

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4684 HJUD HB 223

Page 4, lines 5 and 6:

Delete ", court, or municipality"

Insert "or court"

Page 4, line 13:

Delete ", state courts, and municipalities"

Insert "and state courts"

*Adopted*

A . E N D M E N T

~~#1~~ #9

Offered in the HOUSE

By Gruenberg

TO: CSHB 223 (Judiciary)

Page 1, after line 11:

Insert the following new bill sections to read:

"\* Section 1. AS 09.38.015(a) is amended to read:

(a) An individual is entitled to exemption of the following property:

(1) a burial plot for the individual and the individual's family;

(2) health aids reasonably necessary to enable the individual or a dependent to work or to sustain health;

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

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

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

(6) compensation or benefits paid or payable and exempt under federal law;

(7) liquor licenses granted under AS 04;

(8) limited entry permits granted under AS 16.43, except as provided in that chapter;

(9) that portion of a permanent fund dividend exempted under AS 43.23.065(a).

\* Sec. 2. AS 09.38.030(b) is amended to read:

(b) An individual who does not receive earnings either weekly, semi-monthly or monthly is entitled to a maximum exemption for the aggregate value of cash and other liquid assets available in any month of \$700, except as provided in AS 09.38.050 and AS 43.23.065(a). The term "liquid assets" includes deposits, securities, notes, drafts, accrued vacation pay, refunds, prepayments, and receivables.

\* Sec. 3. AS 09.38.065(a) is amended to read:

(a) Notwithstanding other provisions of this chapter,

(1) a creditor may make a levy against exempt property of any kind, except property exempted under AS 43.23.065(a), to enforce a claim for

(A) child support;

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

(C) state or local taxes; and

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

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

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

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

Page 1, line 12:

Delete "\* Section 1."

Insert "\* Sec. 4."

Renumber the following bill sections accordingly.

Page 1, lines 18 - 19:

Delete "Notwithstanding AS 09.38, no"

Insert "No"

Page 4, line 11:

Delete "Sec. 3"

Insert "Sec. 6"

### Chapter 38. Alaska Exemptions Act.

**Section**

15. Property exempt without limitation  
30. Exemption of earnings and liquid assets

**Section**

115. Adjustment of dollar amounts

No. S-1004,

#### Sec. 09.38.010. Homestead exemption.

**Cross references.** — For current exemption amounts, see 8 Alaska Administrative Code 95.030.

#### NOTES TO DECISIONS

Avoidance of judicial lien to extent of impairment of homestead exemption — Section 522(f) of the Bankruptcy Code provides that "... the debtor may avoid the fixing of a [judicial] lien on ... property to the extent that such lien impairs an exemption . . ." To determine whether there is such an impairment of a homestead exemption, the following steps are taken by the court: (1) all liens are ranked in order of priority (and equity, if any) to the extent of the value of the prop-

erty; (2) the gross amount of the homestead exemption is subtracted from the value of the property; and (3) from the remainder left, each lien is subtracted, one at a time, beginning with the most senior lien, until a judicial lien is reached. Then the judicial lien is subtracted. To the extent that all or any portion of the judicial lien exceeds the remainder derived in (2), above, it is voidable. In re Duncan, 43 Bankr. 833 (Bankr. D. Alaska 1984).

Section 1

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

- (1) a burial plot for the individual and the individual's family;
- (2) health aids reasonably necessary to enable the individual or a dependent to work or to sustain health;
- (3) benefits paid or payable for medical, surgical, or hospital care to the extent they are or will be used to pay for the care;
- (4) an award under AS 18.67 (Violent Crimes Compensation Board) or a crime victim's reparations Act of another jurisdiction;
- (5) benefits paid or payable as a longevity bonus under AS 47.45;
- (6) compensation or benefits paid or payable and exempt under federal law;
- (7) liquor licenses granted under AS 04;
- (8) limited entry permits granted under AS 16.43, except as provided in that chapter.

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

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

ders of confir-  
0(b) motion is  
ibited by sub-  
aw Offices of  
, Sup. Ct. Op.  
80 P.2d 1125

successor.

oner. The  
ption, or a  
edemption,  
redeemed.  
urchaser or  
erty or the  
h 101 SLA

Section 1 continued

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

Editor's notes. — This section is set out to reflect the change in the name of the former "Alaska State Housing Authority" to the "Alaska State Building Au-

thority" made by § 1, ch. 103, SLA 1986. Implementation of this legislative action is made by the revisor of statutes under AS 01.05.031.

## NOTES TO DECISIONS

Cited in Municipality of Anchorage v. Baugh Constr. & Eng'g Co., Sup. Ct. Op.

No. 3083 (File Nos. S-699, S-831), P.2d (1986).

**Sec. 09.38.020. Exemptions of personal property subject to value limitations.**

Cross references. — For current exemption amounts, see 8 Alaska Administrative Code 95.030.

**Sec. 09.38.025. Exemption of unmatured life insurance and annuity contracts.**

Cross references. — For current exemption amounts, see 8 Alaska Administrative Code 95.030.

Section 2

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

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

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

§ 09.38.030

shed under  
80 acres is

3, SLA 1986.  
slative action  
tatu es under

831), P.2d

subject to

ance and

d assets.  
09.38.050,  
individual  
net earn-  
he weekly  
withheld.  
basis are  
gs of the  
held and  
n individ-  
ting from  
v or court  
r weekly,  
on for the  
le in any  
m "liquid  
vacation

nd (b) of

§ 09.38.050

CODE OF CIVIL PROCEDURE

§ 09.38.115

Section 2

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

(2) enforceable under an order of a court of bankruptcy under 11  
U.S.C. 1301 — 1330 (Bankruptcy Reform Act of 1978).

(d) If the individual debtor is a nonresident, the limitations on gar-  
nishment imposed under 15 U.S.C. 1673 apply.

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

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

(2) money or property received for alimony or separate mainte-  
nance;

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

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

(5) amounts paid under a stock bonus, pension, profit-sharing, an-  
nuity, or similar plan or contract, providing benefits by reason of age,  
illness, disability, or length of service. (§ 2 ch 62 SLA 1982; am § 36  
ch 6 SLA 1984)

Effect of amendments. — The 1984 reference in paragraph (2) of subsection  
amendment changed the federal statutory (c).

**Sec. 09.38.050. Increased exemption amount.**

Cross references. — For current ex-  
emption amounts, see 8 Alaska Adminis-  
trative Code 95.030.

**Sec. 09.38.065. Claims enforceable against exempt property.**

**NOTES TO DECISIONS**

Execution on limited entry permit.  
— Expressions of legislative intent in  
combination with the clear provisions of  
the 1982 Exemptions Act are persuasive  
evidence that the legislature meant what  
it said in permitting a parent with past

due child support claims to execute  
against an otherwise exempt limited  
entry permit. *Anderson v. Anderson*, Sup.  
Cl. Op. No. 3172 (File No. S-1320),  
P.2d (1987).

**Sec. 09.38.115. Adjustment of dollar amounts.** (a) The dollar  
amounts in this chapter change, as provided in this section, according  
to and to the extent of changes in the Consumer Price Index for all  
Urban Consumers for the Anchorage Metropolitan Area compiled by  
the Bureau of Labor Statistics, United States Department of Labor

en. The effective service upon the virtue of previous writs terminate.

1) An individual as payment for an increase in the total debt shall the request as exemption amount and all the individual, includ-

may be increased alty of perjury, he individual's individual's aggregation may not le earnings for an exemption), a maximum § 2 ch 62 SLA

ceeding under ons under AS 030 apply. (§ 2

property, or a nestead under a health aid a value limi- as been taken destroyed and entitled to an after the pro- ption of pro- id under AS proceeds are ion does not excess of the or 09.38.020.

this chapter principle of le basis for

tracing selected by the individual claiming the exemption. (§ 2 ch 62 SLA 1982)

Section 3

**Sec. 09.38.065. Claims enforceable against exempt property.**

(a) Notwithstanding other provisions of this chapter,

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

(A) child support;

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

(C) state or local taxes; and

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

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

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

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

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

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

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

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

(c) The court may order or authorize process respecting any item of goods to which this section applies only after a hearing, upon notice to the individual of the hearing and of the individual's rights at it. The notice shall be as directed by the court. The order or authorization may prescribe appropriate conditions as to payments upon the debt secured

5-0686P

Cook  
1/13/88

Original sponsors: Swackhammer and Larson

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 223 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to remedies for the collection of  
7 debt involving permanent fund dividends and to the  
8 exemption for dividends; amending Alaska Rule of  
9 Civil Procedure 69; and providing for an effective  
10 date."

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

12 \* Section 1. AS 43.23.065(a) is amended to read:

13 (a) One hundred dollars [EXCEPT AS PROVIDED IN (b) OF THIS  
14 SECTION, 50 PERCENT] of the annual permanent fund dividend payable to  
15 an individual is exempt from levy, execution, garnishment, attachment,  
16 or any other remedy for the collection of debt. This exemption ap-  
17 plies to an eligible individual's permanent fund dividend both before  
18 and after payment is made to the individual. Notwithstanding  
19 AS 09.38, no other exemption applies to a dividend. The commissioner  
20 shall include the case name and number with a dividend delivered to  
21 the court in accordance with a writ of execution.

22 \* Sec. 2. AS 43.23.065(b) is amended to read:

23 (b) The following claims, or voluntary assignments of dividends  
24 in payment or partial payment of the claims, have priority in the  
25 order listed over other claims on [AN EXEMPTION IS NOT AVAILABLE UNDER  
26 THIS SECTION FOR] permanent fund dividends: [TAKEN TO SATISFY]

27 (1) child support obligations required by court order or  
28 decision of the child support enforcement agency under AS 47.23.140 -  
29 47.23.220;

1 (2) court ordered restitution under AS 12.55.045 - 12.55.-  
2 051 or 12.55.100;

3 (3) a court ordered fine;

4 (4) a court ordered probation fee under AS 12.55.105; or

5 (5) [(4)] a debt owed by an eligible individual to an  
6 agency of the state, state court, or municipality unless the debt is  
7 contested and an appeal is pending, or the time limit for filing an  
8 appeal has not expired.

9 \* Sec. 3. AS 43.23.067 is amended to read:

10 Sec. 43.23.067. CERTAIN DIVIDEND CLAIMS [CLAIMS OF DEFAULTED  
11 SCHOLARSHIP LOANS]. (a) AS 09.38 does not apply to permanent fund  
12 dividends taken to satisfy debts listed under AS 43.23.065(b) [AS 14.-  
13 43.120(i)]. Notwithstanding AS 09.35, execution on a claim to satisfy  
14 a debt listed under AS 43.23.065(b) [AS 14.43.120(i)] is accomplished  
15 by delivering a [CERTIFIED] claim to the department containing the  
16 following information:

17 (1) the name [AND SOCIAL SECURITY NUMBER] of the individual  
18 whose dividend is being claimed and sufficient information to identify  
19 the individual;

20 (2) the amount the individual owes to the agency of the  
21 state, court, or municipality [ON THE SCHOLARSHIP LOAN]; [AND]

22 (3) a statement of the basis for the claim; and

23 (4) a statement that

24 (A) if the debt has not been contested, the individual  
25 has had notice of the debt and an opportunity to contest, or, if  
26 contested, that the issue has been resolved in favor of the  
27 agency, court, or municipality [ALASKA COMMISSION ON POSTSECOND-  
28 ARY EDUCATION]; and

29 (B) if the debt has been contested and resolved in

*Pass through to individual*

*Pass section*

(X)

1 favor of the agency, court, or municipality [ALASKA COMMISSION ON  
2 POSTSECONDARY EDUCATION], no appeal is pending, the time limit  
3 for filing an appeal has expired, or the appeal has been resolved  
4 in favor of the agency, court, or municipality [COMMISSION].

5 (b) Upon receipt of a claim under (a) of this section the de-  
6 partment shall send notice [NOTIFY THE INDIVIDUAL OF THE CLAIM. THE  
7 NOTICE SHALL BE SENT] to the address provided in the individual's  
8 permanent fund dividend application that contains [AND MUST PROVIDE]  
9 the following information:

10 (1) the identity of the agency, court, or municipality  
11 making the claim;

12 (2) the amount of the claim; [AND]

13 (3) a statement of the basis for the claim; and

14 (4) [(2)] notice that the amount of the permanent fund  
15 dividend that does not exceed the amount of the claim, after deducting  
16 the exemption under AS 43.23.065(a), will [SHALL] be paid to the  
17 agency, court, or municipality [ALASKA COMMISSION ON POSTSECONDARY  
18 EDUCATION] unless the agency, court, or municipality [COMMISSION]  
19 releases the claim or the individual requests a hearing on the validi-  
20 ty of the claim from the agency, court, or municipality making the  
21 claim within 30 days after the date the notice is sent by the depart-  
22 ment.

23 (c) If a hearing is requested by an individual, the agency,  
24 court, or municipality making the claim shall notify the department.  
25 The agency, court, or municipality making the claim is responsible for  
26 affording the individual a hearing on the validity of the claim and  
27 notice of any appeal rights the individual may have. A hearing is not  
28 required under this subsection on the validity of the debt that forms  
29 the basis for the claim. If no notice of a request for a hearing or

1 release of the claim is received by the department from the agency,  
2 court, or municipality [AS 44.62.330 - 44.62.630 APPLY TO A HEARING  
3 REQUESTED BY AN INDIVIDUAL UNDER (b)(2) OF THIS SECTION. IF A REQUEST  
4 FOR A HEARING IS NOT RECEIVED BY THE DEPARTMENT WITHIN THE REQUIRED  
5 TIME LIMIT], the department shall pay to the agency, court, or munic-  
6 ipality [ALASKA COMMISSION ON POSTSECONDARY EDUCATION] the amount of  
7 the permanent fund dividend that does not exceed the amount of the  
8 claim, after deducting the exemption under AS 43.23.065(a). The  
9 commissioner shall include the case name and number with a payment to  
10 the court.

