

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6331 SENATE JUDICIARY

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alternate payee as soon as a member is both vested and old enough to take early retirement, regardless of whether the member has terminated employment or chooses to take early retirement. Unlike the federal definition, the PERS and TRS definition does not allow payment of benefits to an alternate payee before the member begins to receive a benefit. There is no system in place to allow either PERS or TRS to apply the federal QDRO requirements.

We characterize this second problem as a "potential" problem because we believe that, despite the language of the bill, the better argument is that the federal definition of QDRO would not be applicable to PERS and TRS. This is so because 26 U.S.C. 414(p)(9) provides that the federal definition does not apply to any plan to which 26 U.S.C. 401(a)(13) does not apply. 26 U.S.C. 401(a)(13) does not apply to governmental plans, such as PERS, TRS, and municipal plans. Thus, under federal law, the federal definition of "QDRO," by its own terms, does not apply to PERS and TRS or the other governmental plans. Moreover, this proposed state statute says, in subsec. (c), that the exemptions in (a) "do not prevent" payment under a federally defined QDRO. Payment under such an order is not required by the proposed statute. In other words, if a creditor (spouse) has a domestic relations order that is a qualified one under the federal definition, then the exemptions in proposed AS 09.38.017(a) do not bar the creditor from reaching the pension money. But some other statute might do so -- e.g., our PERS and TRS statutes. This raises questions as to what right a person has to enforce a QDRO against a governmental plan other than PERS or TRS if the exemption is enacted.

The bill states a conclusive presumption that a retirement plan that is exempt from claims under the bill is a spendthrift trust. Proposed AS 09.38.017(d). We seriously doubt that this provision provides a bankruptcy debtor with any additional protection. If the debtor chooses state law exemptions, the provisions of the bill already exempt the debtor's interests in or payments from the specified retirement plans. If the debtor chooses federal Bankruptcy Code exemptions, it is unlikely that a bankruptcy court would give any credence to this presumption in considering whether a plan that is clearly not a spendthrift trust is excludable from the bankruptcy estate under 11 U.S.C. 541(c)(2). (PERS and TRS would not appear to qualify as spendthrift trusts, since, although access to their benefits is, by statute, strictly controlled, the portion of the trust money that is the employee's contribution account may be obtained by the employee upon termination of employment before eligibility for retirement benefits.)

The provisions of the bill that were added in the committee substitute amend the dollar amounts of the value of exemptions which may be claimed under the Alaska Exemptions Act. The statutory amounts were doubled. However, the practical effect is less than double because, as required by statute, the amounts had already been adjusted up by regulation, approximately 10 percent, in accordance with the consumer price index. (These amounts may be adjusted upward again by the Department of Labor by operation of AS 09.38.115, which provides for such changes each even-numbered year.) There are no obvious legal problems with these portions of the bill.

There is a significant policy decision to be made, however, with regard to approving the increases. The effect of the increases will be to allow debtors to keep more of their property while restricting the property available to nonsecured or undersecured creditors trying to recover on loans in default. In approving loans, some creditors may have counted on the availability of property or income that would be exempt under this bill.

It is very difficult to predict what economic effect will result if this bill becomes law. Some suggest that greater exemption amounts will encourage more creditor negotiations with debtors and thus reduce bankruptcy filings. Some suggest that debtors will be more encouraged to file bankruptcy because they will be able to keep more property. Another possibility is that increased exemptions will decrease the availability of credit.

It is worth noting that the Alaska Exemptions Act was based on the Uniform Exemptions Act, promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL). Alaska is the only state to date that has enacted the uniform Act, and Alaska enacted exemptions in higher amounts than were proposed in the uniform Act. We spoke with John McCabe, legal director for the NCCUSL. He informs us that there is no consistent answer on how any state has approached the exemption situation. For instance, several states exempt the homestead completely, but differ in the definition of the "homestead."

Mr. McCabe reported that Texas is noted for having the most liberal homestead provision. The definition requires that the debtor live on the property and then includes all property to the outer boundaries. Thus, a debtor could be in bankruptcy, have an urban home worth hundreds of thousands of dollars sitting on millions of dollars worth of oil and the entire property would be exempt from creditors. Mr. McCabe reported that the Texas homestead provision has been criticized as being an imposition on

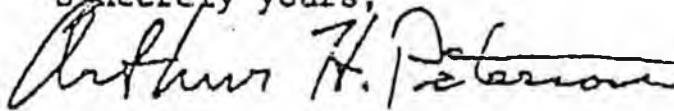
the credit system and unfairly restrictive for creditors.

When drafting the Uniform Exemptions Act, the drafters first determined what kinds of property should be reasonably included. Next, the drafters tried to ascertain reasonable values that would fairly serve the debtor's interests and not unfairly limit creditors. Mr. McCabe stated that the purpose of an exemptions Act is to preserve some assets for the debtor to make a fresh start without making the exemptions so great as to abuse the credit system. He felt that the actual amounts were derived by almost an intuitive consideration of what was fair and reasonable.

We note that only the new exemption of interests in retirement plans does not apply to assets of a bankruptcy estate in a bankruptcy proceeding filed before the effective date of the bill. Section 11 of the bill. Apparently, the legislature intended the increased exemptions added by the committee substitute to apply to pending bankruptcy proceedings.

We make no recommendation as to the resolution of the policy issue raised by the increased exemption amounts, but only bring the issue to your attention. Although there are no obvious legal problems with adopting the increased exemption amounts, the legal problems identified concerning the retirement plan exemption and the significant policy questions raised by the increased exemptions warrant serious consideration of veto. A veto would allow a bill to be drafted during the interim that would clarify the effects on the state's retirement systems and also allow more studied consideration of the policy issues. We would be happy to assist in drafting an appropriate veto message, if you wish.

Sincerely yours,


for Grace Berg Schaible
Attorney General

GBS:VBR:JJ:pjg

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M. Gregory Oczkus

M. Jane Pettigrew

April 5, 1990

Mr. Andy Hemenway
c/o Max Gruenberg
Box V
Juneau, AK 99811

RE:

Dear Mr. Hemenway:

Enclosed please find the following information: A private pension plan article by Thomas J. Yerbich, a copy of the case of Mackey vs. Lanier Collection Agency 108 S.Ct. 2182, an Attorney General's opinion letter dated June 6, 1988 and a copy of AS9.38.017.

In 1988 the legislature adopted AS9.38.017 which provided for exemption of a persons' retirement plan interest and payments thereunder. Previously the only state exemption for retirement programs was for the PERS or other public sector plans.

Enclosed please find an excellent analysis of the impact of Mackey on private pension plans in conjunction with the exemption provided under AS9.38.017. It is very probable that the only portion of AS9.38.017 which remains viable and constitutional is an individual's IRA which qualifies under 28 USC 408. Otherwise, all of the definitions in AS9.38.017(e)(3) fall under the substantive terms of ERISA. This would mean that plans which are qualified under 26 USC 401(a), 403(a), 403(b) and 409 are within ERISA. Any and all state action relating to ERISA Plans is preempted under the Mackey.

You have advised me of Senate Bill 568 as an attempt to force cash distributions out of retirement plans which would otherwise be exempt. It would appear to me that the first step in addressing any qualified domestic relational order issue with respect to the statute would be to repair the statute so that it is not in conflict with the Mackey decision. I do not believe that AS9.38.017 will pass constitutional scrutiny at this time.

Please give me a call after you have an opportunity to read this.

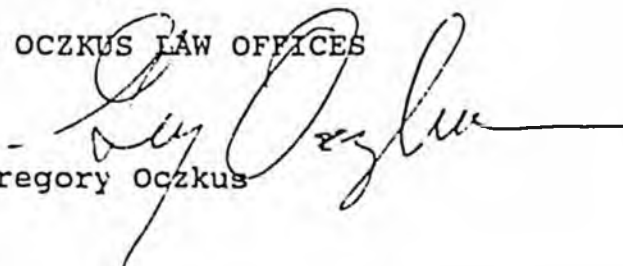
Sincerely,

GREG OCZKUS LAW OFFICES

M. Gregory Oczkus

MGO/eb EB26

No



to Dave

PRIVATE PENSION PLANS EXEMPT OR EXCLUDED? - MAYBE!

By: Thomas J. Yerbich

I. Exemption

Chapter 135, SLA 1988 added new AS § 09.38.017 exempting from claims of an individual's creditors the interest of the individual in and the money or other assets payable to the individual from a retirement plan. As defined in AS § 09.38.017(e)(3) a retirement plan is one which is qualified under §§ 401(a) [qualified pension, profit-sharing and stock bonus plans], 403(b) [certain qualified annuities provided by charitable and educational institutions], 408 [individual retirement accounts], and 409 [tax credit employee stock ownership plans] of the Internal Revenue Code. Barely had the ink dried on the Governor's signature on chapter 135, SLA 1988 when the U.S. Supreme Court effectively, for the the most part, invalidated it.

The problem arises as a result of § 514(a) of the Employee Retirement Income Security Act of 1974 ("ERISA") which provides, in relevant part, that "the provisions of this title and title IV shall supercede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b)." ERISA § 4(a) extends ERISA coverage to all employee benefit plans established or maintained by either an employer or employee organization.

Mackey v. Lanier Collections Agency & Service, [486 U.S. ___, 108 S.Ct. 2182, 100 L.Ed.2d 836] decided June 17, 1988, invalidated a Georgia statute exempting from garnishment employee benefit programs holding: (1) state laws specifically designed to affect employee benefit plans are pre-empted by ERISA § 514(a); and (2) pre-emption extends to those laws which are consistent with ERISA's substantive requirements [108 S.Ct. at 2185]. The holding and result in Mackey are applicable to AS § 09.38.017. That is, to the extent AS § 09.38.017 "makes reference to ERISA plans" it is a statute within the meaning of § 514(a). That AS § 09.38.017, at least in part, makes specific reference to ERISA plans is plainly and patently clear. By reference to retirement plans "qualified" under §§ 401, 403, and 409 of the Internal Revenue Code ("IRC"), AS § 09.38.017 is referring specifically to ERISA covered plans because those sections are contained in ERISA Title II and also fall within the ERISA § 4(a) description. This was the approach initially taken (correctly, in the opinion of this author) in In re Komet, 93 B.R. 498 (Bkrtcy.W.D.Tex. 1988) [opinion withdrawn and rehearing granted] and In re Dyke, 99 B.R. 343 (Bkrtcy.S.D.Tex. 1989) in invalidating a Texas exemption statute substantially similar to AS § 09.38.017. Under this interpretation, ERISA § 514(a) - Mackey pre-empts AS § 09.38.017 to the extent it applies to retirement plans qualified under IRC §§ 401, 403 and 409. [Note that public pension plans, exempt under AS §§ 09.38.015(b), 14.25.200 and 39.35.500, remain unaffected as ERISA § 4(b)(1) excludes such plans from coverage under ERISA.]

On the other hand, the Chief Bankruptcy Judge of the Western District of Texas has held that ERISA § 514(a) - Mackey does not pre-empt the Texas exemption statute [In re Volpe, 1989 Bankr. LEXIS 739 (decided 4/28/89)]. The Volpe opinion is quite lengthy, and to fully analyze it would require nearly as many pages as the opinion itself consumes. However, an abbreviated critical analysis is in order.

It is very evident that the court in Volpe, in narrowly construing the impact of Mackey, in reality disagrees with Mackey's result and the breadth. Unfortunately for debtors, Volpe is at odds with the clear and unmistakable language of Mackey that "[t]he state statute's express reference to ERISA plans suffices to bring it within the federal law's pre-emptive reach," making Volpe somewhat dubious authority. This is particularly true in light of the broader view of the pre-emptive impact of ERISA § 514(a) taken by the Ninth Circuit [E.g., Franchise Tax Board of Calif. v. Construction Laborers Vacation Trust for So. Calif., 679 F.2d 1307 (9th Cir. 1982) rev'd on other grounds 463 U.S. 1, 103 S.Ct. 2841, 77 L.Ed.2d 420 (1983); Russell v. Massachusetts Mutual Life Insurance Co., 722 F.2d 482 (9th Cir. 1983) rev'd on other grounds 473 U.S. 134, 105 S.Ct. 3085, 87 L. Ed.2d 96 (1985); Scott v. Gulf Oil Corp., 754 F.2d 1499 (9th Cir. 1985); Misic v. Building Service Employees Health & Welfare Trust, 785 F.2d 1374 (9th Cir. 1986)]. A careful reading of those decisions indicates the Ninth Circuit would most likely not adopt the Volpe narrow construction.

