" means a progressive incurable or irreversible condition that would result in death within a relatively short time if life-sustaining procedures are not administered. The determination of when a terminal condition exists is made by two physicians who have personally examined the patient. One of the two physicians must be the patient's attending physician. The opinion of two physicians is not required if two physicians are not available.

Section 2. The immediate effective date is identical in House and Senate versions.

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 3, 1986

SUBJECT: Powers of Conference Committees
(SB 140)

TO: Senator Richard Eliason

FROM: George Utermohle *GU*
Legislative Counsel

This memorandum supplements a conversation with Sheila Peterson of your staff. The question was whether a conference committee could draft a substitute bill for SB 140 using sentences from the House version and Senate version. As long as the conference committee adopts language adopted by either house, the conference committee could formulate a substitute bill by combining sentences from either version. The paramount consideration is whether the language adopted by the conference committee encompasses a complete unit of subject matter.

For example, in 18.12.010(a) of SB 140 there are at least four different subjects addressed in either or both of the versions of the bill. Those subjects are eligibility for and legal effect of a declaration, the manner for executing a declaration, the presumptions of validity of a declaration, and the fee for preparation of a declaration. On each of these four subjects the committee must adopt either the Senate or House language.

The conference committee must adopt the language on the eligibility for and legal effect of a declaration because the same language is in both versions of the bill.

The conference committee has two versions of language to choose from on the subject of the manner of executing a declaration. The conference committee may adopt either the House or Senate version.

The conference committee has only one version of language to choose from on the subject of the presumptions of validity

Senator Richard Eliason
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April 3, 1986

of a declaration. The House and Senate bills contain identical language on this subject. The conference committee must include this language in a conference committee substitute because it is included in both versions. The only issue before the committee is whether to include this language in 18.12.010(a) or 18.12.010(d).

The conference committee has two versions of the language relating to the fee for preparation of a declaration. The House version says no fee may be charged while the Senate version is silent on this subject. The conference committee may then adopt the House language or the Senate language on this subject.

The action which the conference committee takes on each of these subjects is distinct and independent from that taken on the others. The only limit on the power of the committee to mix and match between House and Senate language on each subject is that the committee cannot change the effect of the bill as to that subject to arrive at a result that differs from both the House and Senate versions. Admittedly, it is difficult to determine when this has occurred. However, without this limit on the power of a conference committee to mix and match Senate and House language, form would prevail over substance and a conference committee could conceivably completely rewrite legislation without powers of free conference.

Though I have treated the manner of executing a declaration as a single subject for consideration by the committee, this subject could be further divided into distinct subjects. For example in executing a declaration, the declaration may be witnessed by two persons or in the alternative by two persons or a person who can take acknowledgments. The second distinct subject addressed by the House and Senate versions of the bill is the competence of persons to serve as witnesses. In the Senate version witnesses may not be related by blood or marriage to the declarant and must be at least 18 years old and in the House version witnesses must be generally competent to serve as witnesses. The conference committee could then accept the House language on who can witness (two persons or a person qualified to take acknowledgments) and the Senate's language on the competence of persons to witness a declaration (16 year of age and not related by blood or marriage). The limit on the power of the conference committee to mix and match language from the House and Senate versions of the bill would be exceeded if

Senator Richard Eliason
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the committee attempted to combine the House provision that any person generally competent to be witness may witness a declaration with the Senate provision that a witness cannot be related by blood or marriage to the declarant. In this case the conference committee would not be adopting the House or Senate amendment on the issue but would be formulating compromise language which is beyond the power of a conference committee.

GU:mkr
m4/066

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 1, 1986

SUBJECT: Powers of a conference committee
SB 140

TO: Senator Richard Eliason

FROM: George Utermohle *GU*
Legislative Counsel

You have asked whether a conference committee that has not been granted limited powers of free conference may delete language from an amendment previously adopted by one house to avoid redundant language when the same language is contained in another portion of the amendments adopted by the other house.

In regard to the specific language in question the Senate amendments to SB 140 include the following sentence in sec. 18.12.010(a): "A physician or health care provider may presume, in the absence of actual notice to the contrary, that the declaration complies with this Act and is valid." The House amendments have moved this language from sec. 18.12.010(a) to sec. 18.12.010(d).