11 \* Sec. 4. AS 43.23.067, as amended by sec. 3 of this Act, has the  
12 effect of amending Alaska Rule of Civil Procedure 69 by authorizing  
13 agencies of the state, state courts, and municipalities to execute on  
14 permanent fund dividends without using the execution procedures provided in  
15 that rule.

16 \* Sec. 5. AS 43.23.065(c) is repealed.

17 \* Sec. 6. This Act takes effect immediately under AS 01.10.070(c).  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

Original sponsors: Swackhammer and Larson

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE  
2 CS FOR HOUSE BILL NO. 223 (Judiciary)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FIFTEENTH LEGISLATURE - SECOND SESSION  
5 A BILL

6 For an Act entitled: "An Act relating to remedies for the collection of  
7 debt involving permanent fund dividends and to the  
8 exemption for dividends; amending Alaska Rule of  
9 Civil Procedure 69; and providing for an effective  
10 date."

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

12 <sup>→</sup> \* Section <sup>2</sup> AS 43.23.065(a) is amended to read:  
13 <sup>Add</sup>  
<sup>new</sup>  
<sup>§ 1.</sup>

14 (a) One hundred dollars [EXCEPT AS PROVIDED IN (b) OF THIS  
15 SECTION, 50 PERCENT] of the annual permanent fund dividend payable to  
16 an individual is exempt from levy, execution, garnishment, attachment,  
17 or any other remedy for the collection of debt. This exemption ap-  
18 plies to an eligible individual's permanent fund dividend both before  
19 and after payment is made to the individual. <sup>As 09.38</sup> Notwithstanding ~~other~~  
20 laws, no other exemption applies to a dividend. The commissioner  
21 shall include the case name and number with a dividend delivered to  
22 the court in accordance with a writ of execution.

23 \* Sec. <sup>3</sup> AS 43.23.065(b) is amended to read:

24 (b) The following claims, or voluntary assignments of dividends  
25 in payment or partial payment of the claims, have priority in the  
26 order listed over other claims on [AN EXEMPTION IS NOT AVAILABLE UNDER  
27 THIS SECTION FOR] permanent fund dividends: [TAKEN TO SATISFY]

28 (1) child support obligations required by court order or  
29 decision of the child support enforcement agency under AS 47.23.140 -  
47.23.220;

1 (2) court ordered restitution under AS 12.55.045 - 12.55.-  
2 051 or 12.55.100;

3 (3) a court ordered fine;

4 (4) a court ordered probation fee under AS 12.55.105; or

5 (5) [(4)] a debt owed by an eligible individual to an  
6 agency of the state, state court, or municipality unless the debt is  
7 contested and an appeal is pending, or the time limit for filing an  
8 appeal has not expired.

9 \* Sec. ~~3~~<sup>4</sup>. AS 43.23.067 is amended to read:

10 Sec. 43.23.067. CERTAIN DIVIDEND CLAIMS [CLAIMS OF DEFAULTED  
11 SCHOLARSHIP LOANS]. (a) ~~[AS 09.38 does not apply to permanent fund~~  
12 ~~dividends taken to satisfy debts listed under AS 43.23.065(b), AS 14.~~  
13 ~~43.120(i)].~~ Notwithstanding AS 09.35, execution on a claim to satisfy  
14 a debt listed under AS 43.23.065(b) [AS 14.43.120(i)] is accomplished  
15 by delivering a [certified] claim to the department containing the  
16 following information:

17 (1) the name [AND SOCIAL SECURITY NUMBER] of the individual  
18 whose dividend is being claimed and sufficient information to identify  
19 the individual;

20 (2) the amount the individual owes to the agency of the  
21 state, court, or municipality [ON THE SCHOLARSHIP LOAN]; [and]

22 *insert 2* (3) a statement that

23 (A) <sup>if</sup> the debt has not been contested, or, if contested, *the individual has had notice of the debt and opportunity*  
24 <sub>to contest it</sub>  
25 that the issue has been resolved in favor of the agency, court,  
26 or municipality [ALASKA COMMISSION ON POSTSECONDARY EDUCATION];  
27 and

28 (B) if the debt has been contested and resolved in  
29 favor of the agency, court, or municipality [ALASKA COMMISSION ON  
POSTSECONDARY EDUCATION], no appeal is pending, the time limit

1 for filing an appeal has expired, or the appeal has been resolved  
2 in favor of the agency, court, or municipality [COMMISSION].

3 (b) Upon receipt of a claim under (a) of this section the de-  
4 partment shall <sup>send notice</sup> ~~notify the individual of the claim. The notice shall~~  
5 ~~be sent~~ to the address provided in the individual's permanent fund  
6 dividend application <sup>which</sup> ~~and~~ must provide the following information:

7 (1) the identity of the agency, court, or municipality  
8 making the claim;

9 (2) the amount of the claim; ~~and~~

10 <sup>10-5-81 T 3</sup> → <sup>4</sup> ~~(2)~~ [(2)] notice that the amount of the permanent fund  
11 dividend that does not exceed the amount of the claim, after deducting  
12 the exemption under AS 43.23.065(a), will [SHALL] be paid to the  
13 agency, court, or municipality [ALASKA COMMISSION ON POSTSECONDARY  
14 EDUCATION] unless the agency, court, or municipality [COMMISSION]  
15 releases the claim or the individual requests a hearing on the validi-  
16 ty of the claim from the agency, court, or municipality making the  
17 claim within 30 days after the date the notice is sent by the depart-  
18 ment.

19 (c) If a hearing is requested by an individual, the agency,  
20 court, or municipality making the claim shall notify the department.  
21 The agency, court, or municipality making the claim is responsible for  
22 affording the individual a hearing on the validity of the claim. <sup>and notice of any appeal rights</sup> A  
23 hearing is not required under this subsection on the validity of the  
24 debt that forms the basis for the claim. If no notice of a request  
25 for a hearing or release of the claim is received by the department  
26 from the agency, court, or municipality [AS 44.62.330 - 44.62.630  
27 APPLY TO A HEARING REQUESTED BY AN INDIVIDUAL UNDER (b)(2) OF THIS  
28 SECTION. IF A REQUEST FOR A HEARING IS NOT RECEIVED BY THE DEPARTMENT  
29 WITHIN THE REQUIRED TIME LIMIT], the department shall pay to the

1 agency, court, or municipality [ALASKA COMMISSION ON POSTSECONDARY  
2 EDUCATION] the amount of the permanent fund dividend that does not  
3 exceed the amount of the claim, after deducting the exemption under  
4 AS 43.23.065(a).

5 <sup>REPEAL</sup>  
4

\* Sec. 4. AS 43.23.067, as amended by sec. 3 of this Act, has the  
6 effect of amending Alaska Rule of Civil Procedure 69 by authorizing  
7 agencies of the state, state courts, and municipalities to execute on  
8 permanent fund dividends without using the execution procedures provided in  
9 that rule.

10 \* Sec. 5. AS 43.23.065(c) is repealed.

11 \* Sec. 6. This Act takes effect immediately under AS 01.10.070(c).  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

Adopted

A M E N D M E N T #1

Offered in the HOUSE

By Swackhammer

TO: CSHB 223 (Judiciary)

Page 2, line 6:

Delete "state court, or municipality"

After "state" insert "or state court"

Page 2, line 21:

Delete ", court, or municipality"

Insert "or state court"

Page 2, line 27:

Delete ", court, or municipality"

Insert "or court"

Page 3, line 1:

Delete ", court, or municipality"

Insert "or court"

Page 3, line 4:

Delete ", court, or municipality"

Insert "or court"

Page 3, line 10:

Delete ", court, or municipality"

Insert "or court"

Page 3, line 17:

Delete ", court, or municipality"

Insert "or court"

Page 3, line 18:

Delete ", court, or municipality"

Insert "or court".

Page 3, line 20:

Delete ", court, or municipality"

Insert "or court"

Page 3, lines 23 and 24:

Delete ", court, or municipality"

Insert "or court"

Page 3, line 25:

Delete ", court, or municipality"

Insert "or court"

Page 4, lines 1 and 2:

Delete ", court, or municipality"

Insert "or municipality"

Page 4, lines 5 and 6:

Delete ", court, or municipality"

Insert "or court"

Page 4, line 13:

Delete ", state courts, and municipalities"

Insert "and state courts"

A M E N D M E N T

*K-3*

*[Signature]*

By Swackhammer

Offered in the HOUSE

TO: CSHB 223 (Judiciary)

*adopted*

Page 2, line 12, after "43.23.065(b)":

Insert "for which payments are at least 45 days overdue" <

Page 2, line 14, after "43.23.065(b)":

Insert "for which payment is at least 45 days overdue"

Page 2, line 22, after "claim":

Insert ", including the date payment on the debt became due"

Page 3, line 13, after "claim":

Insert ", including the date payment on the debt became due"

Page 4, line 14, after "dividends":

Insert "in certain cases"

Adopted #5  
AMENDMENT #1

Offered in the HOUSE

By Gruenberg

TO: CSHB 223 (Judiciary)

Page 1, after line 11:

Insert the following new bill sections to read:

"\* Section 1. AS 09.38.015(a) is amended to read:

(a) An individual is entitled to exemption of the following property:

(1) a burial plot for the individual and the individual's family;

(2) health aids reasonably necessary to enable the individual or a dependent to work or to sustain health;

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

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

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

(6) compensation or benefits paid or payable and exempt under federal law;

(7) liquor licenses granted under AS 04;

(8) limited entry permits granted under AS 16.43, except as provided in that chapter;

(9) that portion of a permanent fund dividend exempted under AS 43.23.065(a).

\* Sec. 2. AS 09.38.030(b) is amended to read:

(b) An individual who does not receive earnings either weekly, semi-monthly or monthly is entitled to a maximum exemption for the aggregate value of cash and other liquid assets available in any month of \$700, except as provided in AS 09.38.050 and AS 43.23.065(a). The term "liquid assets" includes deposits, securities, notes, drafts, accrued vacation pay, refunds, prepayments, and receivables.

\* Sec. 3. AS 09.38.065(a) is amended to read:

(a) Notwithstanding other provisions of this chapter,

(1) a creditor may make a levy against exempt property of any kind, except property exempted under AS 43.23.065(a), to enforce a claim for

(A) child support;

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

(C) state or local taxes; and

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

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

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

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

Page 1, line 12:

Delete "\* Section 1."

Insert "\* Sec. 4."

Renumber the following bill sections accordingly.

Page 1, lines 18 - 19:

Delete "Notwithstanding AS 09.38, no"

Insert "No"

Page 4, line 11:

Delete "Sec. 3"

Insert "Sec. 6"

A M E N D M E N T

Offered in the HOUSE:

BY: SUND

TO: HB 223

PAGE: ~~1~~ 2

LINE: ~~22~~ 23

Insert new subsection (4), to read:

(4) a statement that payment on the debt is at least <sup>120</sup>~~45~~ days  
overdue; and

Renumber following sections accordingly

# INSERT # 1

\* Section 1.

AS 09.38.065 (a) is amended by adding a <sup>new</sup> paragraph to read:

(3) a creditor may levy on a permanent fund dividend under AS 43.23.065 - 43.23.067, except that one hundred dollars ~~is~~ of the dividend is exempt from levy.

---

# Insert 2

a statement of the basis ~~of~~ for the claim; and

(4)

---

Insert 3

(3) a statement of the basis for the claim; and

---

Insert 4

~~AS 43.23.067~~

(d) The commissioner shall include the case name and number with a dividend delivered to the court under this section.

Adopted

Amendment #2  
Offered in the House by Sund  
TO CS HB 223 (Jud)

Pg 2, Line 23

~~repeal subsec~~

Add new subsection to read:

(3) IF the claimant is a municipality or court, evidence of ~~the~~ judgement against the individual;

Renumber following sections accordingly

Repealed on Pg 3, Line 14

Repealed by #3

1 (1) child support obligations required by court order or  
2 decision of the child support enforcement agency under AS 47.23.140 -  
3 47.23.220;

4 (2) court ordered restitution under AS 12.55.045 - 12.55.-  
5 051 or 12.55.100;

6 (3) a court ordered fine;

7 (4) a court ordered probation fee under AS 12.55.105; or

8 (5) [(4)] a debt owed by an eligible individual to an  
9 agency of the state, state court, or municipality unless the debt is  
10 contested and an appeal is pending, or the time limit for filing an  
11 appeal has not expired.

12 \* Sec. 3. AS 43.23.065 is amended by adding new subsections to read:

13 (d) AS 09.38 does not apply to permanent fund dividends taken to  
14 satisfy debts listed under (b) of this section.

15 (e) Before payment of part of an individual's permanent fund  
16 dividend is made to a creditor under this section the commissioner  
17 shall provide the individual with

18 (1) notification of the claim and amount claimed;

19 (2) a statement of the basis for the claim; and

20 (3) if applicable, identification of the case under which  
21 the claim has been made, including court case name and case number.

22 \* Sec. 4. AS 43.23.065(c) is repealed.

23 \* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

Mail to individual @ address  
~~appeal on PFD APP~~  
Certified or  
Return Receipt?

Original sponsors: Swackhammer and Larson

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE  
2 CS FOR HOUSE BILL NO. 223 (State Affairs)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL  
6 For an Act entitled: "An Act relating to remedies for the collection of  
7 debt involving permanent fund dividends and to the  
8 exemption for dividends; and providing for an effective  
9 date."