Furthermore, Volpe overlooks the clear impact of invalidating the Georgia antigarnishment statute. First, any distinction between an antigarnishment statute and an exemption statute is one one without a difference - both serve the goal of protecting assets from the claims of creditors. Second, adopting as correct the Volpe distinction between "plans" and "benefits" (which is difficult inasmuch as benefits are an integral part of a pension plan), it does not necessarily follow, as Volpe holds, that state exemption of pension plan benefits is not pre-empted. The case for pre-emption of state statutes protective of pension plans is even stronger than that for welfare plans in that Congress in ERISA [§ 206(d)(1)] expressly addressed the question of protection to be accorded pension plan benefits; thus, having spoken on the subject, effectively foreclosed state law application in the same area. Finally, it is evident that applying the Volpe rationale, substituting the Georgia antigarnishment statute for the Texas exemption statute, the conclusion would be opposite to that reached in Mackey. This simply cannot be.

But what about Individual Retirement Accounts or Individual Retirement Annuities ("IRA") under IRC § 408? AS § 09.38.017 also exempts IRAs. An IRA is established and maintained by the individual, not by the employer or an employee organization; therefore, IRAs [not falling within the ERISA §4(a) description] are not covered by ERISA and ERISA § 514(a) does not pre-empt that part of AS § 09.38.017, unless the court should determine that the law is not severable. [This author, having enough on his plate for the moment, will leave severability to others.] The initial Komet decision took the position (by way of dicta referring to "ERISA-qualified individual retirement accounts") that exemption of IRAs was also pre-empted; this author respectfully disagrees with the court on this point because, as noted, IRAs are not covered by ERISA. However, some IRAs are maintained and/or partially funded by employer contributions. If an IRA involves employer participation, Lab.Reg. § 2510.3-2(d) should be examined to determine ERISA coverage. Also, the issue is not as clear with respect to IRC § 408(k) Simplified Employee Pensions. These are excluded from ERISA coverage by regulation if certain conditions enumerated therein are met [Lab.Reg. § 2520.104-10].

Where does this leave Alaskans with respect to exemption of private retirement plans? If a debtor elects to use the Federal exemptions, § 522(d)(10)(E) of the Bankruptcy Code ("BC") exempts such plans to the extent "reasonably necessary for the support of the debtor and any dependant of the debtor." If a debtor elects to use the state law exemptions alternative under BC § 522(b)(2), an IRC § 408 qualified IRA is probably exempt under AS § 09.38.017 but IRC §§ 401, 403, and 409 qualified plans are not exempt under either the pre-empted AS § 09.38.017 or under other Federal law pursuant to BC § 522(b)(2)(A) [In re Daniel 771 F.2d 1352 (9th Cir. 1985) cert. den. 475 U.S. 1016, 106 S.Ct. 1199, 89 L.Ed.2d 313 (1986)].

II. Excludability

In the bankruptcy context, a more complex question is presented by the issue of whether or not a qualified retirement plan is excluded from the estate of a bankrupt as a "spendthrift trust," under BC § 541(c)(2). Conventional wisdom has been that BC § 541(c)(2) does not exclude pension plans despite the ERISA § 206(d)(1) requirement that qualified pension plans include a provision restricting alienation or assignment of benefits [See In re Daniel, supra, 771 F.2d at 1360]. Upon what may be euphemistically referred to as "more mature reflection," this author has concluded that "it ain't necessarily so." [A caveat is in order: if the following appears somewhat convoluted, circular and confusing it is only because it probably is. The state of the law in this area is somewhat convoluted, circular and confusing as is often the case when multiple Congressional acts having differing public policy considerations apply to a particular issue. Those who have delved into qualified pension plans and foolhardily made an excursion into the realm of ERISA and its regulations (Labor and Treasury) with their often-times confusing and occasionally contradictory provisions can only too well attest to this point.]

The Ninth Circuit in Daniel specifically held [771 F.2d at 1360] that:

"[T]his Court holds that the phrase 'applicable non-bankruptcy law' in 11 USC § 541(c)(2) was intended to be a narrow reference to state 'spendthrift trust' law and not a broad reference to all other laws, including ERISA and the IRC which prohibit alienation. Therefore, the ERISA and IRC anti-alienation provisions in debtor's pension and profit-sharing plan does not create a Federal non-bankruptcy exclusion under 11 USC § 541(c)(2)." (Emphasis by the court).

The Ninth Circuit Bankruptcy Appellate Panel has held that Mackey did not undermine Daniel and BC § 541(c)(2) may, therefore, be applied [In re Kaplan, 97 B.R. 572, 576 (BAP9 1989)]. Thus, the precise issue of whether or not an ERISA covered pension plan is a spendthrift trust excluded under BC § 541(c)(2) must be determined by reference to the law of Alaska. Unfortunately, there is a paucity of either Alaska decisional or statutory law on the subject. Before one leaps with great exuberance and joy on the language contained in AS § 09.38.017(d) conclusively presuming retirement plans to be spendthrift trusts, consider that that provision (specifically applicable to ERISA covered plans), as well as the exemption of ERISA covered retirement plans, may be pre-empted by ERISA § 514(a) - Mackey.

One may ask where are we going if ERISA § 514(a) - Mackey pre-empts application of state law to ERISA pension plans and Daniel denies the existence of a Federal law exclusion under either BC § 522(b)(2)(A) or BC § 541(c)(2). Fortunately, part III of the Mackey decision, sanctioning application of general state law where it does not conflict with a specific provision of ERISA, left a loop-hole through which we may squeeze.

We start our analysis with Daniel and the three Court of Appeals decisions it followed: Matter of Goff 706 F.2d 574 (5th Cir. 1983), In re Graham 726 F.2d 1268 (8th Cir. 1984) and In re Lichstrahl 750 F.2d 1468 (11th Cir. 1985). All four decisions, applying state law to determine that the pension plan before the court was not a spendthrift trust, held that BC § 541(c)(2) did not exclude the ERISA covered pension plan from the bankruptcy estate. All applied the generally accepted principle of trust law that a settlor may not create a spendthrift trust in the settlor's own favor [See generally Bogert, Trusts § 40 (6th ed. 1987); Bogert, Trusts and Trustees §223 (2d ed. Rev. 1979); IIA Fratcher, Scott on Trusts § 156 (4th ed. 1987); Restatement 2d, Trusts § 156]. Goff involved a

Keough self-employed pension plan while Graham, Lichstrahl and Daniel involved pension and profit sharing plans established by a professional corporation of which the debtor was the (1) sole shareholder, (2) trustee and (3) principal beneficiary. Lichstrahl analyzed and applied Florida law to determine if it was the equivalent of a settlor creating a spendthrift trust in the settlor's favor (disregarding the corporate form because of the broad control debtor had) while Graham and Daniel implicitly determined similar pension plans were not spendthrift trusts under Iowa and California law, respectively. Similar facts would most likely produce the same results applying Alaska law, whether Alaska adheres to Bogert, Scott or the Restatement.

We now turn to the average employee who neither controls the employer-settlor nor is a trustee under the plan. Is such a plan excluded under BC § 541(c)(2)? Under Daniel yes, provided the plan is an enforceable spendthrift trust under Alaska law [See In re West, 81 B.R. 22 (BAP9 1987)]. Unfortunately, neither Alaska decisional nor statutory law [except the ill-fated AS § 09.38.017(d)] illuminates this issue. It may even be questionable whether spendthrift trusts are recognized at all in Alaska. AS §§ 06.05.180 and 06.25.140 refer to spendthrift trusts in relation to the duties of a trustee; however, neither defines or otherwise explicates on what is a spendthrift trust under Alaska law, nor is there any reported decision on the question. These sections, with AS § 09.30.-017(d), are, however, indicative that Alaska recognizes the general validity of spendthrift trusts, following the majority rule in the United States rather than the English and minority U.S. rule that such trusts are invalid or void as against public policy (an unreasonable restraint on alienation). The ultimate answer will be determined by the persuasiveness of counsels' arguments based on one or all of the three principal general authorities (Bogert, Scott or Restatement) and principal cases from other jurisdictions. [Matter of Brooks, 844 F.2d 258 (5th Cir 1988) contains an excellent example of the analytical and factual problems involved with this alternative; see also In re Rabo, 97 B.R. 827 (Bkrtcy.W.D.PA 1989).]

Coming full circle, let us consider a seemingly convoluted theory that AS § 09.38.017(d) is not pre-empted. ERISA § 514(a) only pre-empt's state law, not other Federal law. Keeping this in mind, one might argue that BC § 541(c)(2) (a federal statute) expressly incorporates by reference the applicable non-bankruptcy state law of debtor's domicile, thereby making it an integral part of BC § 541(c)(2). Strange as it may sound, this theory finds support in the very rationale underpinning Daniel and the cases it follows [BC § 541(c)(2) preserved restrictions on the debtor to alienate, enforceable under otherwise applicable state non-bankruptcy law, excluding such nonalienable interests from the estate]. If, as noted, BC § 541(c)(2) incorporates otherwise applicable non-bankruptcy state law, it is the Federal statute incorporating the state law, not the state law incorporated, being applied. It follows, a fortiori, that ERISA § 514(a), because it does not pre-empt BC § 541(c)(2), does not pre-empt AS § 09.38.017(d) to the extent it is incorporated into BC § 541(c)(2). Therefore, BC § 541(c)(2), which incorporates AS § 09.38.017(d), conclusively presumes the ERISA § 206(d)(1) mandated anti-alienation clause creates a spendthrift trust excluded from the debtor's estate. In all candor, this author must note the one case found which addresses this issue, the court rejected this very argument [In re Volpe, supra].

III. Congressional Inconsistency

To add to the confusion, consider the potential disparate effects between filing and not filing bankruptcy. If a debtor remains outside bankruptcy, the ERISA § 206(d)(1) mandated anti-alienation clause protects an ERISA covered retirement plan from creditors. This clearly reflects Congressional intent to protect ERISA retirement plans from individuals' creditors. On the other hand, if a debtor files for bankruptcy protection under title 11, Goff - Graham - Lichstrahl - Daniel either eliminate or sharply curtail protection of retirement plans. This result appears to be consistent with Congressional intent, expressed in BC § 522(d)(10)(E), to only provide partial or limited protection to retirement plans. Thus, we are faced with two not entirely consistent Congressional expressions of intent. It is no small wonder that we mere mortals are somewhat confused and uncertain in determining which controls.

Goff - Graham - Lichstrahl - Daniel take the position that BC § 522(d)(10)(E) controls. The reasoning of those courts, in light of customarily applied rules of statutory interpretation, is both logical and persuasive. However, the courts manifestly fail to reconcile the difference in treatment and fundamental conflict in Congressionally expressed public policy. Why should ERISA-qualified retirement plans be totally beyond the reach of creditors if a debtor does not file bankruptcy but, at best, only partially protected if a debtor files bankruptcy? BC § 522, provides either uniform exceptions under BC § 522(d) or, at the option of a debtor if it is more beneficial, the same exemptions that would be available if the debtor did not file bankruptcy. Does this not indicate a Congressional policy determination that a debtor by filing bankruptcy should be in no worse a position in terms of the assets a debtor retains? In other words, a debtor should not be faced, as a debtor may be under existing judicial interpretations, with the unpalatable choice of preserving a qualified retirement plan and foregoing a fresh start, or getting a fresh start and possibly foregoing retirement benefits.

Perhaps, as more than one court has observed, only Congress can resolve this dichotomy. On the other hand, the courts could re-examine Goff - Graham - Lichstrahl - Daniel and determine, as the

Court did in *In re Hinshaw* [23 B.R. 233 (Bkrtcy.D.KN. 1982)], that an ERISA covered pension plan is exempt under BC § 522(b)(2)(A).

It is also interesting to note that an Alaskan teacher or public employee does not face such a dilemma. Not only are such pension plans exempt, but also probably excluded as spendthrift trusts under BC § 541(c)(2) by AS §§ 14.25.200 (teachers) and 39.35.500 (PERS). [But see *In re Goldberg*, 98 B.R. 353 (Bkrtcy. N.D.IL (1989) for potential problems when the employee makes voluntary contributions to the plan; *In re Swanson*, 873 F.2d 1121 (8th Cir. 1989) holding that "statutory" retirement funds are not "traditional" spendthrift trusts and, thus, not excluded.]

A related question is whether the Alaska Legislature can amend AS § 09.38.017(e)(3) to delete the specific reference to ERISA plans and simply adopt definitional language similar to that contained in ERISA § 3(2)(A), thereby avoiding pre-emption by ERISA § 514(a). The answer is probably not because of the language in *Mackey* that state laws "specifically designed to affect employee benefit plans" are pre-empted under § 514(a)." [108 S.Ct. at 2185] Footnote 4 in *Mackey* may be interpreted in a manner giving hope, albeit slim, that a statute exempting all pension plans, whether or not ERISA covered might be sufficiently general to avoid pre-emption by ERISA § 514(a). It appears, however, that only Congress can legislate in a manner which would specifically exempt private retirement plans, except for the plan established or maintained by that extremely rare, if not extinct, employer engaged in a business not affecting interstate commerce.