The powers of conference committees is limited by Rule 42 of the Uniform Rules which provides in part

"If the committee reaches agreement on previously adopted amendments to a bill adopted by either house, the committee then submits an identical report to each house."

Under the Rules the conference committee must reach agreement on previously adopted amendments. The issue is what is a previously adopted amendment. Section 18.12.010(a) as passed by the Senate addresses three distinct subjects: eligibility for and legal effect of a declaration, execution of declarations, and presumptions of validity of a declaration. Two of the three subjects have been amended in the House. As to the eligibility for and legal effect of declarations House and Senate versions are the same. As to

Senator Richard Eliason

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the execution of declarations House and Senate versions differ greatly. As to the third subject, presumptions of validity of a declaration, the House and Senate versions are contrary to each other; the Senate version contains this provision and the House does not.

In reaching an agreement on previously adopted amendments, the conference committee may address each subject separately and adopt either the House or Senate amendment on each. As to the subject of "presumptions" the committee may agree to accept the Senate language or the House version that deletes this provision from sec. 18.12.010(a). In regard to sec. 18.12.010(d) that is contained in the House version, and that contains the language on presumptions of validity of declarations, the committee may accept the House version of the language or the Senate version, which has no subsection (d).

As an alternative procedure the conference committee could adopt the Senate version of sec. 18.12.010(a) in its entirety and not adopt sec. 18.12.010(d) from the House version. This procedure would also avoid the duplication of the "presumptions" language.

GU:mkr
m4:053

SENATE VERSION	HOUSE VERSION
<p><u>Witnessing Requirement (Sec. 18.12.010(a))</u></p> <p>-- The declaration is witnessed by two persons not related to the declarant by blood or marriage.</p> <p><u>Recording of a Declaration (Sec. 18.12.010(b))</u></p> <p>-- Declarant notifies physician of a declaration.</p> <p><u>Sample Declaration (Sec. 18.12.010(c))</u></p> <p>-- Does not address the nutrition and hydration issue</p> <p><u>Nutrition and Hydration (Sec. 18.12.040(b))</u></p> <p>-- Nothing prohibits the use of any medical procedure, including provisions for nutrition and hydration, to provide comfort care or to relieve pain.</p> <p><u>Declaration of a Pregnant Woman (Sec. 18.12.040(c))</u></p> <p>-- The declaration has no effect as long as it is probable that the fetus could develop to the point of live birth.</p> <p><u>Transfer of Patients (Sec. 18.12.050(b))</u></p> <p>-- If a health care facility won't honor a declaration, a transfer to another facility must be made.</p>	<p><u>Witnessing Requirement (Sec. 18.12.010(a))</u></p> <p>-- The declaration is witnessed by two persons generally competent OR a judge, justice, magistrate, clerk of a court, notary public, United States postmaster, or a commissioned officer under AS 09.63.050(4). No fee may be charged for preparing a declaration.</p> <p><u>Recording of a Declaration (Sec. 18.12.010(b))</u></p> <p>-- Declarant provides a copy of the declaration to the physician.</p> <p><u>Sample Declaration (Sec. 18.12.010(c))</u></p> <p>-- Provides the following language:</p> <p>I () do () do not desire that nutrition or hydration (food and water) be provided by gastric tube or intravenously if necessary.</p> <p><u>Nutrition and Hydration (Sec. 18.12.040(b))</u></p> <p>-- Nothing prohibits the use of any medical procedure, including provisions for nutrition and hydration, to provide comfort care or to relieve pain. The declaration can state that the patient does not wish nutrition and hydration to be administered by tubes.</p> <p><u>Declaration of a Pregnant Woman (Sec. 18.12.040(c))</u></p> <p>-- Suspends the declaration as long as the fetus is alive.</p> <p><u>Transfer of Patients (Sec. 18.12.050(b))</u></p> <p>-- If a health care facility won't honor a declaration, a transfer to the patient's home or to another facility must be made.</p>