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

11 Section 1. AS 43.23.065(a) is amended to read:

*Liab. in tax  
For 800 - may  
be over 100.*

12 (a) One hundred dollars [EXCEPT AS PROVIDED IN (b) OF THIS  
13 SECTION, 50 PERCENT] of the annual permanent fund dividend payable to  
14 an individual is exempt from levy, execution, garnishment, attachment,  
15 or any other remedy for the collection of debt. This exemption ap-  
16 plies to an eligible individual's permanent fund dividend both before  
17 and after payment is made to the individual. Notwithstanding other  
18 laws, no other exemption applies to a dividend. (A creditor is not  
19 required to serve the individual with notice of levy under AS 09.38.-  
20 080(c) and 09.38.085. [A writ of execution may be served on the com-  
21 missioner by certified mail under the rules of court for service of  
22 a civil summons. [The commissioner shall include the case name and  
23 number with a dividend delivered to the court in accordance with a  
24 writ of execution.

25 \* Sec. 2. AS 43.23.065(b) is amended to read:

26 (b) The following claims, or voluntary assignments of dividends  
27 in payment or partial payment of the claims, have priority in the  
28 order listed over other claims on [AN EXEMPTION IS NOT AVAILABLE UNDER  
29 THIS SECTION FOR] permanent fund dividends: [TAKEN TO SATISFY]

*Allows  
Private  
creditors  
attawl  
all but  
\$100.-*

*Execution  
Civil  
Rule  
69  
Attachment  
R 89*

*Process  
Server*

*ph  
out  
Per  
CT  
S95*

## OUTLINE OF PROCEDURE

- I. Agency, court, or municipality issues a bill (i.e., tax assessment, delinquent loan, license fee, court ordered fine, final judgment in lawsuit or utility bill) to the individual.
  - A. Individual must have notice and an opportunity to contest the bill.
  - B. If contested, debt must have been resolved in favor of the agency and no appeal must be pending or possible.
- II. Agency, court or municipality then sends a claim to DOR, containing
  - A. Name of debtor and other sufficient identifying information;
  - B. Amount of claim;
  - C. Basis of the claim; and
  - D. Confirmation that person had notice and an opportunity to contest the debt, and the debt has been resolved in claimant's favor.
- III. DOR then sends notice of claim to debtor, containing
  - A. Identity of claimant;
  - B. Amount of claim;
  - C. Basis of claim; and
  - D. Notice of right to hearing, if requested within 30 days.
- IV. If individual requests a hearing within 30 days, agency must provide it.
  - A. Hearing only on validity of claim, not underlying debt.
  - B. If individual loses, must notify person of appeal rights.
- V. If no hearing requested, or upon resolution of hearing in agency's favor, DOR pays claimant amount claimed, up to amount of PFD minus \$100.

POSSIBLE STATE CLAIMS

- I. State loans in default
  - A. Student loans
  - B. DCED loans
- II. Taxes
  - A. DOR taxes
  - B. Labor taxes
  - C. Insurance premium taxes (if individual liability exists)
- III. License Fees
  - A. Occupational licenses
  - B. Business licenses
  - C. Commercial fishing licenses
- IV. Child support enforcement claims
- V. Civil judgments and attorneys fee awards
- VI. Court fines
- VII. Court ordered restitution
- VIII. DNR land contracts and leases in default
- IX. Administrative regulatory fines - e.g., DEC, Motor Vehicles, DCED

House of Representatives

MEMORANDUM

TO: All House Members  
FROM: Rep. C.E. Swackhammer  
DATE: February 10, 1988  
RE: CSHB 223 (Fin)



RATIONALE

The original intent of House Bill 223 was to address the outstanding court fines and include statutory language that would allow the Courts to collect those monies via the permanent fund dividend program. There is a provision in current statutes that allows a state agency the right to collect a person's Permanent Fund Dividend check if that person owes money to that particular state agency. However, it was unclear whether the Court System was included as a state agency. House Bill 223 clarifies that issue.

The state currently has \$237.5 million in direct loans in default. This is only in the loan programs. This total does not include overdue court fines, overpaid unemployment benefits, unpaid child support, restitution fees nor probation fees. The Court System has approximately \$6 million outstanding in court fines.

EXEMPTION: The \$100 exemption offers an incentive to those who normally would not apply, knowing their dividend check is going to be attached as a means to repay a debt owed to a state agency. A \$100 exemption from levy, execution, garnishment, attachment or other remedy for collection of debt is provided in House Bill 223. This applies to all state agencies with the exception of child support enforcement which can attach an entire dividend check. It was estimated that the Child Support Enforcement Division would lose approximately \$600,000 in revenue and over \$70,000 in federal funds if the \$100 exemption was in effect for that agency.

COST OF COLLECTIONS: The administrative costs should not be borne by the dividend fund thus the general public does not have to bear the cost of debt collection through reduced dividends. Fees would be established by

the Department of Revenue that cover the administrative costs of processing all claims and assignments which will be paid for by the claiming agency.

DUE PROCESS: The question of due process is covered in House Bill 223. Before a claim can be made on an individual's permanent fund dividend check, the following must occur:

- 1) An administrative hearing must be offered to the individual on the basis of the debt. This hearing will be conducted by the agency making the claim.
- 2) The debt must be at least 45 days overdue.
- 3) A claim will be forwarded to the Department of Revenue.
- 4) The Department will send a 45 day notice to the individual advising that, absent notice of appeal by the claiming agency, the Department of Revenue will pay the dividend or the portion being claimed to the agency.
- 5) The individual shall be granted an administrative hearing on the basis of the claim upon request.

EFFECTIVE DATE: The effective date for House Bill 223 is April 1, 1989, which allows the Department of Revenue adequate time to process all dividend checks for 1988.

Your vote for CSHB 223 (Fin) would be greatly appreciated.

Thank you for your consideration.

PUBLIC OPINION MESSAGE

JH  
JAN 18 1988

DEAR: REPRESENTATIVE SUND

NAME: MARTY LASSE  
TITLE:  
ADDRESS: BOX 7402  
CITY: KETCHIKAN, AK. ZIP: 99901  
PHONE: N/R-  
BILL NO: HB 223

SUBJECT: TAKE PF DIVIDENDS WHEN DEBT OWED TO STATE  
MESSAGE: I STRONGLY SUPPORT THE STATE OF ALASKA BEING ABLE TO ATTACH PERMANENT  
AND CHECKS FOR DEBTS OWED THE STATE, ESPECIALLY FOR THOSE WHO OWE ON THEIR STUD  
NT LOANS.

FOMID: 08112311  
DATE: 01/15/88  
TIME: 11:23:11  
LIONAME: KETCHIKAN LIO

COPIES: REPRESENTATIVES

- ADAMS
- BOYER
- BROWN
- DAVIS
- FRANK
- GOLL
- LARSON
- POURCHOT
- RIEGER
- SWACKHAMMER
- WALLIS
- BARNES
- COTTEN
- GRUENBERG
- NAVARRE
- TAYLOR
- ULMER

NO RESPONSE REQUIRED

JOHN SUND, REPRESENTATIVE

2504 2nd Avenue  
Ketchikan, Alaska 99901  
(907) 225-5552

---

While in Juneau  
P. O. Box V  
Juneau, Alaska 99811  
(907) 465-4919

January 21, 1988

Marty Lasse  
Box 7402  
Ketchikan, Alaska 99901

Dear Mr. Lasse:

Thank you for writing concerning House Bill 223, which would streamline procedures for State attachment of Permanent Fund Dividends. I appreciate your support.

We heard the bill and redrafted it in the House Judiciary Committee, which I chair. The Committee worked on the difficult balance which must be struck between streamlining the procedure for attachment and protecting the due process rights of individuals whose PFD's are attached. We didn't feel that it should be necessary for the State to go to court for a judgement against a person who is delinquent on a state loan. At the same time, however, there is a fair possibility for a mistake by the state bureaucracy, and the individual's rights to appeal have to be protected in cases where the wrong check may have been taken.

We feel that we have come up with a good approach, which, for example, protects \$100.- from any attachment whatsoever. Two levels of appeals have been provided for. First, the person must be provided an opportunity to appeal to the agency which wants the money. Second, an opportunity is provided to appeal the attachment itself.

The bill has moved out of the Judiciary Committee and is now in the House Finance Committee.

Thanks again for your letter. Please let me know if there is any further information I can provide.

Sincerely,

John Sund  
Representative

FISCAL NOTE

REQUEST:

Revision Date: 1/15/88  
Title: An act relating to collection of debt involving permanent fund dividends  
Sponsor: Judiciary  
Requestor: House Judiciary Committee

Agency Affected: Revenue  
BRU: Permanent Fund Dividend

Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-	56.7	56.7	56.7	56.7	56.7
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	83.1	63.1	63.1	63.1	63.1
SUPPLIES	-	1.8	1.8	1.8	1.8	1.8
EQUIPMENT	-	15.6	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	157.2	121.6	121.6	121.6	121.6
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (PFD)	-	157.2	121.6	121.6	121.6	121.6
TOTAL	-	157.2	121.6	121.6	121.6	121.6

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	5	5	5	5	5
TEMPORARY	-	-	-	-	-	-

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Ervin B. Jones  
Division: Permanent Fund Dividend

Phone: 465-2323  
Date: 1/15/88

Approved by Commissioner: [Signature]  
Agency: Revenue

Date: 1/15/88

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

Department of Revenue  
Permanent Fund Dividend Division  
Fiscal Note Analysis  
CSHB 223  
1/15/88

Assumptions:

- 1) Since a claim under the proposed section 3 would be infinitely easier for state agencies and the courts to use, those entities would use this mechanism exclusively. It is impossible to estimate the number of such claims the Department of Revenue might receive. However, the following will give some idea of the volume.
  - a) In 1986, the Postsecondary Education Commission was able to get only 800 of their 2,000 attachments through the courts and served on the Department of Revenue. In 1987, under provisions similar to the proposal in this bill, the Commission was able to serve 5,038 certified claims on the Department of Revenue, a 500% increase.
  - b) The Child Support Enforcement Division currently serves approximately 6,012 attachments. This is an almost 50% increase over 1986.
  - c) The court system of Alaska processes approximately 25,000 criminal cases, alone, a percentage of which result in fines.
  - d) Under the present system, private parties account for 8,820 claims each year. Given that the cost of service will stay the same and that the amount of recovery has gone from a potential \$400 to a potential \$700, the number of private party services will increase dramatically.
  - e) In 1987, the department experienced 37,393 claims on Permanent Fund Dividends, almost twice as many as in 1986 and four times as many as in 1985. Even without the passage of this bill, we expect at least 50,000 claims in 1988. With the passage of this bill, the total numbers could easily reach 100,000.
  
- 2) I would assume and hope that this bill would not effect the 1988 dividend distribution. Assuming that the bill became law in mid-May it would be impossible to get everything in place, and complete the printing, programming, staff recruitment and training necessary to implement the bill before the filing deadline of June 30. By that time, the department has already received thousands of claims and assignments, made under the expectation that they will be processed under the current law. It is arguably not fair to take an applicant's dividend (except \$100) when the applicant filed under a law which provided for a 50% exclusion.

If the provisions of this bill are intended to take effect in mid-stream, a new analysis of costs will have to be done to include the cost of dealing with a very irate public.

Program Summary:

The department's responsibilities under this bill would be as follows:

- a) Forms Printing: The Department of Revenue would print an auxiliary Permanent Fund Dividend "Claim by Government Agency" to be distributed to all agencies identified in the definition of agency. The "PFD Claim form" would require of the agency:
  - 1) The name and address of the agency.
  - 2) The full name, address and birthdate of the obligee.
  - 3) The amount of the claim.
  - 4) A statement of the basis of the claim. (Some consistent, short form of reasons would have to be worked out with the many "agencies." The data capture of a free form reason would be very expensive.)
  - 6) If applicable, a case name and number.
- b) Systems/Programming Changes: The bill will require many changes, including the recognition of a new category of "claim form."
- c) Individual, private claims will continue to be processed one at a time, with unique problems. Claims from state agencies will be automated to some extent. The court system is not be prepared to provide automated services of claims via tape matches and so the claims will be served and processed the same as private claims.
- d) Agencies which are part of the Alaska State Accounting System will be paid through the system with supporting information provided. The court system will be paid by check.
- e) The department currently receives thousands of contacts from debtors whose dividends have been attached, despite our best efforts to steer their complaints, appeals, etc. to the creditor who served the attachment. At the point when 50,000 - 60,000 Alaskan families are being affected by this expedited process, the number of such contacts, and the number of contacts with the Legislature, the Governor's Office and the Ombudsman is definitely going to increase.

1. Positions:

2 PPT Accounting Clerk I, R8,  
@ \$2,270.18/Mo each including  
salary and benefits for  
8 months = \$36.3

These positions will assist the existing Accounting Clerk II in the processing of the existing attachments and assignments. This also involves correspondence and telephone contact with the many competing garnishors.

3 PPT Data Processing Clerk I,  
R8, @ \$2,270.18/Mo each including  
salary and benefits for 3 months = 20.4

These positions will perform the  
data capture necessary on the  
claims to enable the department to  
comply with the provisions of  
the bill.

Total Personal Services \$56.7

2. Other Costs:

a) Travel: None.

b) Contractual:

Printing \$5.1

Includes printing costs associated  
with 75,000 claim forms, 60,000  
notices of appeal rights, and  
60,000 notices of claim.

Postage 28.0

Includes postage for claim  
notices and bulk shipment of  
claim forms to agencies.