The legislature might consider enacting a new statute as part of AS 13.36 (dealing with trusts in general) defining enforceable spendthrift trusts in a manner to include pension plans. This alternative, unfortunately, raises significant public policy questions because such a statute could inadvertently extend to attempts by settlors to create spendthrift trusts in their own favor, which is not particularly sound from a public policy standpoint.

IV. Summary

In summary, with respect to private retirement plans, the conclusion is that a debtor has a choice of several alternatives, any of which may or may not be satisfactory.

1. Remain outside bankruptcy, relying on ERISA § 206(d)(1) to protect qualified pension plan benefits (other than IRAs) [Part IIIA of *Mackey* indicates that state garnishment statutes may not be used to reach pension plan benefits] and AS § 09.38.017 to protect an IRA.
2. File bankruptcy and elect the Federal exemptions using BC § 522(d)(10)(E) to protect part of a qualified pension plan.
3. File bankruptcy and elect the state exemptions using AS § 09.38.017 to protect an IRA.
4. File bankruptcy and hope that, to the extent not exempt, a pension plan is excluded under BC § 541(c)(2) if the "trust" qualifies as a spendthrift trust under Alaska law. [Note BC § 541(c)(2) is applicable, if at all, irrespective of whether Federal or state exemptions are elected.]
5. Terminate participation in the ERISA covered retirement plan in a manner permitting withdrawal of vested contributions and "roll-over" the funds into an IRA under IRC § 408(a)(1) thereby bringing the funds within that part of AS § 09.38.017 which is perhaps not pre-empted by ERISA § 514(a).

Not one of the alternatives can be considered an iron-clad, fool-proof method of preserving a private retirement plan. Until either Congress deems it appropriate to legislate a resolution or the Ninth Circuit reverses its decision interpreting BC § 522(b)(2)(A) as not exempting pension plans, counsel for debtors (and debtors) will have to proceed using whichever alternative, or combination, which, under the particular facts and circumstances, will most probably preserve the maximum amount of a debtor's assets. Debtor and debtors' counsel may find solace of sorts in the fact that trustees and trustees' counsel face the same uncertain status of the law. Furthermore, there are serious additional problems faced by trustees in "cashing-out" a qualified retirement plan not distributable until the debtor terminates employment. Given the two-sided nature of the problem, it is possible most of the controversies which may arise will be resolved by a negotiated settlement rather than litigated. A point which Judge Ross will undoubtedly welcome, particularly since little else written here provides his Honor much assistance.

Counsel should carefully review all the private pension plan documents (not just the Summary Plan Description furnished employees) and the IRS qualification determination letter. The particular language used in a given plan or the trust instrument may be crucial to a final determination as to whether such plan is excluded under BC § 541(c)(2).

It would also be advisable for counsel to review each case cited in this article and the cases cited in those cases to glean other arguments which may be advanced in support of whichever position is advantageous to counsel's client. Until some court renders a controlling decision, it is "open season."

Alaska State Legislature



Senate Judiciary Committee

April 20, 1990

MEMORANDUM

TO: All Senators

FROM: Senator Jan Faiks, Chairman
Senate Judiciary Committee

SUBJECT: CSSB 252 (Jud) "An Act relating to retirement system exemptions from execution."

SB 252 is before the Senate for consideration today. This bill was introduced by the Judiciary Committee at the request of the Alaska Court System, and was amended in committee at the suggestion of the Public Employees' Retirement System (PERS) and the Municipality of Anchorage. It makes certain changes to the Alaska Exemptions Act, AS 09.38. This act allows a debtor to protect some of the debtor's property from creditors.

Section 1 of CSSB 252 (Jud) amends AS 09.38.015(b). That section currently provides that in debt collection proceedings other than bankruptcy, a debtor's interest in the Teachers' Retirement System (TRS) or in PERS is exempt from execution by creditors. Section 1 adds the Judicial Retirement System (JRS) and the Elected Public Officers' Retirement System (EPORS) to this list, thus treating all state retirement benefits the same way for purposes of protecting them from seizure by creditors.

Section 2 of CSSB 252 (Jud) amends AS 09.38.017. That section currently provides that in any debt collection proceeding, including bankruptcy, a debtor's retirement accounts (public or private) are exempt from execution by creditors.

However, subsection (c) of AS 09.38.017 provides that this particular exemption does not prevent payment of benefits to an ex-spouse under a qualified domestic relations order (QDRO) as defined in federal law. The most common type of QDRO is a property settlement order issued by a divorce court. It is used to award one spouse a portion of the other spouse's retirement benefits.

The definition of QDRO contained in federal law authorizes the payment of an employee's retirement accounts to an ex-spouse either when the employee retires, or when the employee is eligible to retire. However, this federal definition specifically exempts state and local government retirement plans, which are allowed to adopt their own rules regarding time of payment of retirement benefits to an ex-spouse. In Alaska, the laws and ordinances governing PERS and other state and municipal retirement plans provide that retirement benefits may only be paid to an ex-spouse when an employee actually retires, not when the employee is merely eligible to retire.

Because AS 09.38.017(c) references the federal definition of QDRO, and because this federal definition specifically authorizes government plans to adopt their own rules regarding time of payment of QDRO's, it should be clear that AS 09.038.017(c) does not require state and local government plans to use the federal definition. Section 2 of CSSB 252 (Jud) merely clarifies this, by codifying the federal definition more expressly.

**ANCHORAGE POLICE AND FIRE RETIREMENT BOARD
ALASKA STATE LEGISLATION ON
QUALIFIED DOMESTIC RELATIONS ORDERS (QDRO's)**

FACTS:

Under current Alaska Law, certain pension benefits are arguably subject to attachment under the Anchorage Police and Fire Retirement System; while those same benefits under PERS and other state retirement plans are not.

BACKGROUND:

In 1988, the Alaska Legislature adopted AS 09.38.017 which protects both public and private pension benefits from assignment except under a "Qualified Domestic Relations Order" or QDRO. Under AS 09.38.017, a QDRO is defined by reference to federal law, at U.S.C. 414, as being able to assign a member's pension benefits to satisfy a child or spousal support or property settlement when a member is first eligible to retire, regardless of when or whether the member actually retired.

All government pension plans are specifically exempted by ERISA from federal pension regulations. ERISA allows for government plans to define or restrict application of QDRO's as its regulations see fit. Alaska State Legislation, AS 39.35.370(e), for PERS and TRS has been adopted which states payment on a QDRO may only be made to the alternate payee (i.e. ex-spouse) at the time the member actually retires. The PERS statute AS 39.35.370 (e) does not allow for payment of benefits from the plan until the following requirements are met: (1) the member meets the eligibility requirement of this section, (2) the member terminates employment; and (3) the member applies for retirement. Anchorage Municipality Code (AMC) 3.85.075 was passed in June 1989, which allows the Anchorage Police and Fire Retirement System to make payments to an alternate payee only from the date the member actually retires.

Alaska Statute 09.38.017 may jeopardize the Police and Fire Retirement Board's and the Anchorage Assembly's ability to define or restrict application of QDRO's as allowed by ERISA. AS 09.38.017 clearly denies members of the Anchorage Police and Fire Retirement System equal protection of law by treating them differently from members of PERS and TRS, without apparent justification.

SOLUTION:

The problem can be easily solved by merely clarifying AS 09.38.017(c) to exempt governmental pension and retirement plans from the definition incorporated in this statute. This change is fully consistent with the intent of the federal law, which allows governmental plans to define or restrict application of QDRO's.

CONTACT: D. Lee Wentworth

(907) 343-6440

MEMORANDUM

TO: Representative H.A. "Red" Boucher, Chair
House State Affairs Committee

FROM: Dennis J. Burns, Aide
House State Affairs

DATE: March 28, 1990

RE: HB 568

The following is in response to your request for background information:

Senator Rodey introduced SB 508 on 4/14/88 as a Senate Judiciary Committee bill. This bill was signed into law on 7/12/88 (Chapter 135 SLA 88).

The language in Section 1. AS 09.38.017(c) of HB 568 originated in SB 508.

The purpose of SB 508 was to prevent the attachment of retirement benefits (PERS and TRS) and IRAs in bankruptcy proceedings. During that time, there were a number of Alaskans who were experiencing financial reverses, and it seemed unfair to allow for the total depletion of their financial assets.

The language in Section 1. AS 09.38.017(c) was recommended by Legal Services. The intent was to recognize that there were some situations (QDRO) which should not be exempt. As I understand the intent of this section, however, the QDRO was to fit under the existing state PERS and TERS definition of QDRO, and if no definition existed then the federal definition would apply.

According to an opinion by the former Attorney General Grace Berg Schaible, there are two definitions of QDRO:

Under the federal definition, a QDRO can order payment of a benefit to a spouse as soon as a member is both vested and old enough to take early retirement, regardless of whether the member has terminated employment or chooses to take early retirement.

According to Ms. Schaible, the PERS and TRS definition of QDRO does not allow payment of benefits to a spouse before the member begins to receive the benefit.

However, it is unclear reading the statutes - AS 14.25.220(31) and AS 39.35.680(34) - whether the QDRO definition as defined by Mr. Schaible is implicit.

Ms. Schaible also noted that the federal definition of QDRO would not be applicable to PERS and TRS because 26 U.S.C. 414(p) provides that the federal definition does not apply to PERS or TRS.

3-5-70
SB 252

Supported by PERS

Is this a description of current law or a change?

new sec 3 (Temporary law)
purpose section, that provides that ~~the~~ ~~is~~ ~~in~~ ~~existence~~ ~~at~~ ~~the~~ ~~time~~ of
not apply to any ~~other~~ that is in existence at the time of
to effective date.

problem - this would be interpreted to mean that we are doing
to law, not changing it, and that

changes were

Municipality of Anchorage



P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650
(907) 343-4295

TOM FINK,
MAYOR

POLICE AND FIRE RETIREMENT BOARD

RECEIVED

March 5, 1990

MAR 12 1990

JAN FAIKS
SENATE OFFICE

The Honorable Jan Faiks
The State Senate
The State Capitol, Room 101
P. O. Box V
Juneau, AK 99811

Dear Ms. Faiks:

Thank you for taking the time to visit with John Cowdery and I during our visit to Juneau on February 20, 1990. The issue we discussed regarding when an alternate payee (i.e. ex-spouse) may receive payments on a Qualified Domestic Relations Orders (QDRO) is of concern to the Police and Fire Retirement Board, the Retirement System members and retirees.

As discussed with you and your staff, the problems are listed below:

1. All government pension plans are specifically exempted by ERISA from federal pension regulations. ERISA allows for government plans to define or restrict application of QDRO's as its regulations see fit. Thus, Alaska State Legislation for PERS and TRS has been adopted which states payment may only be made to an alternate payee at the time the member actually retires.
2. Alaska Statute 09.38.017, passed in 1988, it allows for the alternate payee to elect to receive their payments from other government plans at the time the member is first eligible to retire, not when they actually retire. As stated above, PERS and TRS legislation does not allow for payment to an alternate payee until the retiree actually retires.

The Honorable Jan Faiks

March 5, 1990

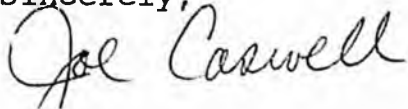
Page 2

3. Subsequently, in June 1989, Anchorage Municipal Code (AMC) 3.85.075 was passed which allows the Anchorage Police and Fire Retirement System to make payment to an alternate payee only from the date the member actually retires.
4. AS 09.38.017 may jeopardize the Police and Fire Retirement Board's and the Anchorage Assembly's ability to define or restrict application of QDRO's as allowed under ERISA. AS 09.38.017 clearly denies members of the Anchorage Police and Fire Retirement pension plan the equal protection of law by treating them differently from members of state governmental plans, without apparent justification.
5. The problem can be easily solved by merely clarifying AS 09.38.017 to exempt governmental pension and retirement plans from the definition incorporated in AS 09.38.017(c). The change is fully consistent with the intent of the federal laws incorporated by reference in AS 09.38.017(c).

As you are aware, the proposed change to State Statute AS 09.38.017 (c) has been reviewed by the State Attorney General's office and has support of the Public Employee Retirement System administration, as well as all the Police and Fire Retirement System members.

If you have any further questions, please call me or the Police and Fire Retirement Board Staff at (907) 343-6440.

Sincerely,



Joe Caswell
Chairman
Police and Fire Retirement Board

JC/lh:c
Attachments

BY THE STATE AFFAIRS COMMITTEE

1 IN THE HOUSE

2

HOUSE BILL NO. 568

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the definition of qualified
7 domestic relations orders for retirement plan inter-
8 est and payment exemptions."