SENATE VERSION	HOUSE VERSION
<p><u>Penalties - Attending Physician (Sec. 18.12.070(a))</u></p> <ul style="list-style-type: none"> -- A physician who fails to withdraw is guilty of a class A misdemeanor. -- A physician who fails to record a declaration is guilty of a class A misdemeanor. (Sec. 18.12.070(b)) 	<p><u>Penalties - Attending Physician (Sec. 18.12.070(a))</u></p> <ul style="list-style-type: none"> -- An attending physician who fails to comply with the declaration or to make a transfer won't receive payment for service after withdrawal should have occurred is liable for \$1000 penalty, and must pay any costs associated with failure to comply.
<p><u>Penalties (Sec. 18.12.070(c))</u></p> <ul style="list-style-type: none"> -- Any person who alters a declaration is guilty of a class A misdemeanor. -- Any person who hastens an individual's death by withholding knowledge of a declarant's revocation is guilty of first degree murder. (Sec. 18.12.070(d)) 	<p><u>Penalties (Sec. 18.12.070(b))</u></p> <ul style="list-style-type: none"> -- Any person who alters a declaration is civilly liable to the patient and his/her heirs.
<p><u>Recognition of Declaration (Sec. 18.12.090)</u></p> <ul style="list-style-type: none"> -- Another state's declaration is valid. 	<p><u>Recognition of Declaration (Sec. 18.12.090)</u></p> <ul style="list-style-type: none"> -- Another state's, or a territory or possession of the United States, declaration is valid.
<p><u>Definition (Sec. 18.12.100(7))</u></p> <ul style="list-style-type: none"> -- One physician determines if a patient is terminally ill. -- Terminal condition means an incurable or irreversible condition that would result in death within a relatively short time if life-sustaining procedures are not administered. 	<p><u>Definition (Sec. 18.12.100(7))</u></p> <ul style="list-style-type: none"> -- Two physicians, when available, determines if a patient is terminally ill. -- Terminal condition means a progressive incurable or irreversible condition that would result in death within a relatively short time if life-sustaining procedures are not administered.

Utermohle
4/25/86

Original sponsors: Eliason, Ziegler,
V.Fischer, et al

1 IN THE SENATE

BY THE CONFERENCE COMMITTEE

2 CONFERENCE CS FOR SENATE BILL NO. 140

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the rights of the terminally ill;
7 and providing for an effective date."

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

9 * Section 1. AS 18 is amended by adding a new chapter to read:

10 CHAPTER 12. RIGHTS OF TERMINALLY ILL.

11 Sec. 18.12.010. DECLARATION RELATING TO USE OF LIFE-SUSTAINING
12 PROCEDURES. (a) A competent person who is at least 18 years old may
13 execute a declaration at any time directing that life-sustaining
14 procedures be withheld or withdrawn from that person; but the declara-
15 tion is given operative effect only if the declarant's condition is
16 determined to be terminal and the declarant is not able to make treat-
17 ment decisions. The declaration shall be signed by the declarant, or
18 another at the declarant's direction, and in either case shall be
19 witnessed by two persons or a person qualified to take acknowledge-
20 ments under AS 09.63.010. The witnesses must be at least 18 years old
21 and may not be related to the declarant by blood or marriage. A
22 person may not charge a fee for preparing a declaration.

23 (b) It is the responsibility of the declarant to provide a copy
24 of the declaration to the declarant's physician. A physician or other
25 health care provider who is provided a copy of the declaration shall
26 make it a part of the declarant's medical records.

27 (c) A declaration may, but need not, be in the following form:

28 DECLARATION

29 If I should have an incurable or irreversible condition that will

1 cause my death within a relatively short time, it is my desire that my
2 life not be prolonged by administration of life-sustaining procedures.

3 If my condition is terminal and I am unable to participate in de-
4 cisions regarding my medical treatment, I direct my attending phy-
5 sician to withhold or withdraw procedures that merely prolong the
6 dying process and are not necessary to my comfort or to alleviate
7 pain.

8 I [] do [] do not desire that nutrition or hydration (food
9 and water) be provided by gastric tube or intravenously if
10 necessary.

11 Signed this _____ day of _____, _____.

12 Signature _____

13 Place _____

14 The declarant is known to me and voluntarily signed or
15 voluntarily directed another to sign this document in my presence.