Data Processing Chargeback from 50.0  
Department of Administration  
estimated 50.0 in FY89, including  
development; 30.0 in years  
thereafter.

TOTAL Contractual \$83.1

c) Equipment

Purchase 2 Wang 4250 workstations  
to provide access to the PFD  
System for the accounting staff = \$4.8

Purchase 3 Wang 4230 workstations  
for data capture = 7.2

Purchase 1 Wang VS-100 IOP = 3.6

TOTAL Equipment \$15.6

d) Supplies: \$1.8

TOTAL COST \$157.2

Suggested Amendments:

It is impractical for the Department of Revenue to be sending thousands of notices of claim and appeal rights to applicants, on behalf of other agencies. The notices and all further contact should be by the creditor agency, not Revenue. We will need to work with the concerned agencies and the committee staff to effect this change.

Attachments: None.

*Revised for publication*

# STATE OF ALASKA

STEVE COWPER, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX K—STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600

June 8, 1987

Honorable Steve Cowper  
Governor  
State of Alaska  
P.O. Box A  
Juneau, AK 99811

Re: HCS CSSB 227(SA) am H -- state  
agency claims to PFD's  
Our file: 883-87-0053

Dear Governor Cowper:

At Bob Evans' request on your behalf, we have reviewed HCS CSSB 227(SA) am H, a bill purportedly designed to make it easier for state agencies to attach permanent fund dividends of individuals owing debts to the state. If it were to become law, this bill would allow state agencies to execute on an individual's permanent fund dividend administratively, without the need to obtain a prior court judgment and writ of execution. We understand that the Commission on Postsecondary Education and the Department of Commerce and Economic Development each supported this bill, on the assumption that they would recover significant amounts of money through this process. We do not share their confidence, and for this reason, as well as other administrative and legal considerations, we recommend that you veto this bill.

Under the bill, execution by a state agency on a permanent fund dividend is exempted from the standard execution procedures contained in AS 09.35. Instead, a state agency need only serve the Department of Revenue with a claim identifying the individual whose dividend is sought (by name and social security number), the amount the individual owes the agency, and a statement that the debt is not currently contested. Upon receiving a claim, the Department of Revenue then is to notify the individual, by certified mail, of the claim and of the individual's right to a hearing before the agency making the claim.

This hearing requirement is our first concern. The bill provides that the hearing must be held under the administrative adjudication portion of the Administrative Procedure Act (APA), AS 44.62.330 -- 44.62.630. Even though the scope of the hearing is limited to the validity of the agency's claim to the dividend, and not to the validity of the underlying debt (which, presumably, has already been resolved), APA hearings are still

extremely expensive. Many agencies that might use this program have never operated under the APA and will require education and information on appropriate procedures, probably from this department. Under the APA, the hearing must be presided over by an independent hearing officer -- a lawyer with at least two years of experience, generally hired from the private sector. AS 44.62.350 and AS 44.62.450. With the notice sent by the Department of Revenue to the dividend applicant about the claim, which will have to conform to the form outlined in AS 44.62.380(b), the department will have to include a postcard, addressed to the agency making the claim, entitled "Notice of Defense", which the dividend applicant may simply sign and mail in to request and obtain a hearing. AS 44.62.360 and 44.62.380. If the applicant mails in the "Notice of Defense" postcard, the affected agency must then send a notice of hearing under AS 44.62.420. Finally, at the conclusion of the hearing, a written decision must be rendered. AS 44.62.510.

All of these procedures are expensive and time-consuming, and we believe that these factors have not been adequately considered or addressed by the agencies, especially in light of the ease with which an aggrieved applicant can obtain a hearing. The Department of Revenue estimates that there will be 6,000 -- 8,000 claims by state agencies under this Act. Even if the issues involved in the hearings are relatively simple, the sheer number of hearings that will be required under this Act make it likely that state savings, if any, will be minimal.

The Department of Revenue is concerned about an additional expense that will be incurred if this bill becomes law. An amendment adopted on the house floor added a requirement that the notice of claim sent by the Department of Revenue be mailed by certified mail. Page 2, line 7. This requirement adds a significant cost to the department's administration of this program, both in additional postage and in the tracking of return receipts.

We have been contacted by representatives of the Municipality of Anchorage, who have raised additional issues with respect to this bill. The municipality is interested in using the procedures in the bill to collect on debts owed to it. However, the bill is limited to collection of debts owed "to an agency of the state." Proposed AS 43.23.067(a), referring to AS 43.23.065(b)(4). The first issue is whether a municipality qualifies as an agency of the state, qualified to use this expedited execution procedure. As a general proposition, a municipality is not a state agency; municipalities are generally referred to as "political subdivisions" of the state. On the other hand, the

Municipality of Anchorage has indicated that the debts it would seek to collect under the program are fines imposed by the state courts for municipal violations. These fines are payable to the court, which then turns the money over to the municipality. Since the fine is owed and payable to the court, a good argument can be made that these fines constitute debts owed to an agency of the state. If this bill becomes law, we believe that the municipality will attempt to make this argument, which may result in litigation on this question. The municipality also recommends that you veto this bill and persuade the legislature to pass an alternate bill clearly applicable to agencies of the state and its political subdivisions.

We also note another potential legal problem raised by this bill. Rule 69(a), Alaska Rules of Civil Procedure, provides that the sole means of execution on a court judgment in this state must be by a writ of execution, unless the court directs otherwise. It appears that this bill would effect a change in the execution procedures prescribed by this court rule. Article IV, sec. 15, of the Alaska Constitution provides, however, that the legislature may not change a court rule absent a two-thirds vote of each legislative body (which, in fact, this bill received). Furthermore, to change a court rule the bill must specifically state that its purpose is to effect such a change (which this bill did not state). Leege v. Martin, 379 P.2d 447 (Alaska 1963). Thus, for those cases where a judgment has been obtained by the state concerning the debt in question (which we believe will occur in the majority of cases), a question exists as to whether the procedures outlined in this bill may be used or whether that Rule 69(a) provision controls.

Another problem we have identified is the requirement that the agency making a claim provide the Department of Revenue with the individual's social security number. Many times a state agency with a debt owed to it does not know the debtor's social security number. (For example, prisoners are not required to provide social security numbers to the Department of Corrections.) A far better approach would be to require a social security number or other appropriate identification.

Throughout the legislative session, there were several bills being considered to achieve the purposes of HCS CSSB 227(SA) am H. Unfortunately, it appears that the bill that passed was not the bill that received the most input and work. See, for example, House Bills 13 and 223. Since this legislation does not contain a special effective date, and thus would take effect 90 days after you sign it or after it becomes law without your signature, administrative impossibilities prevent it from

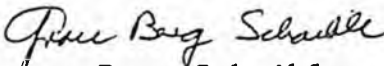
Hon. Steve Cowper, Governor  
File No. 883-87-0053

June 8, 1987  
Page 4

affecting this year's permanent fund dividend program.

We recommend that you veto this bill, due to its serious problems, while endorsing the concept, and encourage the legislature to complete a better bill next session. If that bill has an immediate effective date, it can still apply to next year's dividend program. A draft veto message is attached for your consideration.

Sincerely,

  
Grace Berg Schaible  
Attorney General

GBS/JWB/lb/nb

cc w/enc.: Hon. Hugh Malone, Commissioner  
Dept. of Revenue

# STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 2, 1987

The Hon. C. E. Swackhammer  
Alaska State House  
P.O. Box V  
Juneau, AK 99811

Re: House Bill 223, relating to  
permanent fund dividends  
Our File No.: 663-87-0446

Dear Representative Swackhammer:

By memorandum dated March 19, 1987, you asked us to review a proposed bill to permit agencies to apply for and receive the permanent fund dividends of individuals who owe debts to the agencies. Specifically, you asked us to comment on the tax consequences of the proposal and to make any other general comments regarding the draft. A later version of this proposed bill was recently introduced as House Bill 223, and we will direct our comments to the version currently under consideration.

## Federal Tax Implications

House Bill 223 would permit an "agency," defined as any state agency, state court, or municipality, to apply for and receive the permanent fund dividend of an individual who owes a debt to the agency. Assuming the procedure proposed to implement this process is workable (see discussion below), you have asked whether the agency's action will have federal income tax consequences to the individual. Although an absolute answer is impossible without either an Internal Revenue Service official ruling or a court decision, we believe a court would characterize this transaction as a discharge of a taxpayer's debt, thereby constituting income to the taxpayer under 26 U.S.C. § 61.

We understand that you asked the same question of the Legislative Affairs Agency. By memorandum dated March 20, 1987, Theresa L. Bannister stated that she could not, with any certainty, provide an answer to your question. On the one hand, the discharge of a taxpayer's debts is generally included in a taxpayer's gross income under 26 U.S.C. § 61. On the other hand, because the agency would claim the dividend on behalf of the taxpayer, who would never claim the dividend himself, the transaction could be viewed as simply a ~~discharge of a~~ ~~taxpayer's~~ ~~debt~~ ~~to~~ ~~the~~ ~~agency~~ ~~and~~ ~~therefore~~ ~~not~~ ~~income~~ ~~to~~ ~~the~~ ~~taxpayer~~.

4  
STEVE COWPER, GOV.

REPLY TO:

1031 W 4th AVENUE  
SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 276-3550

1st NATIONAL CENTER  
100 CUSHMAN ST.  
SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 452-1568

P.O. BOX K-STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

APR 03 1987

DEPARTMENT OF LAW

taxpayer's debt by the agency. Thus the transaction might be excluded from income as a gift under 26 U.S.C. § 102.

We believe the better argument is that the discharge of a debt under these circumstances would constitute gross income. The bill permits agencies other than the state to apply for and receive an individual's dividend. In those cases where a municipality received an individual's dividend, an actual transfer of funds would take place from the dividend fund (within the state general fund) to the municipality. This would clearly be a discharge of debt, rather than a write-off of debt. Although the question is arguably closer where the state is the debtor, the language of the bill implies an actual discharge of a debt by the state, rather than a gift. Finally, as noted by Tamara Brandt Cook, Director of the Legal Services Division, Legislative Affairs Agency, in a memorandum dated March 23, 1987, were this to be interpreted as a gift, the transaction could violate article IX, section 6, of the Alaska Constitution. Given the generally aggressive posture of the Internal Revenue Service, which views any exemption claim with skepticism, we believe the IRS would treat any agency claim for a permanent fund dividend as taxable income to the individual.

#### Other Legal Issues

In addition to the tax issues, this bill raises other legal issues which deserve discussion. First, as outlined by Ms. Cook, this legislation would be subject to challenge under the due process requirements of the state and federal constitutions, because by exempting these transactions from the normal execution procedures in AS 09.25, the bill does not provide for notice and prior hearing before the seizure of the individual's property. Balancing the interest of the individual in a prior hearing against the interest of the agency in efficient government operations, and taking into account the relatively slight chance of a permanent deprivation in the event of an agency mistake, we believe the legislation might withstand a due process challenge. However, the only thing we can say with any certainty is that a challenge would likely occur.

Second, although providing an exemption from AS 09.25, the bill fails to mention applicable court rules. The Alaska Supreme Court has provided specific procedures for execution on judgments in Civil Rule 69. Because this rule specifically provides that enforcement of a judgment be by a writ of execution unless otherwise directed by the court, this rule would supersede the new legislation unless the bill is amended to specifically amend Civil Rule 69. Of course, the bill will then need to be

adopted by a two-thirds vote in each house of the legislature.  
Alaska Constitution art. IV, § 15.

Third, this legislation raises some questions concerning how a particular agency is going to determine whether or not a particular individual "is eligible to receive the dividend." AS 43.23.005(a) provides as part of the eligibility requirements for a permanent fund dividend that the individual be a state resident. "Residency" is established when an individual is physically present in the state "with the intent to remain in the state indefinitely and to make a home in the state." AS 01.10.055(a). Since residency depends on the state of mind of the individual, it is difficult to see how an agency could defend its "belief" that the individual is a resident. Should the belief be challenged by the individual himself. Although it is unlikely that many will make such a challenge, since the only negative consequence of the agency's actions will be an increased tax liability and the individual will gain an even larger debt write-off, such a challenge is certainly plausible, and if made, the agency's position would likely be indefensible.

We also note a few other practical questions raised by the bill. The bill fails to mention what procedures to use if the agency's claim is for less than the full amount of the dividend. In that case, is the entire check sent to the agency, or should the Department of Revenue issue separate checks to both the individual and the agency? Also, the bill provides that the Commissioner of the Department of Revenue must notify the individual that the execution has occurred. In addition to increasing the Department of Revenue's administrative costs, this procedure may cause an individual who wishes to challenge the action to believe that his challenge should be made through the administrative processes at the Department of Revenue. We believe it would be more appropriate for the agency making the claim to defend against any challenge, and we would therefore recommend that the bill be amended to add an additional section specifying that any challenge to the execution should be made to the agency making the claim.

Finally, we believe sec. 5 of the bill should be clarified. The reference to AS 09.38.085 should also include a reference to AS 09.38.075(b) and AS 09.38.080(c). Further, it appears that the final two sentences being added to AS 43.23.-065(a) refer only to situations where the court is the creditor.

The Hon. C. E. Swackhammer  
Alaska State House  
File No.: 663-87-0446

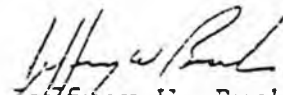
April 2, 1987  
Page 4

If this is the drafter's intent, we would recommend that these two sentences be moved to a separate subsection.

We hope this answers your questions.