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

10 * Section 1. AS 09.38.01(c) is amended to read:

11 (c) The exemptions provided by (a) of this section do not pre-
12 vent the payment of benefits under a retirement plan to an alternate
13 payee under a qualified domestic relations order. In this subsection,
14 "qualified domestic relations order" has the meaning given in 26
15 U.S.C. 414(p), except as applied to "governmental plans" as defined
16 under 29 U.S.C. 1002 in which case "qualified domestic relations
17 order" has the meaning given by the plan or by the law governing the
18 plan.

(p) Qualified domestic relations order defined.

For purposes of this subsection and section 401(a)(13)—

(1) In general.

(A) Qualified domestic relations order. The term "qualified domestic relations order" means a domestic relations order—

(i) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(ii) with respect to which the requirements of paragraphs (2) and (3) are met.

(B) Domestic relations order. The term "domestic relations order" means any judgment, decree, or order (including approval of a property settlement agreement) which—

(i) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and

(ii) is made pursuant to a State domestic relations law (including a community property law).

(2) Order must clearly specify certain facts. A domestic relations order meets the requirements of this paragraph only if such order clearly specifies—

(A) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,

(B) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,

(C) the number of payments or period to which such order applies, and

(D) each plan to which such order applies.

(3) Order may not alter amount, form, etc., of benefits. A domestic relations order meets the requirements of this paragraph only if such order—

(A) does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan,

(B) does not require the plan to provide increased benefits (determined on the basis of actuarial value), and

(C) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

(4) Exception for certain payments made after earliest retirement age.

(A) In general. A domestic relations order shall not be treated as failing to meet the requirements of subparagraph (A) of paragraph (3) solely because such order requires that payment of benefits be made to an alternate payee—

(i) on or in the case of any payment before a participant has separated from service, after the date on which the participant attains (or would have attained) the earliest retirement age,

(ii) as if the participant had retired on the date on which such payment is to begin under such order (but taking into account only the present value of the benefits actually accrued and not taking into account the present value of any employer subsidy for early retirement), and

(iii) in any form in which such benefits may be paid under the plan to the participant (other than in the form of a joint and survivor annuity with respect to the alternate payee and his or her subsequent spouse).

For purposes of clause (ii), the interest rate assumption used in determining the present value shall be the interest rate specified in the plan or, if no rate is specified, 5 percent.

(B) Earliest retirement age. For purposes of this paragraph, the term "earliest retirement age" means the earlier of—

(i) the date on which the participant is entitled to a distribution under the plan, or

(ii) the later of—

(I) the date the participant attains age 50, or

(II) the earliest date on which the participant could begin receiving benefits under the plan if the participant separated from service.

(5) Treatment of former spouse as surviving spouse for purposes of determining survivor benefits. To the extent provided in any qualified domestic relations order—

(A) the former spouse of a participant shall be treated as a surviving spouse of such participant for purposes of sections 401(a)(11) and 417 (and any spouse of the participant shall not be treated as a spouse of the participant for such purposes), and

(B) if married for at least 1 year, the surviving former spouse shall be treated as meeting the requirements of section 417(d).

A plan shall not be treated as failing to meet the requirements of subsection (a) or (k) of section 401 which prohibit payment of benefits before termination of employment solely by reason of payments to an alternate payee pursuant to a qualified domestic relations order.

(6) Plan procedures with respect to orders.

(A) Notice and determination by administrator. In the case of any domestic relations order received by a plan—

(i) the plan administrator shall promptly notify the participant and each alternate payee of the receipt of such order and the plan's procedures for determining the qualified status of domestic relations orders, and

(ii) within a reasonable period after receipt of such order, the plan administrator shall determine whether such order is a qualified domestic relations order and notify the participant and each alternate payee of such determination.

(B) Plan to establish reasonable procedures. Each plan shall establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders.

(7) Procedures for period during which determination is being made.—

(A) In general. During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined (by the plan administrator, by a court of competent jurisdiction, or otherwise), the plan administrator shall separately account for the amounts (hereinafter in this paragraph referred to as the "segregated amounts") would have been payable to the alternate

payee during such period if the order had been determined to be a qualified domestic relations order.

(B) Payment to alternate payee if order determined to be qualified domestic relations order. If within the 18-month period described in subparagraph (E) the order (or modification thereof) is determined to be a qualified domestic relations order, the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons entitled thereto.

(C) Payment to plan participant in certain cases. If within the 18-month period described in subparagraph (E)—

(i) it is determined that the order is not a qualified domestic relations order, or

(ii) the issue as to whether such order is a qualified domestic relations order is not resolved,

then the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons who would have been entitled to such amounts if there has been no order.

(D) Subsequent determination or order to be applied prospectively only. Any determination that an order is a qualified domestic relations order which is made after the close of the 18-month period described in subparagraph (E) shall be applied prospectively only.

(E) Determination of 18-month period. For purposes of this paragraph, the 18-month period described in this subparagraph is the 18-month period beginning with the date on which the first payment would be required to be made under the domestic relations order.

(8) Alternate payee defined. The term "alternate payee" means any spouse, former spouse, child or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.

(9) Subsection not to apply to plans to which section 401(a)(13) does not apply. This subsection shall not apply to any plan to which section 401(a)(13) does not apply. For purposes of this title, except as provided in regulations, any distribution from an annuity contract under section 403(b) pursuant to a qualified domestic relations order shall be treated in the same manner as a distribution from a plan to which section 401(a)(13) applies.

(10) Waiver of certain distribution requirements. With respect to the requirements of subsections (a) and (k) of section 401, 403(b), and section 409(d), a plan shall not be treated as failing to meet such requirements solely by reason of payment to an alternative payee pursuant to a qualified domestic relations order.

(11) Consultation with the Secretary. In prescribing regulations under this subsection and section 401(a)(13), the Secretary of Labor shall consult with the Secretary.

(q) Highly compensated employee.

(1) In general. The term "highly compensated employee" means any employee who, during the year or the preceding year—

(A) was at any time a 5-percent owner,

(B) received compensation from the employer in excess of \$75,000,

(C) received compensation from the employer in excess of \$50,000 and was in the top-paid group of employees for such year, or

(D) was at any time an officer and received compen-

sation greater than 50 percent of the amount in effect under section 415(b)(1)(A) for such year.

The Secretary shall adjust the \$75,000 and \$50,000 amounts under this paragraph at the same time and in the same manner as under section 415(d).

(2) Special rule for current year. In the case of the year for which the relevant determination is being made, an employee not described in subparagraph (B), (C), or (D) of paragraph (1) for the preceding year (without regard to this paragraph) shall not be treated as described in subparagraph (B), (C), or (D) of paragraph (1) unless such employee is a member of the group consisting of the 100 employees paid the greatest compensation during the year for which such determination is being made.

(3) 5-percent owner. An employee shall be treated as a 5-percent owner for any year if at any time during such year such employee was a 5-percent owner (as defined in section 416(i)(1)) of the employer.

(4) Top-paid group. An employee is in the top-paid group of employees for any year if such employee is in the group consisting of the top 20 percent of the employees when ranked on the basis of compensation paid during such year.

(5) Special rules for treatment of officers.—

(A) Not more than 50 officers taken into account. For purposes of paragraph (1)(D), no more than 50 employees (or, if lesser, the greater of 3 employees or 10 percent of the employees) shall be treated as officers.

(B) At least 1 officer taken into account. If for any year no officer of the employer is described in paragraph (1)(D), the highest paid officer of the employer for such year shall be treated as described in such paragraph.

(6) Treatment of certain family members.

(A) In general. If any individual is a member of the family of a 5-percent owner or of a highly compensated employee in the group consisting of the 10 highly compensated employees paid the greatest compensation during the year, then—

(i) such individual shall not be considered a separate employee, and

(ii) any compensation paid to such individual (and any applicable contribution or benefit on behalf of such individual) shall be treated as if it were paid to (or on behalf of) the 5-percent owner or highly compensated employee.

(B) Family. For purposes of subparagraph (A), the term "family" means, with respect to any employee, such employee's spouse and lineal ascendants or descendants and the spouses of such lineal ascendants or descendants.

(C) Rules to apply to other provisions.

(i) In general. Except as provided in regulations and in clause (ii), the rules of subparagraph (A) shall be applied in determining the compensation of (or any contributions or benefits on behalf of) any employee for purposes of any section with respect to which a highly compensated employee is defined by reference to this subsection.

(ii) Exception for determining integration levels. Clause (i) shall not apply in determining the portion of the compensation of a participant which is under the integration level for purposes of section 401(l).

(7) Compensation. For purposes of this subsection—

(A) In general. The term "compensation" means

and the current funding (pay-as-you-go) cost method are not acceptable actuarial cost methods. The Secretary of the Treasury shall issue regulations to further define acceptable actuarial cost methods.

→ (32) The term "governmental plan" means a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. The term "governmental plan" also includes any plan to which the Railroad Retirement Act of 1935 or 1937 applies, and which is financed by contributions required under that Act and any plan of an international organization which is exempt from taxation under the provisions of the International Organizations Immunities Act (59 Stat. 669).

(33)(A) The term "church plan" means a plan established and maintained (to the extent required in clause (ii) of subparagraph (B)) for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501 of the Internal Revenue Code of 1954 [26 USCS § 501].

(B) The term "church plan" does not include a plan—

(i) which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513 of the Internal Revenue Code of 1954 [26 USCS § 513]), or

(ii) if less than substantially all of the individuals included in the plan are individuals described in subparagraph (A) or in clause (i) of subparagraph (C) (or their beneficiaries).

(C) For purposes of this paragraph—

(i) A plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches includes a plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

(ii) The term employee of a church or a convention or association of churches includes—

(I) a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, regardless of the source of his compensation;

(II) an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501 of the Internal Revenue Code of 1954 [26 USCS § 501] and which

(27) "part-time teacher" means a teacher occupying a position requiring teaching on a regular basis for at least 50 percent of the normal workweek at a teaching assignment, excluding teaching as an assistant or graduate assistant, or teaching on a substitute, temporary, or per diem basis;

(28) "permanent disability" means a physical or mental condition which, in the judgment of the administrator, based upon medical reports and other evidence satisfactory to the administrator, presumably prevents a member from satisfactorily performing the member's usual duties for the member's employer or the duties of another position or job which an employer makes available for which the member is qualified by training or education;

(29) "prescribed rate of interest" means the rate of interest used for computing employer contributions, for preparing actuarial tables used by the system, for crediting interest to members' contributions, and for charging interest on members' indebtedness accounts;

(30) "public school" means a school operated by publicly elected or appointed school officials in which the program and activities are under the control of those officials and which is supported by public funds;

(31) "qualified domestic relations order" means a divorce or dissolution judgment under AS 25.24, including an order approving a property settlement, that

(A) creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a member;

(B) sets out the name and last known mailing address, if any, of the member and of each alternate payee covered by the order;

(C) sets out the amount or percentage of the member's benefit, or of any survivor's benefit, to be paid to the alternate payee, or sets out the manner in which that amount or percentage is to be determined;

(D) sets out the number of payments or period to which the order applies;

(E) does not require any type or form of benefit or any option not otherwise provided by this chapter;

(F) does not require an increase of benefits in excess of the amount provided by this chapter, determined on the basis of actuarial value; and

(G) does not require the payment, to an alternate payee, of benefits that are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order;

(32) "retired teacher or member" means a member who is terminated, who has not received a refund from the system, and who is receiving a benefit, other than disability, from the system;

(33) "retirement" means that period of time from the first day of the month following

CURRENT STATUS: (S) STA

STATUS DATE: 04/11/88

JRN-DATE	JRN-PG		ACTION
04/11/88	2959	(S)	READ THE FIRST TIME - REFERRAL(S)
04/11/88	2959	(S)	STA, THEN FIN

SB 504

"An Act relating to contributions from permanent fund dividends to Yukon Quest International, Ltd.; and providing for an effective date."

PRIME SPONSOR: FINANCE COMMITTEE

CURRENT STATUS: (S) STA

STATUS DATE: 04/11/88

JRN-DATE	JRN-PG		ACTION
04/11/88	2959	(S)	READ THE FIRST TIME - REFERRAL(S)
04/11/88	2960	(S)	STA, THEN FINANCE

SB 505

"An Act establishing the Alaska Children's Commission; and providing for an effective date."

PRIME SPONSOR: JUDICIARY COMMITTEE

CURRENT STATUS: (S) CALFNDAR 5/9

STATUS DATE: 05/09/88

JRN-DATE	JRN-PG		ACTION
04/12/88	2984	(S)	READ THE FIRST TIME - REFERRAL(S)
04/12/88	2984	(S)	STA, THEN HES, FIN
04/28/88	3244	(S)	STA RPT CS JDP SAME TITLE
04/28/88	3244	(S)	FISCAL NOTE PUBLISHED
05/06/88	3524	(S)	HES REFERRAL WAIVED
05/09/88	3751	(S)	FIN REFERRAL WAIVED
05/09/88	3758	(S)	RULES TO 2ND SUPPLEMENTAL CALENDAR
05/09/88	3758	(S)	NOT TAKEN UP

SB 506

"An Act providing for the issuance of general obligation bonds in the amount of \$64,000,000 for the purpose of paying the cost of highway, road, and trail projects; and providing for an effective date."