16 Witness _____

17 Address _____

18 Witness _____

19 Address _____

20 State of _____

21 _____ Judicial District

22 The foregoing instrument was acknowledged before me this (date)
23 by (name of person who acknowledged).

24 _____
25 Signature of Person Taking
26 Acknowledgement

27 _____
28 Title or Rank
29 _____

1 Serial Number, if any

2 THIS DECLARATION MUST BE EITHER WITNESSED BY TWO PERSONS OR
3 ACKNOWLEDGED BY A PERSON QUALIFIED TO TAKE ACKNOWLEDGEMENTS UNDER
4 AS 09.63.010.

5 (d) A physician or health care provider may presume, in the
6 absence of actual notice to the contrary, that the declaration com-
7 plies with this chapter and is valid.

8 Sec. 18.12.020. REVOCATION OF DECLARATION. (a) A declaration
9 may be revoked at any time and in any manner by which the declarant is
10 able to communicate an intent to revoke, without regard to mental or
11 physical condition. A revocation is only effective as to the attend-
12 ing physician or any health care provider acting under the guidance of
13 that physician upon communication to the physician or health care
14 provider by the declarant or by another to whom the revocation was
15 communicated.

16 (b) The attending physician or health care provider shall make
17 the revocation a part of the declarant's medical record.

18 Sec. 18.12.030. RECORDING DETERMINATION OF TERMINAL CONDITION
19 AND CONTENTS OF DECLARATION. When an attending physician who has been
20 provided a copy of a declaration determines that the declarant is in a
21 terminal condition, the physician shall record that determination and
22 the contents of the declaration in the declarant's medical record.

23 Sec. 18.12.040. TREATMENT OF QUALIFIED PATIENTS. (a) A qual-
24 ified patient has the right to make decisions regarding use of life-
25 sustaining procedures as long as the patient is able to do so. If a
26 qualified patient is not able to make these decisions, the declaration
27 governs decisions regarding use of life-sustaining procedures.

28 (b) This chapter does not prohibit the application of any med-
29 ical procedure or intervention, including the provision of nutrition

1 and hydration, considered necessary to provide comfort care or alle-
2 viation of pain. The declaration may provide that the declarant does
3 not want nutrition or hydration administered intravenously or by
4 gastric tube.

5 (c) The declaration of a qualified patient known to the
6 attending physician to be pregnant is given no effect as long as it is
7 probable that the fetus could develop to the point of live birth with
8 continued application of life-sustaining procedures.

9 Sec. 18.12.050. TRANSFER OF PATIENTS. (a) An attending physi-
10 cian who is unwilling to comply with the requirements of AS 18.12.030
11 or who is unwilling to comply with the declaration of a qualified
12 patient under AS 18.12.040 shall withdraw as attending physician but
13 the withdrawal is effective only when the services of another attend-
14 ing physician have been obtained.

15 (b) If the policies of a health care facility preclude compli-
16 ance with the declaration of a qualified patient under this chapter,
17 that facility shall take all reasonable steps to notify the patient
18 or, if the patient is not able to make treatment decisions, the
19 patient's guardian, of the facility's policy and shall take all
20 reasonable steps to effect the transfer of the patient to the
21 patient's home or to a facility where the provisions of this chapter
22 can be carried out.

23 Sec. 18.12.060. IMMUNITIES. (a) In the absence of actual
24 notice of the revocation of a declaration, the following, while acting
25 in accordance with the requirements of this chapter, are not subject
26 to civil or criminal liability or guilty of unprofessional conduct:

27 (1) a physician who causes the withholding or withdrawal of
28 life-sustaining procedures from a qualified patient;

29 (2) a person who participates in the withholding or with-

1 drawal of life-sustaining procedures under the direction or with the
2 authorization of a physician;

3 (3) the health care facility in which the withholding or
4 withdrawal occurs.

5 (b) A physician, a health care professional, or a health care
6 facility is not subject to civil or criminal liability for actions
7 under this chapter that are in accord with reasonable medical stan-
8 dards.