Sincerely,

GRACE BERG SCHAIBLE  
ACTING ATTORNEY GENERAL

By:   
Jeffrey W. Bush  
Assistant Attorney General

JWB:lb

cc: Ervin Jones, Director  
Administrative Services  
Department of Revenue

Arthur H. Peterson, AAG  
Department of Law

STEVE COWPER  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

053

June 15, 1987

The Honorable Ben Grussendorf  
Speaker of the House  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Re: HSC CSSB 227 (SA) am H --  
state agency claims to  
PFD's

Dear Representative Grussendorf:

Under the authority of art. II, sec. 15 of the Alaska Constitution, I have vetoed HSC CSSB 227 (SA) am H. The proposed Act would have permitted state agencies to attach permanent fund dividends of individuals owing debts to the state without using normal execution procedures.

I commend the efforts of the legislature to make collection of state debts easier. However, serious problems in administration of this proposed Act make it necessary that I ask the legislature to pass alternative legislation next session to deal with these concerns. I understand that substantial work has been done on HB 223, which may be an appropriate vehicle. If the legislature includes an immediate effective date on legislation passed next session, no time will be lost. HCS CSSB 227(SA) am H has no specified effective date, and therefore, because of the administrative impossibility of implementing it after a mid-September effective date, could not affect this year's dividend distribution.

My primary concern is that the proposed Act is far too costly. By requiring administrative hearings under the Administrative Procedure Act (APA), AS 44.62.330 -- 44.62.-630, any savings realized by the legislation through expedited executions would be lost in added costs. These hearings are extremely easy for a debtor to request but are very expensive for an agency to hold. In addition, the proposed

The Honorable Ben Grussendorf

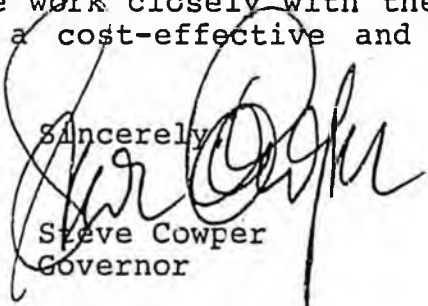
-2-

June 15, 1987

Act attempts to modify the execution procedures provided under Rule 69(a), Alaska Rules of Civil Procedure, without following the requirements of the Alaska Constitution, art. IV, sec. 15, for amendment of court rules. Finally, the proposed Act fails to take into account the needs of municipalities, which should also have an opportunity to use these expedited procedures.

I recognize that an argument can be made that I should sign this bill and work on correcting its infirmities next session. However, I believe that that strategy might not result in passage of corrective legislation. I believe that it would be better to veto this bill and have the Departments of Law and Revenue work closely with the legislature next session to pass a cost-effective and constitutional bill.

Sincerely,



Steve Cowper  
Governor

COMMITTEE SUBSTITUTE for HOUSE BILL 223 (STATE AFFAIRS)

CS for HOUSE BILL 223 (State Affairs)  
INDEX

- SECTION 1: HOUSE BILL 223
- SECTION 2: SECTIONAL ANALYSIS
- SECTION 3: FISCAL NOTES
- SECTION 4: OUTSTANDING COURT FINES RESEARCH
- SECTION 5: STATE LOANS STATISTICS, DELINQUENCY AND  
DEFAULT
- SECTION 6: CURRENT STATUTES

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

**REQUEST:** \_\_\_\_\_ Bill Version: CS HB 223 (State Affairs)  
 Publish Date: \_\_\_\_\_  
 Revision Date: 5-5-87 Agency Affected: Alaska Court System  
 Title: An act relating to permanent BRU: Trial Courts  
 fund dividends  
 Sponsor: Swackhammer, Larson Components:  
 Requestor: Rep. Swackhammer

<b>EXPENDITURES/REVENUES:</b> (Thousands of Dollars)						
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
Personal Services	. . . .	81.3	81.3	81.3	81.3	81.3
Travel	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Contractual	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Supplies	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Equipment	. . . .	9.2	. . . .	. . . .	. . . .	. . . .
Land & Structures	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Grants & Claims	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>90.5</b>	<b>81.3</b>	<b>81.3</b>	<b>81.3</b>	<b>81.3</b>
<b>CAPITAL</b>	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
<b>REVENUE</b>	. . . .	See analysis	. . . .	. . . .	. . . .	. . . .

<b>FUNDING:</b> (Thousands of Dollars)						
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
General Funds	0.0	90.5	81.3	81.3	81.3	81.3
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
<b>TOTAL</b>	<b>0.0</b>	<b>90.5</b>	<b>81.3</b>	<b>81.3</b>	<b>81.3</b>	<b>81.3</b>

<b>POSITIONS:</b>						
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
Full-time	. . . .	1.0	1.0	1.0	1.0	1.0
Part-time	. . . .	3.0	3.0	3.0	3.0	3.0
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

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

See attached fiscal analysis.

Prepared by: Robert G. Fisher, Fiscal Officer Phone: 264-8215  
 Division: Alaska Court System Date: 5-5-87  
 Approved by: *Stephanie J. Cole* Stephanie J. Cole, Deputy Director Date: 5-5-87  
 Agency: Alaska Court System

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management & Budget  
 Impacted Agency(ies)  
 Senate Secretary

FISCAL ANALYSIS  
CSHB 223 (STATE AFFAIRS)

The court system's fiscal note is based on work requirements attributable to issuing writ of execution. Based on information provided by the Anchorage trial court, it is assumed that fines are due in approximately 1/6 of criminal cases charged under state law (not including traffic infractions). The clerical work require to process a writ of execution will include physical review of the file, cross-checking against various monitoring lists maintained by the clerk's office including those for outstanding warrants, and bookkeeping. All of this work must be completed with a high level of accuracy, since execution on a dividend for a defendant who has already paid the fine could result in costly litigation. The supervisor of the criminal division of the Anchorage clerk's office estimates that approximately three hours will be required to issue a writ of execution and arrange for delivery to the Department of Revenue, as well as to account for the dividend when it is received. Substantial time will also be expended reviewing old files to determine if a writ of execution should be issued to obtain a current dividend.

Although additional clerical positions would be required to perform this function, at an ongoing cost of \$81,300, the state will break even on this expenditure if an average of \$38 is collected from the dividend for each outstanding fine. A review of court records indicates an average fine of \$400 so it appears the work required to issue a writ of execution will be offset by revenue.

ALASKA COURT SYSTEM

CS HB 223 (State Affairs) - FISCAL ANALYSIS

Personal Services:	Salary	Benefits	Total
Court Clerk II, Range 10B, Anchorage, PFT - 12 months	\$22,836	\$8,290	\$31,126
Court Clerk II, Range 10B, Fairbanks, PPT - 6 months	12,870	4,468	17,338
Court Clerk II, Range 10B, Kenai, PPT - 6 months	12,120	4,301	16,421
Court Clerk II, Range 10B, Palmer, PPT - 6 months	12,120	4,301	16,421
			-----
<b>Total Personal Services</b>			<b>81,306</b>
<b>Equipment: (one time cost)</b>			
Desk, chair, filing cabinet, and typewriter for each new employee			9,232
			-----
<b>Total First Year Cost</b>			<b>\$90,538</b>
			=====

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

REQUEST \_\_\_\_\_

Bill Version: HB 223

Publish Date: \_\_\_\_\_

Revision Date: \_\_\_\_\_

Agency Affected: Revenue

Title: An act relating to permanent fund dividends

BRU: Administrative Services

Sponsor: Swackhammer, Larson

Components: \_\_\_\_\_

Requestor: State Affairs

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
<b>OPERATING</b>						
PERSONAL SERVICES	-	208.6	105.9	105.9	105.9	105.9
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	83.1	63.1	63.1	63.1	63.1
SUPPLIES	-	1.8	1.8	1.8	1.8	1.8
EQUIPMENT	-	15.6	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
<b>TOTAL OPERATING</b>	-	309.1	170.8	170.8	170.8	170.8
<b>CAPITAL</b>	-	-	-	-	-	-
<b>REVENUE</b>	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	309.1	170.8	170.8	170.8	170.8
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
<b>TOTAL</b>	-	309.1	170.8	170.8	170.8	170.8

POSITIONS:

FULL-TIME	-	5	3	3	3	3
PART-TIME	-	4	4	4	4	4
TEMPORARY	-	-	-	-	-	-

ANALYSIS: Attach a separate page if necessary

(See attached)

Prepared By: Ervin B. Jones  
Division: Administrative Services

Phone: 465-2313  
Date: 4/13/87

Approved by Commissioner: [Signature]  
Agency: Revenue

Date: 4/19/87

Distribution (by Agency preparing fiscal note):

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

Department of Revenue  
Administrative Services Division  
Fiscal Note Analysis  
HB 223  
4/13/87

Assumptions:

- 1) Since a claim under the proposed subsection AS 43.23.005 would be infinitely easier for state agencies, municipalities and the courts to use, those entities would use this mechanism exclusively. It is impossible to estimate the number of such claims the Department of Revenue might receive. However, the following will give some idea of the volume.
  - a) The Postsecondary Education Commission recently testified at hearings for HB 133 that they were able to get only 800 of their 2,000 attachments through the courts. Were that true for all "agencies," we could expect a 250% increase over the current number of attachments by state agencies.
  - b) The City-Borough of Juneau has 3,500 delinquent accounts for such things as property taxes, sales tax, utilities, harbor fees, hospital bills, etc.
  - c) The Anchorage Telephone/Utility has 5,800 "real problem cases."
  - d) Between Anchorage and Juneau, there are over 22,000 outstanding traffic tickets.
  - e) The court system of Alaska processes approximately 25,000 criminal cases, alone, a percentage of which result in fines.
  - f) The Child Support Enforcement Division currently serves approximately 4,500 attachments.
  - g) All other state agencies combined file approximately 2,000 attachments. It is fairly easy to envision 60,000 claims being filed under Section 1 of HB 223.
- 2) I would assume and hope that this bill would not effect the 1987 dividend distribution. Assuming that the bill became law in mid-May it would be impossible to get everything in place, and complete the printing, programming, staff recruitment and training necessary to implement the bill before the filing deadline of June 30.
- 3) It is assumed that the several legal questions raised by the Attorney General and Legal Services are resolved and that the bill as drafted is passed into law. Please see Attorney General memo of 4/2/87, file no. 663-87-0446.

## Program Summary:

The department's responsibilities under this bill would be as follows:

- a) Forms Printing: The Department of Revenue would print an auxiliary Permanent Fund Dividend "Claim by Government Agency" to be distributed to all agencies identified in the definition of agency. The "PFD Claim form" would require of the agency:
  - 1) The name and address
  - 2) The full name, address and birthdate of the obligee.
  - 3) The amount of the claim.
  - 4) A statement of the basis of the claim. (Some consistent, short form of reasons would have to be worked out with the many "agencies." The data capture of a free form reason would be very expensive.)
  - 5) A statement by an officer of the agency of the basis for its belief that the individual is eligible to receive a dividend for that year. This statement would need to include an affirmation that the individual obligee was known to have physically resided in Alaska for the full eligibility period, that the individual was still a resident of Alaska and most importantly, a statement of the basis for belief by the agency that the individual obligee has the intent to remain a resident.
  - 6) If applicable, a case number.
- b) Systems/Programming Changes: The entire dividend system is premised upon processing applications voluntarily filed by applicants claiming to be residents. The bill will require many changes, including the recognition of a new category of "claim form," the identification and denial of competing applications from the obligees, allocating dividend payments to multiple claimants, notification of obligees of claim(s) filed and reconciliation of all amounts paid. I envision this as a fairly major change to the existing PFD system which will require additional programming staff and computer resources.
- c) Claims filed under Section 1 will have to be microfilmed, reviewed for completeness, and data captured. Notice of acceptance or non-availability of funds will be sent to the claimant.
- d) Incomplete claims will result in request letters.
- e) All claims based on an agency's belief that the obligee is eligible will be reviewed by the Enforcement Division for residency. All claims will be matched against the PFD application file. Competing PFD applications will be denied with statutory appeal rights being extended, and hearings provided. Information from competing applications will be used to help verify residency, and when there is no competing application, Enforcement may contact obligees directly to obtain information.
- f) Agencies which are part of the Alaska State Accounting System will be paid through the system with supporting information provided. Municipalities and the court system will be paid by check.

Questions:

- 1) As noted in Mr. Bush's 4/2/87 memo, it is unclear as to what the Department of Revenue is supposed to do with the residual of a Permanent Fund Dividend if a claim is for less than the full amount. Do we pay the individual, as with normal attachments? What is the obligee never filed on his own behalf?
- 2) Does a claim, regardless of the face amount, constitute an application for an "eligible individual" for purposes of calculating the value of the dividend?
- 3) If a claim under Section 1 is the only application filed on behalf of an individual, is it subject to attachment? Is the balance, after AS 43.23.065(b) claims, assignments and attachments are paid, subject to normal attachment?

1. Positions:

3 PFT Accounting Clerk I, R8,  
@ \$2,221.64/Mo each including  
salary and benefits for  
12 months = \$79.9

These positions will assist the existing Accounting Clerk II in the processing of the existing attachments and assignments. This also involves correspondence with the many competing garnishors.

2 PPT Data Processing Clerk I,  
R8, @ \$2,221.64/Mo each including  
salary and benefits for 3 months = 13.3

These positions will perform the data capture necessary on the claims to enable the department to comply with the provisions of Sec. 1

2 PFT Analyst/Programmer IV, R19,  
@ \$4,281/Mo each including  
salary and benefits for 12 months = 102.7

This would be a one-time cost for FY88 development. The maintenance of the system changes will be accomplished by the existing staff.

2 PPT Document Processor I, R7,  
@ \$2,117.76/Mo each including  
salary and benefits for 3 months = 12.7

These positions will assist in  
the denials of approximately  
60,000 applicants and the  
resulting appeals.