PRIME SPONSOR: JUDICIARY COMMITTEE

CURRENT STATUS: (S) TRA

STATUS DATE: 04/12/88

JRN-DATE	JRN-PG		ACTION
04/12/88	2984	(S)	READ THE FIRST TIME - REFERRAL(S)
04/12/88	2984	(S)	TRA, THEN FIN

SB 507

"An Act relating to bonds of contractors for public buildings and works; and providing for an effective date."

PRIME SPONSOR: RULES COMMITTEE

BY REQUEST OF THE GOVERNOR

CURRENT STATUS: (S) TRA

STATUS DATE: 04/13/88

JRN-DATE	JRN-PG		ACTION
04/13/88	3006	(S)	READ THE FIRST TIME - REFERRAL(S)
04/13/88	3006	(S)	TRA, THEN L&C, FINANCE
04/13/88	3006	(S)	ZERO FISCAL NOTE PUBLISHED
04/13/88	3007	(S)	GOVERNOR'S TRANSMITTAL LETTER

SB 508

CSSB 508(FIN)

"An Act relating to property exemptions for homesteads, for certain retirement plan interests and payments, and for other property."

PRIME SPONSOR: JUDICIARY COMMITTEE

CURRENT STATUS: CHAPTER 135 SLA 88

STATUS DATE: 06/08/88

JRN-DATE	JRN-PG		ACTION
04/14/88	3030	(S)	READ THE FIRST TIME - REFERRAL(S)
04/14/88	3030	(S)	JUD, THEN FINANCE
04/21/88	3148	(S)	JUD WAIVED FIVE-DAY NOTIFICATION RULE
04/25/88	3182	(S)	JUD RPT 4DP
04/25/88	3182	(S)	ZERO FISCAL NOTE PUBLISHED
05/03/88	3393	(S)	FIN RPT CS 4DP 2HR NEW TITLE
05/03/88	3394	(S)	ZERO FISCAL NOTE PUBLISHED
05/05/88	3459	(S)	RULES TO CALENDAR
05/05/88	3461	(S)	READ THE SECOND TIME
05/05/88	3461	(S)	FIN CS ADOPTED UNAN CONSENT
05/05/88	3461	(S)	ADVANCED TO THIRD READING UNAN CONSENT
05/05/88	3461	(S)	READ THE THIRD TIME - CSSB 508(FIN)
05/05/88	3461	(S)	PASSED Y20 N-
05/05/88	3485	(S)	TRANSMITTED TO (H)
05/05/88	3515	(H)	READ THE FIRST TIME - REFERRAL(S)
05/06/88	3515	(H)	LABOR & COMMERCE THEN JUDICIARY
05/07/88	3607	(H)	L&C REFERRAL WAIVED
05/08/88	3639	(H)	JUD RPT 4DP
05/09/88		(H)	RULES TO CALENDAR 5/9/88
05/09/88	3685	(H)	READ THE SECOND TIME
05/09/88	3685	(H)	ADVANCED TO THIRD READING UNAN CONSENT
05/09/88	3685	(H)	READ THE THIRD TIME - CSSB 508(FIN)
05/09/88	3685	(H)	PASSED Y35 N- A5
05/09/88	3685	(H)	RETURN TO (S), TRANSMIT TO GOVERNOR NEXT
05/27/88	3812	(S)	1:15 PM 5/17/88 TRANSMITTED TO GOVERNOR
07/12/88	3651	(S)	SIGNED INTO LAW 6/8 CHAPTER 135 SLA 88
07/12/88	3852	(S)	EFFECTIVE DATE OF LAW 9/6/88

Chapter 115

AN ACT

Relating to property exemptions for homesteads, for certain retirement plan interests and payments, and for other property.

Section 1. AS 09.38.010(a) is amended to read:

09.38.010(a)

(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 the [THAT] individual or the dependents of the [THAT] individual, but the value of the homestead exemption may not exceed \$54,000 [527,000].

Section 2. AS 09.38.010(b) is amended to read:

09.38.010(b)

(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 \$54,000 [527,000]. If there are multiple owners of property exempt as a homestead, the value of the exemption of each individual owner may not exceed the [THAT] individual owner's pro rata portion of \$54,000 [527,000].

Section 3. AS 09.38 is amended by adding a new section to read:

09.38.017

Sec. 09.38.017. EXEMPTION OF RETIREMENT PLAN INTERESTS AND PAYMENTS. (a) In addition to the exemption under AS 09.38.015(b), the following are exempt from a claim of an individual's creditor:

-1- CSSB 508(Fin)

Chapter 115

(1) the interest of the individual in a retirement plan; and

(2) the money or other assets payable to the individual from a retirement plan.

(b) The exemptions provided by (a) of this section do not apply to a contribution made by an individual to a retirement plan within 120 days before the individual files for bankruptcy.

(c) The exemptions provided by (a) of this section do not prevent the payment of benefits under a retirement plan to an alternate payee under a qualified domestic relations order. In this subsection, "qualified domestic relations order" has the meaning given in 26 U.S.C. 414(p).

(d) A retirement plan exempt from claims under (a) of this section is conclusively presumed to be a spendthrift trust under this section.

(e) In this section,

(1) "alternate payee" has the meaning given in 26 U.S.C. 414(p)(8);

(2) "individual" means an individual who is a participant in, a beneficiary of, or an alternate payee of a retirement plan;

(3) "retirement plan" means a retirement plan that is qualified under 26 U.S.C. 401(a), 26 U.S.C. 403(a), 26 U.S.C. 401(b), 26 U.S.C. 408, or 26 U.S.C. 407 (Internal Revenue Code).

Section 4. AS 09.38.020 is amended to read:

Sec. 09.38.020. EXEMPTIONS OF PERSONAL PROPERTY SUBJECT TO CREDITORS' LIMITATIONS. (a) An individual is entitled to an exemption in property not to exceed an aggregate value of \$3,000 [51,500] chosen by the individual from the following categories of property:

(1) household goods and wearing apparel (exclusively

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necessary for one household:

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

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

(b) An individual is entitled to exemption of jewelry, not exceeding \$1,000 [\$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 \$2,800 [\$1,400] in aggregate value, of implements, professional books, and tools of the trade.

(d) An individual is entitled to the exemption of pets to the extent of a value not exceeding \$1,000 [\$500].

(e) An individual is entitled to an exemption of one motor vehicle to the extent of a value not exceeding \$3,000 [\$1,500] if the full value of the motor vehicle does not exceed \$20,000 [\$10,000].

• Sec. 5. AS 09.38.025(a) is amended to read:

(a) Except as provided in this section or AS 09.38.017, 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 \$10,000 [\$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 \$10,000 [\$5,000] or the amount of the creditor's claim, whichever is less.

• Sec. 6. AS 09.38.030(a) is amended to read:

(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

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Individual debtor's weekly net earnings not to exceed 25% [31%]. 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.

• Sec. 7. 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 \$1,400 [\$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.

• Sec. 8. AS 09.38.030(c) is amended to read:

(c) The following property, unless exempt without limitation under AS 09.38.015 or 09.38.017, 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

09.38.025(n)

09.38.030(n)

Chapter 115

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.

* Sec. 9. AS 09.38.050(b) is amended to read:

(b) The exemption amounts under AS 09.38.010 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 \$550 [\$275], or, if the individual is claiming an exemption for cash or other liquid assets under AS 09.38.050(b), a maximum amount of \$2,200 [\$1,100] available in a [ANY] month is exempt.

* Sec. 10. AS 09.38.055 is amended to read:

Sec. 09.38.055. BANKRUPTCY PROCEEDINGS. In a proceeding under 11 U.S.C. (Bankruptcy) [THE BANKRUPTCY ACT (11 U.S.C.)] only the exemptions under AS 09.38.010, 09.38.015(a), 09.38.017, 09.38.020, 09.38.025 and 09.38.030 apply.

* Sec. 11. AS 09.38.017, added by sec. 1 of this Act, does not apply to the assets of a bankruptcy estate in a proceeding filed under 11 U.S.C. (Bankruptcy) before the effective date of this Act.

09.38.050(b)

09.38.055

Eff. 9/6/88

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AN ACT

Providing for the establishment of the Institute for Circumpolar Health Studies within the University of Alaska; and providing for an effective date.

* Section 1. FINDINGS. The legislature finds that

(1) the severe health problems of depression, alcoholism, and suicide are endemic to Alaska;

(2) millions of dollars and countless expenditures of energy and time have been spent attempting to solve or at least adequately address these problems in the state, but that major successes have not been achieved and that a new approach to these problems is needed;

(3) other circumpolar areas and nations, including Canada, Siberia, Greenland, and Scandinavia, also suffer from these problems, but that Alaska has failed to exchange research and information with these countries;

(4) the establishment of an Institute for Circumpolar Health Studies within the University of Alaska would be a major new step toward addressing and finding solutions to the health problems of Alaskans and inhabitants of other circumpolar regions;

(5) establishment of the Institute is a concept strongly supported by the International Union for Circumpolar Health and the American Public Health Association's national Arctic health science policy;

(6) Alaska is an especially appropriate location for such an

Sec. 09.35.130. Third party claims.

NOTES TO DECISIONS

This section is not grant of authority to court to determine title to property that is levied upon; it only deals with the circumstances under which property levied upon may be retained after a claim of ownership or the right of possession by a third party. *Keltner v. Curtis*, Sup. Ct. Op. No. 2913 (File No. S-162), 695 P.2d 1076 (1985).

Sec. 09.35.160. Postponement of sale.

NOTES TO DECISIONS

This statute's requirements do not apply to nonjudicial deed of trust foreclosure proceedings. *Ostrow v. Higgins*, Sup. Ct. Op. No. 3085 (File No. S-1004), 722 P.2d 936 (1986).

Sec. 09.35.180. Confirmation of sale or resale.

NOTES TO DECISIONS

II. Procedure.

II. PROCEDURE.

Civil Rule 60(b) motion not prohibited by subsection (d). — The court rejected the contention that they had judicially repealed subsection (d) of this section, which applies to "any other action or proceeding" and thus precludes collateral

but not direct attacks on orders of confirmation; since a Civil Rule 60(b) motion is a direct attack it is not prohibited by subsection (d) of this section. *Law Offices of Murphy L. Clark v. Altman*, Sup. Ct. Op. No. 2811 (File No. 6501), 680 P.2d 1125 (1984).

Sec. 09.35.250. Redemption by judgment debtor or successor.

NOTES TO DECISIONS

Quoted in *Law Offices of Murphy L. Clark v. Altman*, Sup. Ct. Op. No. 2811 (File No. 6501), 680 P.2d 1125 (1984).

Cited in *Moening v. Alaska Mut. Bank*, Sup. Ct. Op. No. 3274 (File No. S-1980), P.2d (1988).

Sec. 09.35.260. Conveyance of property.

NOTES TO DECISIONS

Quoted in *Law Offices of Murphy L. Clark v. Altman*, Sup. Ct. Op. No. 2811 (File No. 6501), 680 P.2d 1125 (1984).

Sec. 09.35.310. Rights of purchaser and redemptioner. The purchaser, from the time of sale until a resale or a redemption, or a redemptioner, from the time of redemption until another redemption, is entitled to the possession of the property purchased or redeemed. Where the property is in the possession of a tenant, the purchaser or redemptioner is entitled to receive the rents of the property or the value of the use and occupation of the property. (S 15.31 ch 101 SLA 1962)

Editor's notes. — This section is set out above to correct a minor error in the main pamphlet.

Chapter 38. Alaska Exemptions Act.

Section

- 10. Homestead exemption
- 15. Property exempt without limitation
- 17. Exemption of retirement plan interests and payments
- 20. Exemptions of personal property subject to value limitations
- 25. Exemption of unmatured life insurance and annuity contracts

Section

- 30. Exemption of earnings and liquid assets
- 50. Increased exemption amount
- 55. Bankruptcy proceedings
- 115. Adjustment of dollar amounts

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 the individual or the dependents of the individual, but the value of the homestead exemption may not exceed \$54,000.

(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 \$54,000. If there are multiple owners of property exempt as a homestead, the value of the exemption of each individual owner may not exceed the individual owner's pro rata portion of \$54,000.

(c) If property that includes a homestead is sold under an execution, the sale becomes effective upon confirmation by order of the court. The court shall enter the order of confirmation unless, within 60 days after the sale, the individual repurchases the property under this section or the court extends the time for confirmation upon the filing of a timely motion by a party in interest. The individual may repurchase property, including that individual's homestead, at a sale on execution before confirmation by paying into court the costs of the sale plus the lesser of either (1) the difference between the highest bid and the amount of the exemption in the property, or (2) the amount of the

creditor's claim. If the individual does not exercise the repurchase right under this subsection, the clerk of the court shall first remit an amount determined to be exempt to the individual from the proceeds of sale and the balance less the cost of the sale to the creditor. For the purpose of collecting an amount remaining unpaid on a judgment after repurchase of property by an individual under this subsection, the creditor or the creditor's assignee may not make another levy on the property repurchased.