9 Sec. 18.12.070. PENALTIES. (a) An attending physician who
10 fails to comply with the declaration of a qualified patient or to make
11 the necessary arrangements to effect a transfer under AS 18.12.050 has
12 no right to compensation for medical services provided to a qualified
13 patient after withdrawal should have been effective or after transfer
14 should have occurred and may be liable to the qualified patient and to
15 the heirs of the qualified patient for a civil penalty not to exceed
16 \$1000.00 plus the actual costs associated with the failure to comply
17 with the declaration, and this shall be the exclusive remedy at law
18 for damages.

19 (b) A person who wilfully conceals, cancels, defaces, obliterated,
20 or damages the declaration of another without the declarant's
21 consent or who falsifies or forges a revocation of the declaration of
22 another may be civilly liable to the qualified patient and to the
23 heirs of the qualified patient.

24 Sec. 18.12.080. GENERAL PROVISIONS. (a) Death resulting from
25 the withholding or withdrawal of life-sustaining procedures under a
26 declaration and in accordance with this chapter does not, for any
27 purpose, constitute a suicide or homicide.

28 (b) The making of a declaration under AS 18.12.010 does not
29 affect in any manner the sale, procurement, or issuance of a policy of

1 life insurance, nor does it modify the terms of an existing policy of
2 life insurance. A policy of life insurance is not legally impaired or
3 invalidated in any manner by the withholding or withdrawal of life-
4 sustaining procedures from an insured qualified patient, notwithstand-
5 ing any term of the policy to the contrary.

6 (c) A physician, health care facility, or other health care
7 provider, and a health care service plan, insurer issuing disability
8 insurance, self-insured employee welfare benefit plan, or nonprofit
9 hospital plan, may not require a person to execute a declaration as a
10 condition for being insured for, or receiving, health care services.

11 (d) This chapter creates no presumption concerning the intention
12 of an individual who has not executed a declaration with respect to
13 the use, withholding, or withdrawal of life-sustaining procedures in
14 the event of a terminal condition.

15 (e) Nothing in this chapter increases or decreases the right of
16 a patient to make decisions regarding use of life-sustaining proce-
17 dures as long as the patient is able to do so, or impairs or super-
18 cedes any right or responsibility that a person has to effect the
19 withholding or withdrawal of medical care in a lawful manner. In that
20 respect, the provisions of this chapter are cumulative.

21 (f) This chapter does not condone, authorize, or approve mercy
22 killing or euthanasia.

23 Sec. 18.12.090. RECOGNITION OF DECLARATIONS EXECUTED IN OTHER
24 STATES. A declaration executed in another state or a territory or
25 possession of the United States in compliance with the law of that
26 jurisdiction is effective for purposes of this chapter.

27 Sec. 18.12.100. DEFINITIONS. In this chapter

28 (1) "attending physician" means the physician selected by,
29 or assigned to, the patient who has primary responsibility for the

1 treatment and care of the patient;

2 (2) "declaration" means a document executed in accordance
3 with the requirements of AS 18.12.010;

4 (3) "health care provider" means a person who is licensed,
5 certified, or otherwise authorized by the law of this state to admin-
6 ister health care in the ordinary course of business or practice of a
7 profession;

8 (4) "life-sustaining procedure" means a medical procedure
9 or intervention that, when administered to a qualified patient, will
10 serve only to prolong the dying process;

11 (5) "physician" means a person licensed to practice medi-
12 cine in this state or an officer in the regular medical service of the
13 armed services of the United States or the United States Public Health
14 Service while in the discharge of their official duties, or while
15 volunteering services without pay or other remuneration to a hospital,
16 clinic, medical office, or other medical facility in the state;

17 (6) "qualified patient" means a patient who has executed a
18 declaration in accordance with this chapter and who has been deter-
19 mined by the attending physician to be in a terminal condition;

20 (7) "terminal condition" means a progressive incurable or
21 irreversible condition that, without the administration of life-sus-
22 taining procedures, will, in the opinion of two physicians, when
23 available, who have personally examined the patient, one of whom must
24 be the attending physician, result in death within a relatively short
25 time.

26 * Sec. 2. This Act takes effect immediately in accordance with AS 01.-
27 10.070(c).
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29