Total Personal Services \$208.6

2. Other Costs:

a) Travel: None.

b) Contractual:

Printing \$5.1

Includes printing costs associated  
with 75,000 claim forms, 60,000  
denial notices, and 60,000 notices  
of appeal rights, and 60,000  
notices of claim.

Postage 28.0

Includes postage for denial notices,  
claim notices and bulk shipment of  
claim forms to agencies.

Data Processing Chargeback from 50.0  
Department of Administration  
estimated 50.0 in FY88, including  
development; 30.0 in years  
thereafter.

TOTAL Contractual \$83.1

c) Equipment

Purchase 3 Wang 4250 workstations  
to provide access to the PFD  
System for the accounting staff = \$7.2

Purchase 2 Wang 4230 workstations  
for data capture = 4.8

Purchase 1 Wang VS-100 IOP = 3.6

TOTAL Equipment \$15.6

d) Supplies: \$1.8

TOTAL COST \$309.1

Suggested Amendments:

As suggested in Mr. Jeffrey Bush's AG's memo, file no. 663-87-0446.

Attachments: None.

CS for HB 223 (State Affairs)  
SECTIONAL ANALYSIS

SECTION 1: A provision is added so that it is clear that \$100 is exempted from levy, execution, garnishment, attachment or any other remedy for the collection of the debt. A creditor seizing the non-exempt portion of the dividend is not required to serve a notice of levy. A writ of execution may be served on the Commissioner of Revenue by certified mail.

SECTION 2: The claims or voluntary assignments of dividends in payment or partial payment are given a priority to include court ordered fines and agencies to include state courts and municipalities.

SECTION 3: This new material exempts debts listed under (b) from AS 09.38, which deals with exemptions in general. Before payment from an individual 's Permanent Fund Dividend is made to a creditor, the Commissioner provides the individual with notification of the claim and amount claimed, a statement of the basis for the claim, and, if applicable, identification of the case under which the claim has been made.

SECTION 4: This repeals current statute AS 43.23.065(c).

SECTION 5: This act takes effect immediately.



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

P.O. Box Y, State Capitol  
Juneau, Alaska 99811-3100  
Mail Stop 3100  
(907) 465-3991

March 16, 1987

MEMORANDUM

TO: Representative Swack Swackhammer

ATTN: Tom Wright

FROM: Penelope Weyhrauch  
Legislative Analyst

RE: Outstanding Court Fines: Attaching Permanent Fund Dividends  
Research Request 87.187

You asked for information on the collection of fees and fines levied by the Alaska Court System, and the amount of fees and fines that are presently outstanding. You were interested in the Alaska Court System's collection efforts, particularly the procedures and problems in attaching a debtor's Permanent Fund Dividend (PFD) to pay fines levied by a judicial officer.

**Fees and Fines**

There are no outstanding filing fees owed to the Alaska Court System because fees are always paid at the time of filing a legal document. Fees are assessed of everyone and are standard--that is, everyone pays the same amount when filing a particular document. Attorney fees could be assessed against a party in a lawsuit, but these fees would generally be payable to the other party and not to the court. However, in a criminal case, a court will appoint an attorney for those who are financially unable to obtain one, but may require that a defendant pay a portion of the attorney's fees.

A fine is a penalty, the amount of which is set on an individual basis by a judicial officer. Karla Forsythe, Staff Counsel for the Alaska Court System, said that there are no centralized records on how much is owed to the State in outstanding fines. She said that each court in the state has its own records, only some of which are computerized. In April 1986, the Court System estimated that over \$6 million was owed for outstanding fines, court appointed attorney fees, and restitution to private parties (Attachment A). Ms. Forsythe said that specific amounts outstanding in each of these categories is not available. She also said that the total amount outstanding has probably increased during the past year.

### Collection Efforts

According to Ms. Forsythe, very little is done by the Court System to collect outstanding fines and attorney fees owed to the State. There is no collection agency within the judicial branch, nor does the Alaska Court System believe that the collection of outstanding balances is a judicial function. The Court System believes that collection should be done by the executive branch and has emphasized that in letters to the Attorney General's office (Attachment B). In regard to collection efforts by the Court System, Arthur Snowden, Administrative Director of the Court System, wrote "The Supreme Court has indicated that it is unwise if not unconstitutional as a violation of the doctrine of separation of powers for the court to combine judicial and executive functions."<sup>1</sup> According to Ms. Forsythe, the Attorney General's office has not responded to the Court System's request for executive branch action. Patrick Conheady, Assistant Attorney General, agreed that the collection of fines is an executive branch function.

Bob Fisher, Fiscal Officer for the Court System, was not aware of the collection efforts that had been made by the courts, since that information is not centralized. He suggested that I contact the clerks of the larger Alaska courts. Susan Paterson, Clerk of the Court in Fairbanks, said that over \$8,000 was collected from the assignment of PFDs by defendants with outstanding court fines. (The assignment is the voluntary signing over of an individual's right to a PFD.) David Haas, Clerk of the Court in Juneau, said that no efforts for the collection of outstanding court fines have been made by the Juneau office. I was unable to reach the clerk of the Anchorage court.

### Attaching Permanent Fund Dividends

The Department of Revenue is responsible for issuing PFDs. According to Mike McGee, Chief of PFD Operations in the department, State agencies can garnish 100 percent of an individual's PFD if the individual has a debt to the State.<sup>2</sup> Child support obligations have the highest priority for garnishment. Court-ordered restitution and probation fees are second in priority and all other attachments are applied on a "first come, first served basis."<sup>3</sup>

-----  
<sup>1</sup>Letter to Hal Brown, Attorney General, from Arthur Snowden, Administrative Director, Alaska Court System, July 17, 1985.

<sup>2</sup>Federal agencies may garnish 100 percent of an individual's PFD. All other creditors can garnish only 50 percent of an individual's PFD.

<sup>3</sup>Alaska Statutes 43.23.065 (Attachment C).

According to Mr. McGee, the garnishment of an individual's PFD is initiated by the Department of Revenue when a court order or an administrative levy is received from a State agency.<sup>4</sup> An administrative levy occurs when an agency makes an administrative decision that a person has a monetary obligation to the agency. The agency presents a list of persons with obligations to the Department of Revenue and the department matches this with a list of persons receiving PFDs. The dividends of persons with obligations to State agencies are then garnished. For example, the Child Support Enforcement Division of the Department of Revenue routinely uses administrative levies to garnish PFDs of persons who are found to be delinquent in child support payments.

Individuals who do not apply for PFDs have no claim to a dividend and therefore, a State agency to which individuals owe money cannot garnish their PFDs. Mr. McGee said that for a garnishment to occur, a name must match exactly the name under which a person applied for a PFD. If the agency sends a name for garnishment that does not have a match in the PFD listing, the PFD will not be garnished.

Ms. Forsythe and Susan Miller, Manager of Special Projects at the Alaska Court System, said that there are several reasons that the Court System has not been more aggressive in garnishing PFDs for the payment of outstanding fines.<sup>5</sup>

- **Responsibility for Collection.** The Court System maintains that the collection of fines is a function of the executive branch and not the judicial system.

- **Court Authority for Garnishment.** According to Ms. Miller, because no statute gives a judicial officer specific authority to garnish an individual's PFD, some judges do not believe that they have the authority to do so. Each judge in the Court System makes his/her own decision regarding the limits of his/her authority if there is no specific legal guideline. Ms. Miller said that it was her opinion that under the common law, courts have the authority to use civil execution procedures to collect fines. Ms. Forsythe said that the legislature could set clear authority for the courts to attach PFDs.

-----  
<sup>4</sup>For the purposes of this memorandum, "attaching" and "garnishing" are used interchangeably.

<sup>5</sup>Conference Call, Karla Forsythe and Susan Miller of the Alaska Court System, March 11, 1987.

**Attaching Property for the Collection of Criminal Fines.** Several attorneys with the Court System with whom I spoke mentioned that they were not sure about the legality of attaching property for outstanding fines levied in a criminal case.<sup>6</sup> Attaching property has always been associated with civil judgments and imprisonment has been associated with criminal judgments. Patrick Conheady, with the Department of Law, however, believes that AS 12.55.025 (f) establishes clear authority for the garnishing of a defendant's PFD for the payment of an outstanding fine. This statute states that "...a sentence that the defendant pay money, either as a fine or in restitution or both, constitutes a lien in the same manner as a judgment for money entered in a civil action." (Attachment E).

The Civil Execution Process is available for individuals and State agencies who have won a civil judgment against an individual and are attempting to attach property as payment. Alaska courts are required to adhere to the same process as individuals to attach a person's property.<sup>7</sup> According to Ms. Forsythe, the civil execution process--AS 09.35 and AS 09.38--provides protection to debtors by providing notice and substantial time frame requirements so that debtors are assured notice and time to respond to attachment.

While protecting the debtor, this process would require paperwork, time and manpower of the courts. Many courts do not have the staff or the time to engage in the process. Ms. Forsythe said that the legislature could address this by allowing the court to pursue the attachment of an individual's PFD in an abbreviated process. She suggests that attachment could be as simple as notice to the debtor in the form of a letter. Ms. Forsythe also said that the Court System has been looking into the possibility of using the relatively simple administrative levy process to garnish PFDs, rather than the complex civil execution process.

**Exemptions to the Attachment of Property** are included in the civil execution process and are available to debtors. According to Ms. Forsythe, there has been confusion over whether the exemption of liquid assets in AS 09.38.030(b) (Attachment F), applies to PFDs or not. This exemption allows an individual to retain cash and other liquid assets of at least \$700 per month. Thus, an individual's PFD could be exempt from attachment if this statute applies.

-----  
<sup>6</sup>Susan Patterson, Clerk of the Court in Fairbanks, said that some people believe that AS 12.55.051 limits the penalty for the nonpayment of outstanding court fines to imprisonment (Attachment D).

<sup>7</sup>This process is detailed in Attachment G, "Execution Procedure for Judgment Creditors", Alaska Court System Handbook, July 1986, pp. 10 - 16.

Representative Sw .hammer  
March 16, 1987  
Page 5

Ms. Forsythe said that some people argue that AS 09.38.030(b) does not apply to PFDs because AS 43.23.065 (Attachment C) provides the only statutory exemption for the attachment of PFDs.<sup>8</sup> Alaska Statute 43.23.065 exempts one-half of a person's PFD from attachment except for child support, court-ordered restitution, and debts owed to State agencies. An outstanding fine is considered a debt to the State and, in that situation, an individual's PFD would not be included in the partial exemption provided by AS 43.23.065.<sup>9</sup>

\* \* \*

I hope this information is useful to you. If you would like us to research the collection of court fines in other states, we would be happy to do so. If you have any questions or would like additional information, please contact our agency.

Attachment

-----  
<sup>8</sup>This statute is not a part of the civil execution process.

<sup>9</sup>Ms. Forsythe said that the legislature could aid the Court System in the collection of PFDs for outstanding fines by clarifying these statutes. She suggested legislation which states that the liquid assets exemption in AS 09.38.030(b) does not apply to PFDs, and a clarification as to whether or not AS 43.23.065 is the sole statutory exemption relating to PFDs.

ATTACHMENT A  
Letter from Arthur Snowden to Attorney General Brown  
April 3, 1986



## Alaska Court System

State of Alaska

303 "K" STREET  
ANCHORAGE, ALASKA  
99501

ARTHUR H. SNOWDEN II  
ADMINISTRATIVE DIRECTOR

(907) 274 8611

April 3, 1986

Harold M. Brown, Attorney General  
Department of Law  
P. O. Box K  
Juneau AK 99811

Dear Hal:

Although I have not yet received your response to my July 17, 1985 letter requesting that the Department of Law assume its statutory responsibility for collection of monies due to the state on court judgments, I have asked each judicial district to compile case history information about monies due.

Each judicial district was recently asked to provide my office with a statement of all outstanding amounts due to the state from court orders for fines and payment for court-appointed attorneys, and for restitution due to private parties. Preliminary figures for the total of these three categories are as follows:

First district - \$1.5 million  
Second district - \$ 23,500  
Third district - \$3.4 million  
Fourth district - \$1.1 million

The accounting information received in my office must be checked against actual court records before we can assure accuracy in each individual case. We are prepared to pull files and verify amounts due in each case we will be turning over to your office for collection. Please let me know your plans in this regard, so that I can plan for an orderly reporting process.

Thank you for your help and cooperation. Please contact me if you have any questions.

Sincerely,

/s/

Arthur H. Snowden, II  
Administrative Director

cc: Chief Justice Rabinowitz  
Presiding Judges  
Area Court Administrators  
Stephanie Cole  
Karla Forsythe  
Bob Fisher

ATTACHMENT B  
Letter from Arthur Snowden to Attonery General Brown  
July 17, 1985  
and to Attorney General Schaible  
February 18, 1987



## Alaska Court System

State of Alaska

303 "K" STREET  
ANCHORAGE, ALASKA  
99501

ARTHUR M. SNOWDEN II  
ADMINISTRATIVE DIRECTOR

(907) 274-6511

July 17, 1985

Hal Brown  
Attorney General  
Pouch K  
Juneau AK 99811

Dear Hal:

At the request of former Commissioner of Administration Lisa Rudd, the administrative office of the Alaska Court System is reviewing indigency guidelines. One area of concern is the current lack of effort by the Department of Law to collect from defendants the costs of representation which the court has ordered them to pay.

Under AS 18.85.120, persons receiving services of court-appointed counsel shall affirm their indigency and execute waivers authorizing release of income information. At the conclusion of all services by the public defender, the court shall upon request release all non-incriminating information to the attorney general. Under AS 18.85.150, the attorney general may then bring an action on behalf of the state to recover payment.