(d) Upon entry of the order of confirmation under (c) of this section and expiration of the time period for repurchase, the clerk may execute a deed to the property and when delivered it shall be sufficient to convey all title of the individual in the premises sold to the purchaser at the sale. (§ 2 ch 62 SLA 1982; am §§ 1, 2 ch 135 SLA 1988)

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

Effect of amendments. — The 1988 amendment substituted "the individual"

for "that individual" twice in subsection (a) and once in the last sentence in subsection (b), and "\$54,000" for "\$27,000" in subsection (a) and in the last two sentences in subsection (b).

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).

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 collection 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.

(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 39.35.505; for provisions exempting longevity bonuses from levy to enforce collection of a debt, see AS 47.45.120(b). — applicability of the exemptions from execution in proceedings to enforce payment of child support, see AS 47.23.25.

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 Authority" 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), 1/24/1986.

Sec. 09.38.017. Exemption of retirement plan interests and payments. (a) In addition to the exemption under AS 09.38.015(b), the following are exempt from a claim of an individual's creditor:

- (1) the interest of the individual in a retirement plan; and
 - (2) the money or other assets payable to the individual from a retirement plan.
- (b) The exemptions provided by (a) of this section do not apply to a contribution made by an individual to a retirement plan within 120 days before the individual files for bankruptcy.
- (c) The exemptions provided by (a) of this section do not prevent the payment of benefits under a retirement plan to an alternate payee under a qualified domestic relations order. In this subsection, "qualified domestic relations order" has the meaning given in 26 U.S.C. 414(p).
- (d) A retirement plan exempt from claims under (a) of this section is conclusively presumed to be a spendthrift trust under this section.

(c) In this section,

- (1) "alternate payee" has the meaning given in 26 U.S.C. 414(p)(8);
- (2) "individual" means an individual who is a participant in, a beneficiary of, or an alternate payee of a retirement plan;
- (3) "retirement plan" means a retirement plan that is qualified under 26 U.S.C. 401(a), 26 U.S.C. 403(a), 26 U.S.C. 403(b), 26 U.S.C. 408, or 26 U.S.C. 409 (Internal Revenue Code) (§ 3 ch 135 SLA 1988).

Editor's notes. — Section 11, ch 135, SLA 1988 provides that this section "does not apply to the assets of a bankruptcy estate in a proceeding filed under 11 U.S.C. (Bankruptcy) before September 6, 1988."

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 \$3,000 chosen by the individual from the following categories of property:

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

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

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

(b) An individual is entitled to exemption of jewelry, not exceeding \$1,000 in aggregate value, if held for the personal use of the individual or a dependent.

(c) An individual is entitled to exemption, not exceeding \$2,800 in aggregate value, of implements, professional books, and tools of the trade.

(d) An individual is entitled to the exemption of pets to the extent of a value not exceeding \$1,000.

(e) An individual is entitled to an exemption of one motor vehicle to the extent of a value not exceeding \$3,000 if the full value of the motor vehicle does not exceed \$20,000. (§ 2 ch 62 SLA 1982; am § 4 ch 135 SLA 1988)

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

Effect of amendments. — The 1988 amendment substituted "\$3,000" for "\$1,500" in the introductory language of

subsection (a) and in subsection (e), "\$1,000" for "\$500" in subsections (b) and (d), "\$2,800" for "\$1,400" in subsection (c), and "\$20,000" for "\$10,000" in subsection (e).

Sec. 09.38.025. Exemption of unmatured life insurance and annuity contracts. (a) Except as provided in this section or AS 09.38.017, an individual is entitled to exemption of unmatured life insurance and annuity contracts owned by the individual. If the contract has accrued dividends and loan values available to the individual exceeding more than \$10,000, 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 \$10,000 or the amount of the creditor's claim, whichever is less.

(b) A judgment creditor or other claimant of an insurer may not levy upon any of the assets or securities held in this state as a deposit for the protection of the insurer's policyholders or policyholders and creditors. Deposits under AS 21.09.270 may be levied upon if provided in the order of the director of insurance, Department of Commerce and Economic Development, under which the deposit is made. (8 2 ch 62 SLA 1982; am § 5 ch 135 SLA 1988)

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

Effect of amendments. — The 1988 amendment, in subsection (a), inserted "or AS 09.38.017" in the first sentence and substituted "\$10,000" for "\$5,000" twice in the second sentence.

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 \$350. 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 \$1,400, 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 11 U.S.C. 1301 — 1330 (Bankruptcy Reform Act of 1978).

(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 or 09.38.017, 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; am § 36 ch 6 SLA 1984; am §§ 6 — 8 ch 135 SLA 1988)

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

The 1988 amendment substituted

"\$350" for "\$175" in the first sentence in subsection (a) and "\$1,400" for "\$700" in the first sentence in subsection (b), and inserted "or 09.38.017" in the introductory language of subsection (e).

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 \$550, or, if the individual is claiming an exemption for cash or other liquid assets under AS 09.38.030(h), a maximum amount of \$2,200 available in a month is exempt. (§ 2 ch 62 SLA 1982; am § 9 ch 135 SLA 1988)

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

Effect of amendments. — The 1988

amendment substituted "\$550" for "\$275" and "\$2,200 available in a" for "\$1,100 available in any" in subsection (b).

Sec. 09.38.055. Bankruptcy proceedings. In a proceeding under 11 U.S.C. (Bankruptcy) only the exemptions under AS 09.38.010, 09.38.015(a), 09.38.017, 09.38.020, 09.38.025 and 09.38.030 apply (§ 2 ch 62 SLA 1982; am § 10 ch 135 SLA 1988)

Effect of amendments. — The 1988 amendment substituted "11 U.S.C. (Bankruptcy)" for "the Bankruptcy Act" and inserted "11 U.S.C." and inserted "09.38.017".

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. Ct. Op. No. 3172 (File No. S-1320), 736 P.2d 320 (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 (the index). The index for January of the year in which this section becomes effective is the reference base index.

(b) The dollar amounts change on October 1 of each even-numbered year if the percentage of change, calculated to the nearest whole percentage point, between the index for January of that year and the most recent index used to change the exemption amount, 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 August 26, 1982; 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 June 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; am § 37 ch 6 SLA 1984; am §§ 18, 19 ch 14 SLA 1987; am §§ 18, 19 ch 14 SLA 1987)

Effect of amendments. — The 1984 amendment substituted "November" for "December" in the introductory language of subsection (b).

The 1987 amendment in the introductory of subsection (b) substituted "October" for "July" and "January of that year and the most recent index used to change the exemption amount" for "November of the preceding year and the reference base index" and substituted "June" for "April" in subsection (d)(1).

Chapter 40. Provisional Remedies.

Article

1. Attachment (§ 09.40.050)

Article 1. Attachment.

Section

50. Lien on real estate

Sec. 09.40.040. Third party liability.

NOTES TO DECISIONS

Burden on garnishee to establish affirmative defense. — In an action pursuant to this section, a garnishee has the burden of establishing an affirmative defense such as a good faith reliance on a valid assignment. *Steenmeyer Corp. v. Mortenson-Neal*, Sup. Ct. Op. No. 3154 (File No. S-1410), P.2d (1987).

Sec. 09.40.050. Lien on real estate. If real property is attached, the peace officer shall make a certificate containing the title of the cause, the names of the parties, a description of the property attached, the date of attachment, a statement that a writ of attachment has been issued, and the date of issuance, and shall within 10 days deliver the certificate to the recorder of the recording district in which the real property is situated. The recorder shall record the certificate in a book to be kept for that purpose. When the certificate is recorded, the lien in favor of the plaintiff attaches to the real property described in the certificate from the date of the attachment, but if recorded afterwards, it only attaches as against third persons from the date of the

subsequent recording. Whenever the lien is discharged, it is the duty of the recorder, when requested, to record the transcript of an order, entry of satisfaction of judgment, or other proceeding of record whereby it appears that the lien has been discharged. (§ 7.05 ch 101 SLA 1962)

Revisor's notes. — Minor word changes related to the recording of documents were made in this section in 1988 because of the enactment of ch 161, SLA 1988

Chapter 43. Arbitration.

Article

1. Uniform Arbitration Act (§§ 09.43.160, 09.43.170)

NOTES TO DECISIONS

Cited in *City of Valdez v. 18.99 acres*, Sup. Ct. Op. No. 2834 (File No. 6940), 686 P.2d 682 (1984).

Article 1. Uniform Arbitration Act.

Section

160. Appeals
170. Court, jurisdiction

Sec. 09.43.160. Appeals. (a) An appeal may be taken from (1) an order denying an application to compel arbitration made under AS 09.43.020;

(2) an order granting an application to stay arbitration made under AS 09.43.020(b);

(3) an order confirming or denying confirmation of an award;

(4) an order modifying or correcting an award;

(5) an order vacating an award without directing a rehearing; or

(6) a judgment or decree entered under the provisions of AS 09.43.010 — 09.43.180.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action. (§ 1 ch 232 SLA 1968)

Editor's notes. — This section is set out above to correct a minor error in the main pamphlet

Sec. 09.43.170. Court, jurisdiction. In AS 09.43.010 — 09.43.180, the term "court" means the court with jurisdiction in this state. The making of an agreement described in AS 09.43.010 providing for arbitration in this state confers jurisdiction on the court to enforce the agreement under AS 09.43.010 — 09.43.180 and to enter judgment on

creditor's claim. If the individual does not exercise the repurchase right under this subsection, the clerk of the court shall first remit an amount determined to be exempt to the individual from the proceeds of sale and the balance less the cost of the sale to the creditor. For the purpose of collecting an amount remaining unpaid on a judgment after repurchase of property by an individual under this subsection, the creditor or the creditor's assignee may not make another levy on the property repurchased.

(d) Upon entry of the order of confirmation under (c) of this section and expiration of the time period for repurchase, the clerk may execute a deed to the property and when delivered it shall be sufficient to convey all title of the individual in the premises sold to the purchaser at the sale. (§ 2 ch 62 SLA 1982; am §§ 1, 2 ch 135 SLA 1988)

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

Effect of amendments. — The 1988 amendment substituted "the individual"

for "that individual" twice in subsection (a) and once in the last sentence in subsection (b), and "\$54,000" for "\$27,000" in subsection (a) and in the last two sentences in subsection (b).

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).

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.

(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 09.05.132(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 39.35.505; for provisions exempting longevity bonuses from levy to enforce collection of a debt, see AS 47.45.120(h); for applicability of the exemptions from execution in proceedings to enforce payment of child support, see AS 47.23.250.

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 Authority" 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. Daugh Constr. & Eng'g Co., Sup. Ct. Op. No. 3083 (File No. S-699, S-831), P.2d (1986).

Sec. 09.38.017. Exemption of retirement plan interests and payments. (a) In addition to the exemption under AS 09.38.015(b), the following are exempt from a claim of an individual's creditor:

- (1) the interest of the individual in a retirement plan; and
- (2) the money or other assets payable to the individual from a retirement plan.

(b) The exemptions provided by (a) of this section do not apply to a contribution made by an individual to a retirement plan within 120 days before the individual files for bankruptcy.

(c) The exemptions provided by (a) of this section do not prevent the payment of benefits under a retirement plan to an alternate payee under a qualified domestic relations order. In this subsection, "qualified domestic relations order" has the meaning given in 26 U.S.C. 414(p).

(d) A retirement plan exempt from claims under (a) of this section is conclusively presumed to be a spendthrift trust under this section.

Chapter 38. Alaska Exemptions Act.

Section	
10	Homestead exemption
15	Property exempt without limitation
20	Exemptions of personal property subject to value limitations
25	Exemption of unmaturing life insurance and annuity contracts
30	Exemption of earnings and liquid assets
35	Continuing lien on wages
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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.

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, 55 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 the balance less the cost of the sale to the creditor. For the purpose of collecting an amount remaining unpaid on a judgment after repurchase of property by an individual under this subsection, the creditor or the creditor's assignee may not make another levy on the property repurchased.

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

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

NOTES TO DECISIONS

Prior law. — For cases construing former statutes, see *Seagreen v. Wendler*, 5 Alaska 715 (1917); *Wendler v. Brenneisen*, 7 Alaska 13 (1923); *Williams v. Thompson*, 7 Alaska 60 (1927). In re *Bocash*, 10 Alaska 206 (1912); *Dalton v. Interior Credit Bureau, Inc.* Sup. Ct. Op. No. 2158 (File No. 4265); 615 P.2d 631 (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 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 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 23.30.100(h), 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 39.35.500(h); for provisions exempting longevity bonuses from levy to enforce collection of a debt, see AS 47.45.120(h); 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. 2781), 574 P.2d 1274 (1978).