It is my understanding that the Department of Law is undertaking no effort at the present time to recoup the state's expenses in these cases. Although trial courts from time to time have engaged in preliminary collection efforts such as sending reminder letters to defendants, collection of costs is an executive branch function. The Supreme Court has indicated that it is unwise if not unconstitutional as a violation of the doctrine of separation of powers for the court to combine judicial and executive functions (see Public Defender Agency v. Superior Court Third Judicial District, 534 P.2d 947 (1975)).

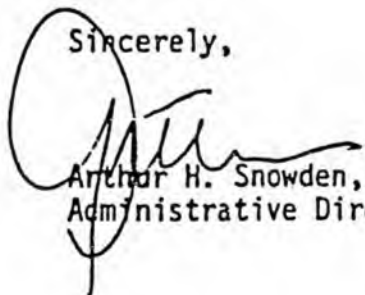
I recognize that collection efforts, including litigation, are not cost effective unless the court has ordered repayment of a substantial sum of money for which there is a realistic change of repayment. Approximately \$277,000 in court-ordered costs are outstanding in Anchorage alone for 1984 with over 5400 Anchorage cases since 1979 in which uncollected costs are outstanding.

July 17, 1985  
Page 2

I propose that the Department of Law assume its statutory responsibility for collection in these cases, and that the Department consider entering into a contract with a collection agency for a fixed percentage of the total amount to be collected.

I would appreciate it if you could review the possibility of entering into such an agreement, and let me know your views.

Sincerely,



Arthur H. Snowden, II  
Administrative Director

KF/k1

cc: Stephanie Cole  
Karla Forsythe



RECEIVED  
FEB 19 1987

Office of Administrative Director  
Alaska Court System

## Alaska Court System

State of Alaska

303 "K" STREET  
ANCHORAGE, ALASKA  
99501

ARTHUR H. SNOWDEN II  
ADMINISTRATIVE DIRECTOR

(907) 274-8511

February 18, 1987

Grace Berg Schaible  
Attorney General  
Department of Law  
P. O. Box K  
Juneau, Alaska 99811

Dear Ms. Schaible:

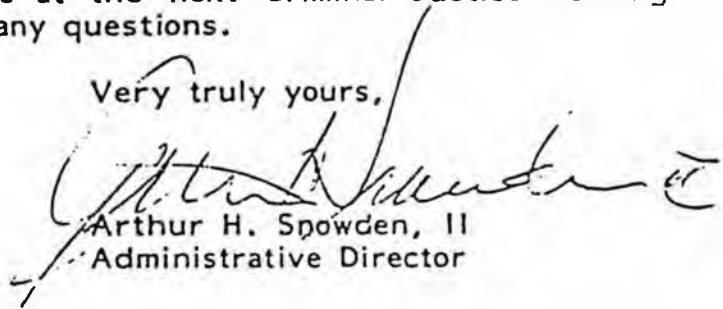
On a number of occasions, I wrote and talked to former Attorney General Hal Brown about the problem of collection of monies due to the State of Alaska. With regard to the court system, these monies consist of amounts due for unpaid fines and payments for court-appointed attorneys.

Although Mr. Brown did not appear to dispute the propriety of the Department of Law making such a collection effort, he was emphatic that he lacked the manpower resources to mount such an effort. I have noted the proposed budget cuts that your department is likely to suffer in the upcoming fiscal year, and it is easy to see that even fewer resources will be available for such secondary functions as debt collection.

However, I have in the past suggested that the state consider contracting, on a "percentage collected" basis, with a private sector collection agency to attempt to collect monies for all debts owed the state.

I hope that we can discuss this issue at the next Criminal Justice Working Group. Please contact me if you have any questions.

Very truly yours,

  
Arthur H. Snowden, II  
Administrative Director

AHS:bs

cc: Stephanie J. Cole, Deputy Administrative Director  
Karla L. Forsythe, Staff Counsel



Alaska Court System  
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

KARLA L. FORSYTHE  
General Counsel

303 K Street  
Anchorage, AK 99501

July 8, 1986

Hal Brown  
Attorney General  
Pouch K  
Juneau, AK 99811

Dear Mr. Brown:

On July 17, 1985, Art Snowden wrote to you proposing that the Department of Law assume its statutory responsibility for collecting fines, and, further, that the department consider entering into a contract with a collection agency for a fixed percentage of the total amount to be collected. On April 3, 1986, Mr. Snowden forwarded preliminary figures for outstanding fines and restitution, indicating a state-wide total of over \$6 million (copies of letters attached). To date, the department has not forwarded a response.

The court system again requests that you look into this matter, and advise Mr. Snowden of your plans.

Sincerely,

Karla L. Forsythe  
General Counsel

cc: Arthur H. Snowden, II  
Stephanie Cole

ATTACHMENT C  
ALASKA STATUTE SUPPLEMENT 43.23.065

provision, see § 22, ch. 99, SLA 1985 in amendment substituted "October" for the Temporary and Special Acts. "December" in paragraph (2).  
 Effect of amendments. — The 1984

**Sec. 43.23.065. Exemption of permanent fund dividends.** (a) Except as provided in (b) of this section, 50 percent of the annual permanent fund dividend 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.

(b) An exemption is not available under this section for permanent fund 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) court ordered restitution under AS 12.55.045 — 12.55.051 or 12.55.100;

(3) a court ordered probation fee under AS 12.55.105; or

(4) 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 expired.

(c) Claims listed in (b) of this section have priority in the order listed over other claims on a permanent fund dividend. (§ 1 ch 102 SLA 1982; am § 1 ch 157 SLA 1984; am § 57 SLA 1985; am § 67 ch 138 SLA 1986)

Revisor's notes. — Sections 12 and 13, ch. 99, SLA 1985, amend this section and add new (b) and (c). The amendments are effective if § 1, ch. 99, SLA 1985 is repealed (see § 25, ch. 99, SLA 1985). If the amendments become law, the section will read: "(a) Fifty percent of a cash permanent fund dividend payment 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 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 expired; or (3) court ordered restitution under AS

12.55.045 — 12.55.051 or 12.55.100. A child support obligation under (1) of this section has priority over a debt owed to an agency of the state, and a permanent fund dividend may not be taken to satisfy a debt under (2) of this section until any portion of the dividend necessary to satisfy a child support obligation has been taken.

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

"(c) The courts of this state may, as a condition of any civil judgment or restitution order under AS 12.55.045 — 12.55.051 or 12.55.100, require the defendant to take the defendant's permanent fund dividend in cash."

Section 22, ch. 99, SLA 1985 provides for an advisory vote to be held at the general election in 1986. For the text of that

prov  
the  
Et  
amer  
in th  
"An  
is,"  
begu  
the s  
limit  
ment  
subs  
Th  
  
S  
  
Re  
SLA  
amer  
1985  
1985  
secti  
eligil  
assis  
Depa  
in wh  
on f  
Heal  
sider  
come  
ent o  
the r  
to do  
Depa  
shall  
tance  
divid  
"(b  
cal a  
1396)  
solely  
permu  
ual o  
housi  
ical a  
sist  
  
St  
  
Re  
SLA  
amer  
1985  
1985  
para  
divic  
count  
tor."  
In

ATTACHMENT D  
Code of Criminal Procedure 12.55.051

Ct App  
2d 1320

l after  
pealed,

endant  
section  
nt and  
nt the  
den its

y civil

grant  
of time  
ch 102

ction (f),  
s Act do  
ction of  
mitted  
ct or the  
defense  
offense  
ording  
the com-  
manner

— For  
S CSSB  
Supple-  
or 1980  
9, (May

sets. —  
ment to  
restitu-  
g and  
Ct App  
2d 1359

was to  
charged  
vidence  
uter of  
d on the

actual loss to the victim is appropriate, even though the loss exceeds the maximum property-value figure which defines the lesser offense. *Fee v. State*, Ct. App. Op. No. 187 (File No. 6951), 656 P.2d 1202 (1982).

**Amount of restitution held proper.** — The trial court did not err in ordering \$300,000 restitution upon conviction of embezzlement by an employee and theft in the first degree even though it would be impossible for the defendant to pay such a large amount, due to the difficulty in predicting at that point what amount of restitution was reasonable for defendant to pay. *Karr v. State*, Ct. App. Op. No. 230 (File No. 7011), 660 P.2d 450 (1983).

**Enforcement of restitution under AS 12.55.051.** — AS 12.55.051(a) prescribes specific method for dealing with

enforcement of court orders requiring payment of fines or restitution, regardless of whether such orders are directly imposed as part of original sentence, under AS 12.55.045, or indirectly imposed as a condition of probation, under AS 12.55.100; thus it was error to revoke appellant's probation in spite of finding that her failure to pay restitution, a condition of her probation, was willful. *Lominac v. Municipality of Anchorage*, Ct. App. Op. No. 220 (File No. 5960), 658 P.2d 792 (1983).

Quoted in *Whittlesey v. State*, Sup. Ct. Op. No. 2231 (File No. 5155), 626 P.2d 1066 (1980).

Stated in *Dorris v. State*, Ct. App. Op. No. 192 (File No. 5947), 656 P.2d 578 (1982).

*Sec. 12.55.050. Increased punishment for persons convicted of more than one felony. [Repealed, § 21 ch 166 SLA 1978. For sentences of imprisonment for felonies, see AS 12.55.125.]*

**Sec. 12.55.051. Enforcement of fines and restitution.** (a) If the defendant defaults in the payment of a fine or any installment or of restitution or any installment, the court may order the defendant to show cause why the defendant should not be sentenced to imprisonment for nonpayment. If the court finds by a preponderance of the evidence that the default was attributable to an intentional refusal or failure to make a good faith effort to pay the fine or restitution, the court may order the defendant imprisoned until the order of the court is satisfied. A term of imprisonment imposed under this section may not exceed one day for each \$50 of the unpaid portion of the fine or restitution or one year, whichever is shorter. Credit shall be given toward satisfaction of the order of the court for every day a person is incarcerated for nonpayment of a fine or restitution.

(b) When a fine or restitution is imposed on an organization, the person authorized to make disbursements from the assets of the organization shall pay the fine or restitution from those assets. A person required to pay a fine or restitution under this subsection who intentionally refuses or fails to make a good faith effort to pay is punishable under (a) of this section.

(c) Pursuant to a petition filed by a defendant who has been sentenced to pay a fine or restitution or an installment, the court, upon a finding of inability to pay, may order modification of the fine or restitution, subject to conditions the court finds appropriate. (§ 12 ch 166 SLA 1978)

ATTACHMENT E  
Code of Criminal Procedure 12.55.025

- (1) the financial, emotional, and medical effects of the offense on the victim;
- (2) the need of the victim for restitution; and
- (3) any other information required by the court. (§ 1 ch 154 SLA 1984)

**Cross references.** — For effect of this SLA 1984 in the Temporary and Special section on Cr. R. 32(d)(2), see § 12, ch. 154, Acts.

**Sec. 12.55.025. Sentencing procedures.** (a) When imposing a sentence for conviction of a felony offense or a sentence of imprisonment exceeding 90 days or upon a conviction of a violation of AS 04, a regulation adopted under AS 04, or an ordinance adopted in conformity with AS 04.21.010, the court shall prepare, as a part of the record, a sentencing report which includes the following:

- (1) a verbatim record of the sentencing hearing and any other in-court sentencing procedures;
- (2) findings on material issues of fact and on factual questions required to be determined as a prerequisite to the selection of the sentence imposed;
- (3) a clear statement of the terms of the sentence imposed;
- (4) any recommendations as to the place of confinement or the manner of treatment; and
- (5) in the case of a conviction for a felony offense, information assessing
  - (A) the financial, emotional, and medical effects of the offense on the victim;
  - (B) the need of the victim for restitution; and
  - (C) any other information required by the court.

(b) The sentencing report required under (a) of this section shall be furnished within 30 days after imposition of sentence to the Department of Law, the defendant, the Department of Corrections, the state Board of Parole if the defendant will be eligible for parole, and to the Alcoholic Beverage Control Board if the defendant is to be sentenced for a conviction of a violation of AS 04, a regulation adopted under AS 04, or an ordinance adopted under AS 04.21.010.

(c) Except as provided in (d) and (e) of this section, when a defendant is sentenced to imprisonment, the term of confinement commences on the date of imposition of sentence. A defendant shall receive credit for time spent in custody pending trial, sentencing, or appeal, if the detention was in connection with the offense for which sentence was imposed. A defendant may not receive credit for more than the actual time spent in custody pending trial, sentencing, or appeal. The time during which a defendant is voluntarily absent from official detention after the defendant has been sentenced may not be credited toward service of the sentence.

(d) A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is admitted to bail. If an appeal is taken and the defendant is not admitted to bail, the Department of Corrections shall designate the facility in which the defendant shall be detained pending appeal or admission to bail.

(e) Except as provided in (g) of this section, if the defendant has been convicted of two or more crimes, sentences of imprisonment shall run consecutively. If the defendant is imprisoned upon a previous judgment of conviction for a crime, the judgment shall provide that the imprisonment commences at the expiration of the term imposed by the previous judgment.

(f) A sentence that the defendant pay money, either as a fine or in restitution or both, constitutes a lien in the same manner as a judgment for money entered in a civil action. Nothing in this section limits the authority of the court to otherwise enforce payment of a fine or restitution.

(g) If the defendant has been convicted of two or more crimes before the judgment on either has been entered, any sentences of imprisonment may run concurrently if

- (1) the crimes violate similar societal interests;
  - (2) the crimes are part of a single, continuous criminal episode;
  - (3) there was not a substantial change in the objective of the criminal episode, including a change in the parties to the crime, the property or type of property right offended, or the persons offended;
  - (4) the crimes were not committed while the defendant attempted to escape or avoid detection or apprehension after the commission of another crime;
  - (5) the sentence is not for a violation of AS 11.41.100 — 11.41.470;
- or

(6) the sentence is not for a violation of AS 11.41.500 — 11.41.530 that results in physical injury or serious physical injury as those terms are defined in AS 11.81.900. (§ 12 ch 166 SLA 1978; §§ 7, 8 ch 131 SLA 1980; am §§ 24, 25 ch 143 SLA 1982; am E.O. No. 55, §§ 6, 7 (1984); am § 2 ch 154 SLA 1984)

Revisor's notes. — AS 12.55.025(e) was amended by § 24, ch. 143, SLA 1982 and purportedly repealed by § 42, ch. 143, SLA 1982. The repeal in § 42 was apparently a drafting error. See House Journal Supplement No. 10, dated June 1, 1982, page 18.

Effect of amendments. — The 1980 amendment substituted "90" for "180" following "exceeding" near the beginning of subsection (a), inserted "or upon a conviction of a violation of AS 04, a regulation adopted under AS 04, or an ordinance adopted in conformity with AS 04 21 010"

following "days" near the middle of subsection (a), and rewrote subsection (b).

Sections 24 and 25, ch. 143, SLA 1982, rewrote subsection (e) and added subsection (g).

The first 1984 amendment substituted "Department of Corrections" for "division of corrections" in subsection (b) and "Corrections" for "Health and Social Services" in the second sentence in subsection (d).

The second 1984 amendment, in subsection (a), inserted "for conviction of a felony offense or a sentence" in the introductory paragraph, added "any" to the beginning

ATTACHMENT F  
Chapter 38, Alaska Exemptions Act

## Chapter 38. Alaska Exemptions Act.

Section	Section
10 Homestead exemption	75 Special procedures relating to limited value exemptions
15 Property exempt without limitation	80 Procedures applicable to a levy on property of an individual
20 Exemptions of personal property subject to value limitations	85 Contents of notice
25 Exemption of unmatured life insurance and annuity contracts	90 Assertion of rights by another
30 Exemption of earnings and liquid assets	95 Judicial relief
35 Continuing lien on wages	100 Debtor's property owned with another
40 Priorities between continuing liens	105 Waiver of exemption
45 Effective date of continuing lien	110 Federal requirements
50 Increased exemption amount	115 Adjustment of dollar amounts
55 Bankruptcy proceedings	120 Protection of property of residents and nonresidents
60 Tracing exempt property	500 Definitions
65 Claims enforceable against exempt property	510 Short title
70 Limitation on enforcement of certain security interests in exempt goods	

Revisor's notes. — Several sections in this chapter were redrafted in 1982 to remove personal pronouns in conformity with AS 01.05.031(c).

Cross references. — For general provisions concerning execution, see AS 09.35 and Civ. R. 69, for legislative intent, see § 1 ch 62 SLA 1982; for transition provisions, see § 15 ch 62 SLA 1982.

Collateral references. — 31 Am. Jur. 2d, Exemptions, § 1 et seq.

35 C.J.S. Exemptions, § 1 et seq.  
Joint bank account as subject to attachment, garnishment, or execution by creditor of one of the joint depositors, 11 ALR3d 1465

Family allowance from decedent's estate

as exempt from attachment, garnishment, execution, and foreclosure, 27 ALR3d 863

What is "necessary" furniture entitled to exemption from seizure for debt, 41 ALR3d 607.

Injury to credit standing, reputation, solvency, or profit potential as elements of damage resulting from wrongful execution against business property, 65 ALR3d 911.

Employee retirement pension benefits as exempt from garnishment, attachment, levy, execution, or similar proceedings, 93 ALR3d 711

Choice of law as to exemption of property from execution, 100 ALR3d 1235

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

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

individual owner may not exceed that individual owner's pro rata portion of \$27,000.

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

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

Cross references. — For provisions value specified under subsection (b) of this section, see AS 34.16.14(k).

## NOTES TO DECISIONS

Prior law. — For cases construing former statutes, see *Seagreen v. Wendler*, 5 Alaska 715 (1917); *Wendler v. Breneman*, 7 Alaska 13 (1923); *Williams v. Thompson*, 7 Alaska 601 (1927); *In re* Bocaah, 10 Alaska 206 (1942); *Dalton Interior Credit Bureau, Inc. v. Sup Ct C. No. 2158* (File No. 4265), 615 P.2d 6 (1980).

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

- (1) a burial plot for the individual and the individual's family;
- (2) health aids reasonably necessary to enable the individual or dependent to work or to sustain health;
- (3) benefits paid or payable for medical, surgical, or hospital care to the extent they are or will be used to pay for the care;
- (4) an award under AS 18.67 (Violent Crimes Compensation Board) or a crime victim's reparations Act of another jurisdiction;

(7) compensation or benefits paid or payable and exempt under federal law.

(7) liquor licenses granted under AS 04.

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

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

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

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

**Cross references.** — For the applicability of the exemptions from execution in income assignment orders for child support, see AS 09 65 132(g), for provisions exempting teachers' retirement salaries and certain other amounts from garnishment, execution or levy, see AS 14.25.200, for provisions exempting unemployment compensation benefits from levy to enforce collection of a debt, see AS 23.20.405(e), for provisions exempting workers' compensation benefits from levy

to enforce the collection of a debt, see AS 23.30.160(b); for provisions exempting amounts held in the public employee pension fund and public employee retirement benefits from levy to enforce the collection of a debt, see AS 39.35.800(b), for provisions exempting longevity bonuses from levy to enforce collection of a debt, see AS 47.45.120(b); for applicability of the exemptions from execution in proceedings to enforce payment of child support, see AS 47.23.250.

#### NOTES TO DECISIONS

**Legislative intent as to liquor licenses.** — Former AS 09.35.087 (see now (a)(7) of this section) indicated an overall legislative intent that one general creditor of a liquor license holder should not be allowed to place himself in a preferred position over other general creditors. *C.Y., Inc. v. Brown*, Sup. Ct. Op. No. 1569 (File No. 27A), 574 P.2d 1274 (1978).

Liquor licenses not exempted from coverage under Article 9 of the

Uniform Commercial Code (AS 45.09). — See *Gibson v. Alaska ABC Bd.*, 377 F. Supp. 161 (D. Alaska 1974), decided under former AS 09.35.087.

As to immunity of real property of University of Alaska from lien attachment or foreclosure, see *University of Alaska v. Simpson Bldg. Supply Co.*, Sup. Ct. Op. No. 1113 (File No. 2198), 530 P.2d 1317 (1975), decided under former AS 09.35.080.

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

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

dependent, books and musical instruments; and

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

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

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

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

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

#### NOTES TO DECISIONS

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

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

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

3996), 597 P.2d 969 (1979)

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

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

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

(b) A judgment creditor or other claimant of an insurer may not levy upon any of the assets or securities held in this state as a deposit for the protection of the insurer's policyholders or policyholders and creditors. Deposits under AS 21.09.270 may be levied upon if provided

the order of the director of insurance, Department of Commerce and Economic Development, under which the deposit is made. (§ 2 ch 62 SLA 1982)

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

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

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

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

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

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

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

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

(2) money or property received for alimony or separate maintenance;

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

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

(5) amounts paid under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract, providing benefits by reason of age, illness, disability, or length of service. (§ 2 ch 62 SLA 1982)

Cross references. — For federal provisions placing limitations on garnishment of wages, see 15 U.S.C. § 1673, for provisions exempting permanent fund dividends from execution, see AS 43.23.065.

Editor's notes. — This section must be read with 15 U.S.C. § 1673, which limits garnishments of wages and preempts this section wherever it would permit garnishment in excess of federal limitations. See notes from November 15, 1982, Op. Att'y Gen. under heading "Opinions of attorney general," below.

Opinions of attorney general. — This section is incompatible in many respects with 15 U.S.C. § 1673, which places limits on garnishment of wages, and as a result,

where state law would permit garnishment of wages in excess of that permitted by federal law, the state law must give way and federal limitations applied. November 15, 1982, Op. A. Gen.

The preemption by 15 U.S.C. § 1673 limited. Under the provisions of 15 U.S.C. §§ 1673(c) and 1677 as interpreted by various state courts, when a state law conflicts with the federal garnishment provisions, each garnishment must be analyzed on a case-by-case basis, and a consideration of both the federal and state formulas, whichever results in the lesser amount garnished should be applied. November 15, 1982, Op. Att'y Gen.

#### NOTES TO DECISIONS

Prior law. — For case construing prior income exemption statute, see *Miller v. Monrean*, Sup. Ct. Op. No. 871 (File 1490), 507 P.2d 771 (1973).

Sec. 09.38.035. Continuing lien on wages. (a) In the case of garnishment of earnings, when the garnishee's answer reflects that the defendant is employed by the garnishee, the judgment or balance due as reflected on the writ of garnishment shall become a lien on earnings due at the time of service of the writ to the extent that they are exempt from garnishment, and that lien shall continue as to subsequent nonexempt earnings until the total subject to the lien equals the amount stated on the writ of garnishment, except that the lien on subsequent earnings shall terminate sooner if the employment relationship is terminated, if the underlying judgment is vacated, modified, or satisfied in full, or if the writ is dismissed.

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

Sec. 09.38.040. Priorities between continuing liens. A lien obtained under AS 09.38.035 has priority over any subsequent garnishment lien or wage assignment. A writ creating a continuing lien served upon an employer while a continuing lien imposed by a previous writ is still in effect shall be answered by the employer with a statement that the employer is holding no funds and with a further statement stating when all previous liens are expected to terminate. The subsequent writ has full effect from the termination of all priorities or until it is otherwise terminated under AS 09.38.035. However, a subsequent writ is not effective if a writ in the same cause of action is pending at the time of service of garnishment. (§ 2 ch 62 SLA 1982)

**Sec. 09.38.046. Effective date of continuing lien.** The effective date of a writ creating a continuing lien is the date of service upon the garnishee. However, if there are, on that date, liens by virtue of previous writs, the effective date is the date all previous writs terminate (§ 2 ch 62 SLA 1982)

**Sec. 09.38.050. Increased exemption amount.** (a) An individual debtor who is in possession of money that was obtained as payment for an injury or disability may request the court to order an increase in the exemption amounts under AS 09.38.030. The individual debtor shall submit affidavits or offer testimony in support of the request as required by the court. The court shall determine the exemption amount after consideration of the individual's responsibilities and all the present and anticipated property and income of the individual, including that which is exempt.

(b) The exemption amounts under AS 09.38.030 may be increased when the individual submits an affidavit, under penalty of perjury, stating that the individual's earnings alone support the individual's household, by so doing, the maximum part of the individual's aggregate disposable earnings for any week subject to execution may not exceed the amount by which the individual's disposable earnings for that week exceed \$275, or, if the individual is claiming an exemption for cash or other liquid assets under AS 09.38.030(b), a maximum amount of \$1,100 available in any month is exempt. (§ 2 ch 62 SLA 1982)

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

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

(b) Money or other property and proceeds exempt under this chapter are traceable under this section by application of the principle of first-in first-out, last-in first-out, or any other reasonable basis for

tracing selected by the individual claiming the exemption. (19 2 ch SLA 1982)

**Sec. 09.38.065. Claims enforceable against exempt property.** (a) Notwithstanding other provisions of this chapter,

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

(A) child support;  
(B) unpaid earnings of up to one month's compensation or full-time equivalent of one month's compensation for personal service of an employee; or

(C) state or local taxes; and  
(2) a creditor may make a levy against exempt property to enforce a claim for

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

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

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

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

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

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

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

(c) The court may order or authorize process respecting any item of goods to which this section applies only after a hearing, upon notice to the individual of the hearing and of the individual's rights at it. The notice shall be as directed by the court. The order or authorization shall prescribe appropriate conditions as to payments upon the debt secured

ATTACHMENT G  
Execution Procedure for Judgment Creditors  
July 1986

or otherwise. The court may not order or authorize process respecting the item if it finds upon the hearing both that the individual lacks the means to pay all or part of the debt secured and that continued possession or use of the item is necessary to avoid undue hardship for the individual or a dependent.

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

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

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

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

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

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

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

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

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

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

location, and value of the individual's property. If the individual fails to appear and disclose the information specified in the order, the individual waives objection to the creditor's levy on property of that kind.

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

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

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

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

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

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

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

(e) If any question arises as to the rights of an individual entitled to an exemption under this chapter, an interested person may file with the clerk of the court from which the process issued a statement of the claim of exemptions and the question raised. The statement shall be referred to the court as soon as practicable thereafter. The court shall

order that notice of a hearing be given. After hearing the matter, the court shall make findings and issue an appropriate order. The court may award to the prevailing party costs of a proceeding under this subsection.

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

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

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

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

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

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

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

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

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

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

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

*Revisor's notes.* — Subsection (c) was enacted as the second sentence of (b), but was redesignated in 1982.

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

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

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

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

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

*Cross references.* — For provisions relating to a creditor's right to make homestead held by tenants by the entirety liable for the debts of either tenant after partition of tenancy, see AS 34.15.140.

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

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

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

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

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

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

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

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

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

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

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

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

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

**Sec. 09.38.500. Definitions.** In this chapter, unless the context otherwise requires,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Revisor's notes.* — Enacted as AS 09.38.125. Renumbered in 1982.

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

*Revisor's notes.* — Enacted as AS 09.38.130. Renumbered in 1982.