Liquor licenses not exempted from coverage under Article D of the

Uniform Commercial Code (AS 45.09). — See *Gibson v. Alaska ABC Bd.*, 377 F. Supp. 151 (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. 2196), 530 P.2d 1317 (1975), decided under former AS 09.35.080.

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

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

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

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

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

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

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

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

NOTES TO DECISIONS

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

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

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

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

Purpose of personal and household property exemptions. — Personal and household property exemptions are designed to ensure that debtors will have necessary items for living in reasonable comfort and for earning a living. *Guterman 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. *Guterman 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 and 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's claim, whichever is less.

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

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

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. Atty 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 be applied. November 15, 1982, Op. Atty Gen.

The preemption by 15 U.S.C. § 1673 is limited. Under the provisions of 15 U.S.C. §§ 1673(e) 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 after consideration of both the federal and state formulas, whichever results in the least amount garnished should be applied. November 15, 1982, Op. Atty Gen.

NOTES TO DECISIONS

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

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

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

Sec. 09.38.040. 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 prior liens 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. 09.38.045. 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. (§ 2 ch 62 SLA 1982)

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

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

(A) child support;

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

(C) state or local taxes; and

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

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

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

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

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

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

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

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

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

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

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

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 governs a proceeding for the determination of a contest in respect to a claim to exemption of property under AS 09.38.020.

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

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

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 with in 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.

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

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

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

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

Cross references. — For provisions and other petition of tenancy, see AS making homestead held by tenants for the 31.15.1980 entirely liable for the debts of either ten.

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

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

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

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

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

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

(c) If the index is revised, the 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 otherwise;

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

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

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

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

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

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

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

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

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

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

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

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.

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THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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APR 3 1989

JAN FAIKS
SENATE OFFICE

MEMORANDUM

April 3, 1989

SUBJECT: Arbitration of Valdez disaster claims
(Work Order No. 6-1164)

TO: Senator Tim Kelly

FROM: Terri Lauterbach *TL*
Legislative Counsel

Enclosed is your bill establishing a special arbitration commission for Valdez oil spill claims.

As you have probably heard, there is a federal law that has set up a special fund for claims based on oil discharges from vessels carrying crude oil that flowed through the Trans-Alaska Pipeline System. Strict liability, up to a maximum of \$100 million per incident, is imposed under the federal law unless the owner or operator of the vessel or the fund administrator can prove the damages were caused by negligence of a government entity or the damaged party. If claims exceed that amount, each claim is reduced proportionately. The unpaid portion of a claim may be pursued under other applicable law, which may or may not require proof of negligence.

I do not know if a claim must be pursued under federal law before other remedies are pursued. So, I do not know precisely when arbitration by your special commission would be appropriate. However, since it seems likely that total claims arising from the Valdez disaster will exceed \$100 million, arbitration by the special commission will eventually be appropriate even if a claim must be pursued under the federal law first. As a practical matter, Exxon will probably not agree to arbitration until the \$100 million federal fund is depleted.

Senator Tim Kelly
Page 2
April 3, 1989

I have enclosed a copy of the entire chapter of federal law related to the pipeline. The most pertinent section begins on page 509. If I can be of further assistance, please let me know.

TL:gc
WKG8/105

Enclosure

CHAPTER 34—TRANS-ALASKA PIPELINE

Sec.

1651. Congressional findings and declaration.
1652. Authorizations for construction.
- (a) Congressional declaration of purpose.
 - (b) Issuance, administration, and enforcement of rights-of-way, permits, leases, and other authorizations.
 - (c) Applicability of statutes governing rights-of-way for pipelines through Federal lands; other statutory terms and conditions; waiver of procedural requirements; supersedure of administrative authorizations for construction.
 - (d) National Environmental Policy Act of 1969 by-passed; issuance of authorizations for construction and operation not to be subject to judicial review; time limits on charges of invalidity or unconstitutionality; jurisdiction; hearings; review.
 - (e) Amendment or modification of rights-of-way, permits, leases, or other authorizations.
1653. Liability for damages.
- (a) Activities along or in vicinity of pipeline right-of-way; strict liability; limitation on liability; subrogation; emergency subsistence and other aid; exemption for State of Alaska.
 - (b) Control and removal of pollutants at expense of right-of-way holder.
 - (c) Discharges of oil from vessels loaded at terminal facilities of pipeline; strict liability; limitation on liability; apportionment of liability; establishment and operation of Trans-Alaska Pipeline Liability Fund.
1654. Antitrust laws.
1655. Roads and airports.

§ 1651. Congressional findings and declaration

The Congress finds and declares that:

(a) The early development and delivery of oil and gas from Alaska's North Slope to domestic markets is in the national interest because of growing domestic shortages and increasing dependence upon insecure foreign sources.

(b) The Department of the Interior and other Federal agencies, have, over a long period of time, conducted extensive studies of the technical aspects and of the environmental, social, and economic impacts of the proposed trans-Alaska oil pipeline, including consideration of a trans-Canada pipeline.

(c) The earliest possible construction of a trans-Alaska oil pipeline from the North Slope of Alaska to Port Valdez in that State will make the extensive proven and potential reserves of low-sulfur oil available for domestic use and will best serve the national interest.

(d) A supplemental pipeline to connect the North Slope with a trans-Canada pipeline may be needed later and it should be studied now, but it should not be regarded as an alternative for a trans-Alaska pipeline that does not traverse a foreign country.

(Pub.L. 93-153, Title II, § 202, Nov. 16, 1973, 87 Stat. 584.)

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DATE 11/15/81

Historical Note

Short Title. Section 201 of Pub.L. 93-153 provided that: "This title [which enacted this chapter] may be cited as the 'Trans-Alaska Pipeline Authorization Act'."

Separability of Provisions. Section 411 of Pub.L. 93-153 provided that: "If any provision of this Act [enacting this chapter, section 1456a of this title, and section 3512 of Title 44, Public Printing and Documents, amending section 1608 of this title, sections 45, 46, 53, and 56 of Title 15, Commerce and Trade, section 185 of Title 30, Mineral Lands and Mining, section 3502 of Title 44, and section 391a of Title 46, Shipping, and enacting provisions set out as notes under sections 1608 and 1651 of this title, section 1904 of Title 12, Banks and Banking, section 45 of Title 15, section 791a of Title 16, Conservation, and section 1221 of Title 33, Navigation and Navigable Waters] or the applicability thereof is held invalid the remainder of this Act shall not be affected thereby."

North Slope Crude Oil; Report on Equitable Allocation. Pub.L. 94-586, § 18, Oct. 22, 1976, 90 Stat. 2916, directed that the President, within 6 months of Oct. 22, 1976, determine special expediting procedures necessary to insure the equitable allocation of North Slope crude oil to the Northern Tier States of Washington, Oregon, Idaho, Montana, Illinois, Indiana, and Idaho to carry out the provisions of section 410 of Pub.L. 93-153 [set out below], and to report his findings to Congress, such report to include a statement demonstrating the impact that the delivery system would have on reducing the dependency of New England and the Middle Atlantic States on foreign oil imports.

Trans-Canada Pipeline; Negotiations With Canada; Feasibility Study. Title III (sections 301 to 303) of Pub.L. 93-153 authorized the President to enter into negotiations with the Government of Canada to determine Canadian willingness to permit construction of pipelines or other transportation systems across its territory to bring gas and oil from Alaska's North Slope to the United States; the need for intergovernmental agreements to protect interests of any parties involved with construction, operation, and maintenance of such natural gas or oil transportation systems; terms and conditions for construction across Canadian territory; desirability of joint studies to insure environmental protection, reduce regulatory uncertainty, and insure meeting energy requirements; quantity of oil and gas for which Canada would guarantee

transit; and acquisition of other energy sources so as to make unnecessary the shipment of oil from the Alaska pipeline by tanker into the Puget Sound area. The President was to report to Congress on actions taken and recommendations for further action. In addition, the Secretary of the Interior was to investigate, and to report to Congress within 2 years of Nov. 16, 1973, as to the feasibility of oil or gas pipelines from the North Slope of Alaska to connect with a pipeline through Canada that would deliver gas to United States markets. Nothing in Title III was to limit the authority of the Secretary or any other Federal official to grant a gas or oil pipeline right-of-way or permit, which that official was otherwise authorized by law to grant.

Exclusion of Persons From Trans-Alaska Pipeline Activities on Basis of Race, Creed, Color, National Origin, or Sex Prohibited. Section 403 of Pub.L. 93-153 provided that: "The Secretary of the Interior shall take such affirmative action as he deems necessary to assure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from receiving, or participating in any activity conducted under, any permit, right-of-way, public land order, or other Federal authorization granted or issued under title II [this chapter]. The Secretary of the Interior shall promulgate such rules as he deems necessary to carry out the purposes of this subsection and may enforce this subsection, and any rules promulgated under this subsection, through agency and department provisions and rules which shall be similar to those established and in effect under title VI of the Civil Rights Act of 1964 [section 2000d et seq. of Title 42]."

Equitable Allocation of North Slope Crude Oil. Section 410 of Pub.L. 93-153 provided that: "The Congress declares that the crude oil on the North Slope of Alaska is an important part of the Nation's oil resources, and that the benefits of such crude oil should be equitably shared, directly or indirectly, by all regions of the country. The President shall use any authority he may have to insure an equitable allocation of available North Slope and other crude oil resources and petroleum products among all regions and all of the several States."

Legislative History. For legislative history and purpose of Pub.L. 93-153, see 1973 U.S. Code Cong. and Adm. News, p. 2417.

§ 1652. Authorizations for construction

(a) Congressional declaration of purpose

The purpose of this chapter is to insure that, because of the extensive governmental studies already made of this project and the national interest in early delivery of North Slope oil to domestic markets, the trans-Alaska oil pipeline be constructed promptly without further administrative or judicial delay or impediment. To accomplish this purpose it is the intent of the Congress to exercise its constitutional powers to the fullest extent in the authorizations and directions herein made and in limiting judicial review of the actions taken pursuant thereto.

(b) Issuance, administration, and enforcement of rights-of-way, permits, leases, and other authorizations

The Congress hereby authorizes and directs the Secretary of the Interior and other appropriate Federal officers and agencies to issue and take all necessary action to administer and enforce rights-of-way, permits, leases, and other authorizations that are necessary for or related to the construction, operation, and maintenance of the trans-Alaska oil pipeline system, including roads and airstrips, as that system is generally described in the Final Environmental Impact Statement issued by the Department of the Interior on March 20, 1972. The route of the pipeline may be modified by the Secretary to provide during construction greater environmental protection.

(c) Applicability of statutes governing rights-of-way for pipelines through Federal lands; other statutory terms and conditions; waiver of procedural requirements; superseding of administrative authorizations for construction

Rights-of-way, permits, leases, and other authorizations issued pursuant to this chapter by the Secretary shall be subject to the provisions of section 185 of Title 30, as amended by Pub.L. 93-153, (except the provisions of subsections (h)(1), (k), (q), (w)(2), and (x)); all authorizations issued by the Secretary and other Federal officers and agencies pursuant to this chapter shall include the terms and conditions required, and may include the terms and conditions permitted, by the provisions of law that would otherwise be applicable if this chapter had not been enacted, and they may waive any procedural requirements of law or regulation which they deem desirable to waive in order to accomplish the purposes of this chapter. The direction contained in subsection (b) of this section shall supersede the provisions of any law or regulation relating to an administrative determination as to whether the authorizations for construction of the trans-Alaska oil pipeline shall be issued.

(d) National Environmental Policy Act of 1969 by-passed; issuance of authorizations for construction and operation not to be subject to judicial review; time limits on charges of invalidity or unconstitutionality; jurisdiction; hearings; review

The actions taken pursuant to this chapter which relate to the construction and completion of the pipeline system, and to the applications filed in connection therewith necessary to the pipeline's operation at full capacity, as described in the Final Environmental Impact Statement of the Department of the Interior, shall be taken without further action under the National

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 WASHINGTON DC 20540

Environmental Policy Act of 1969 [42 U.S.C.A. § 4321 et seq.] and the actions of the Federal officers concerning the issuance of the necessary rights-of-way, permits, leases, and other authorizations for construction and initial operation at full capacity of said pipeline system shall not be subject to judicial review under any law except that claims alleging the invalidity of this section may be brought within sixty days following November 16, 1973, and claims alleging that an action will deny rights under the Constitution of the United States, or that the action is beyond the scope of authority conferred by this chapter, may be brought within sixty days following the date of such action. A claim shall be barred unless a complaint is filed within the time specified. Any such complaint shall be filed in a United States district court, and such court shall have exclusive jurisdiction to determine such proceeding in accordance with the procedures hereinafter provided, and no other court of the United States, of any State, territory, or possession of the United States, or of the District of Columbia, shall have jurisdiction of any such claim whether in a proceeding instituted prior to or on or after November 16, 1973. Such court shall not have jurisdiction to grant any injunctive relief against the issuance of any right-of-way, permit, lease, or other authorization pursuant to this section except in conjunction with a final judgment entered in a case involving a claim filed pursuant to this section. Any review of an interlocutory or final judgment, decree, or order of such district court may be had only upon direct appeal to the Supreme Court of the United States.

(e) Amendment or modification of rights-of-way, permits, leases, or other authorizations

The Secretary of the Interior and the other Federal officers and agencies are authorized at any time when necessary to protect the public interest, pursuant to the authority of this section and in accordance with its provisions, to amend or modify any right-of-way, permit, lease, or other authorization issued under this chapter.

(Pub.L. 93-153, Title II, § 203, Nov. 16, 1973, 87 Stat. 584; Pub.L. 98-620, Title IV, § 402(46), Nov. 8, 1984, 98 Stat. 3360.)

Historical Note

References in Text. The National Environmental Policy Act of 1969, referred to in subsec. (d), is Pub.L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (section 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables volume.

1984 Amendment. Subsec. (d). Pub.L. 98-620 struck out provision that any such proceeding had to be assigned for hearing at the earliest possible date, had to take precedence over all other matters pending on the docket of the district court at that time, and

had to be expedited in every way by such court.

Effective Date of 1984 Amendment. Amendment by Pub.L. 98-620 not to apply to cases pending on Nov. 8, 1984, see section 403 of Pub.L. 98-620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

Legislative History. For legislative history and purpose of Pub.L. 93-153, see 1973 U.S. Code Cong. and Adm. News, p. 2417. See also, Pub.L. 98-620, 1984 U.S. Code Cong. and Adm. News, p. 5708.

Cross References

Roads and airports, see section 1655 of this title.

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Environmental Policy Act

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Short supply controls, domestically produced crude oil, see section 2406 of the Appendix to Title 50, War and National Defense

Federal Practice and Procedure

Relationship to lower federal court jurisdiction, see Wright, Miller & Cooper: Jurisdiction 2d § 3526.

West's Federal Forms

Preliminary injunctions and temporary restraining orders, matters pertaining to, see § 5271 et seq.

Supreme Court jurisdiction on appeal, see § 121 et seq

West's Federal Practice Manual

Rights-of-way, see § 5449.

Notes of Decisions

1. Purpose

The intent of this section which vests exclusive jurisdiction over certain disputes in the United States district courts was to limit

litigation that would delay construction of the pipeline. *Alyeska Pipeline Service Co. v. U.S.*, 1980, 624 F.2d 1005, 224 Ct.Cl. 240.

§ 1653. Liability for damages

(a) Activities along or in vicinity of pipeline right-of-way; strict liability; limitation on liability; subrogation; emergency subsistence and other aid; exemption for State of Alaska

(1) Except when the holder of the pipeline right-of-way granted pursuant to this chapter can prove that damages in connection with or resulting from activities along or in the vicinity of the proposed trans-Alaskan pipeline right-of-way were caused by an act of war or negligence of the United States, other government entity, or the damaged party, such holder shall be strictly liable to all damaged parties, public or private, without regard to fault for such damages, and without regard to ownership of any affected lands, structures, fish, wildlife, or biotic or other natural resources relied upon by Alaska Natives, Native organizations, or others for subsistence or economic purposes. Claims for such injury or damages may be determined by arbitration or judicial proceedings.

(2) Liability under paragraph (1) of this subsection shall be limited to \$50,000,000 for any one incident and the holders of the right-of-way or permit shall be liable for any claim allowed in proportion to their ownership interest in the right-of-way or permit. Liability of such holders for damages in excess of \$50,000,000 shall be in accord with ordinary rules of negligence.

(3) In any case where liability without fault is imposed pursuant to this subsection and the damages involved were caused by the negligence of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damage occurred.

(4) Upon order of the Secretary, the holder of a right-of-way or permit shall provide emergency subsistence and other aid to an affected Alaska Native, Native organization, or other person pending expeditious filing of, and determination of, a claim under this subsection.

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(5) Where the State of Alaska is the holder of a right-of-way or permit under this chapter, the State shall not be subject to the provisions of this subsection, but the holder of the permit or right-of-way for the trans-Alaska pipeline shall be subject to this subsection with respect to facilities constructed or activities conducted under rights-of-way or permits issued to the State to the extent that such holder engages in the construction, operation, maintenance, and termination of facilities, or in other activities under rights-of-way or permits issued to the State.

(b) Control and removal of pollutants at expense of right-of-way holder

If any area within or without the right-of-way or permit area granted under this chapter is polluted by any activities conducted by or on behalf of the holder to whom such right-of-way or permit was granted, and such pollution damages or threatens to damage aquatic life, wildlife, or public or private property, the control and total removal of the pollutant shall be at the expense of such holder, including any administrative and other costs incurred by the Secretary or any other Federal officer or agency. Upon failure of such holder to adequately control and remove such pollutant, the Secretary, in cooperation with other Federal, State, or local agencies, or in cooperation with such holder, or both, shall have the right to accomplish the control and removal at the expense of such holder.

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(c) Discharges of oil from vessels loaded at terminal facilities of pipeline; strict liability; limitation on liability; apportionment of liability; establishment and operation of Trans-Alaska Pipeline Liability Fund

(1) Notwithstanding the provisions of any other law, if oil that has been transported through the trans-Alaska pipeline is loaded on a vessel at the terminal facilities of the pipeline, the owner and operator of the vessel (jointly and severally) and the Trans-Alaska Pipeline Liability Fund established by this subsection, shall be strictly liable without regard to fault in accordance with the provisions of this subsection for all damages, including clean-up costs, sustained by any person or entity, public or private, including residents of Canada, as the result of discharges of oil from such vessel.

(2) Strict liability shall not be imposed under this subsection if the owner or operator of the vessel, or the Fund, can prove that the damages were caused by an act of war or by the negligence of the United States or other governmental agency. Strict liability shall not be imposed under this subsection with respect to the claim of a damaged party if the owner or operator of the vessel, or the Fund, can prove that the damage was caused by the negligence of such party.

(3) Strict liability for all claims arising out of any one incident shall not exceed \$100,000,000. The owner and operator of the vessel shall be jointly and severally liable for the first \$14,000,000 of such claims that are allowed. Financial responsibility for \$14,000,000 shall be demonstrated in accordance with the provisions of section 1321(p) of Title 33 before the oil is loaded. The Fund shall be liable for the balance of the claims that are allowed up to \$100,000,000. If the total claims allowed exceed \$100,000,000, they shall be reduced proportionately. The unpaid portion of any claim may be asserted and adjudicated under other applicable Federal or state law.

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(4) The Trans-Alaska Pipeline Liability Fund is hereby established as a non-profit corporate entity that may sue and be sued in its own name. The Fund shall be administered by the holders of the trans-Alaska pipeline right-of-way under regulations prescribed by the Secretary. The Fund shall be subject to an annual audit by the Comptroller General, and a copy of the audit shall be submitted to the Congress.

(5) The operator of the pipeline shall collect from the owner of the oil at the time it is loaded on the vessel a fee of five cents per barrel. The collection shall cease when \$100,000,000 has been accumulated in the Fund, and it shall be resumed when the accumulation in the Fund falls below \$100,000,000.

(6) The collections under paragraph (5) shall be delivered to the Fund. Costs of administration shall be paid from the money paid to the Fund, and all sums not needed for administration and the satisfaction of claims shall be invested prudently in income-producing securities approved by the Secretary. Income from such securities shall be added to the principal of the Fund.

(7) The provisions of this subsection shall apply only to vessels engaged in transportation between the terminal facilities of the pipeline and ports under the jurisdiction of the United States. Strict liability under this subsection shall cease when the oil has first been brought ashore at a port under the jurisdiction of the United States.

(8) In any case where liability without regard to fault is imposed pursuant to this subsection and the damages involved were caused by the unseaworthiness of the vessel or by negligence, the owner and operator of the vessel, and the Fund, as the case may be shall be subrogated under applicable State and Federal laws to the rights under said laws of any person entitled to recovery hereunder. If any subrogee brings an action based on unseaworthiness of the vessel or negligence of its owner or operator, it may recover from any affiliate of the owner or operator, if the respective owner or operator fails to satisfy any claim by the subrogee allowed under this paragraph.

(9) This subsection shall not be interpreted to preempt the field of strict liability or to preclude any State from imposing additional requirements.

(10) If the Fund is unable to satisfy a claim asserted and finally determined under this subsection, the Fund may borrow the money needed to satisfy the claim from any commercial credit source, at the lowest available rate of interest, subject to approval of the Secretary.

(11) For purposes of this subsection only, the term "affiliate" includes—

(A) Any person owned or effectively controlled by the vessel owner or operator; or

(B) Any person that effectively controls or has the power effectively to control the vessel owner or operator by—

(i) stock interest, or

(ii) representation on a board of directors or similar body, or

(iii) contract or other agreement with other stockholders, or

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(iv) otherwise; or

(C) Any person which is under common ownership or control with the vessel owner or operator.

(12) The term "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, or an unincorporated organization.

(Pub.L. 93-153, Title II, § 204, Nov. 16, 1973, 87 Stat. 586.)

Historical Note

Delegation of Functions. Functions of the President under section 1321(p)(1) to (2) of Title 33, Navigation and Navigable Waters, as incorporated by reference in subsec. (c)(3) of this section, relating to the demonstration of financial responsibility for vessels carrying oil loaded from the Trans-Alaska pipeline, delegated to the Secretary of the Department

in which the Coast Guard is operating, see Ex.Ord. No. 12418, § 4, May 3, 1983. 48 F.R. 20891, set out as a note under section 1321 of Title 33.

Legislative History. For legislative history and purpose of Pub.L. 93-153, see 1973 U.S. Code Cong. and Adm.News, p 2417.

West's Federal Practice Manual

Rights-of-way, see § 5449.

Code of Federal Regulations

Liability fund, see 43 CFR 29.1 et seq.

Oil pollution, financial responsibility, see 33 CFR 131.1 et seq.

Library References

Health and Environment ⇨25.5(3).

C.J.S. Health and Environment §§ 91 et seq., 106 et seq., 129 et seq.

Notes of Decisions

- Claims within section 1
- Strict liability
- Generally 2
- Construction accidents 3
- Pollution clean-up 4

1. Claims within section

This section was intended to deal with environmental risks of the pipeline but did not cover ordinary personal injury and wrongful death claims unconnected with any environmental injury, in view of fact that, although literal interpretation indicated contrary result, overwhelming evidence of legislative history indicated that chapter was intended to deal with environmental accidents rather than ordinary torts. Heppner v. Alyeska Pipeline Service Co., C.A.Alaska 1981, 665 F.2d 868.

2. Strict liability—Generally

Provisions of this chapter were designed to establish the permit holders of the pipeline right-of-way as strictly liable for a broad

range of damages to the land, fish, wildlife, air, water, and the subsistence lifestyle of the Alaskan Native. Jordan v. Amerada Hess Corp., D.C.Alaska 1979, 479 F.Supp. 573.

3. — Construction accidents

This section was intended to render permit holders strictly liable for environmental harm, but was not intended to hold permit holders strictly liable for all damages of any kind that occurred "in connection with" or "in the vicinity of the proposed trans-Alaska pipeline right-of-way," and, hence, was not a basis for holding defendant oil companies strictly liable in action arising from injuries allegedly sustained in an automobile accident that occurred in vicinity of Alaska pipeline or in wrongful death action arising as a result of a construction accident in Alaska pipeline right-of-way. Jordan v. Amerada Hess Corp., D.C.Alaska 1979, 479 F.Supp. 573.

4. — Pollution clean-up

This chapter barred pipeline service company from recovering from the United States for



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Note 4

the cost of cleaning up oil discharged from the pipeline into navigable waters due to the fault of a party; this chapter made the pipeline company absolutely liable for any pollution resulting from operation of the pipeline and prevailed over the earlier enacted Water Pollution Control Act, section 1321(i)(1) of Title 33, which provides that the owner or

operator of the facility that caused pollution may recover its cleanup costs from the United States if the oil discharged was caused by a third party and did not involve any fault of the owner or operator. Alyeska Pipeline Service Co. v. U.S., 1981, 649 F.2d 831, 227 Ct.Cl. 297, certiorari denied 102 S.Ct. 505, 454 U.S. 964, 70 L.Ed.2d 380

§ 1654. Antitrust laws

The grant of a right-of-way, permit, lease, or other authorization pursuant to this chapter shall grant no immunity from the operation of the Federal anti-trust laws.

(Pub.L. 93-153, Title II, § 205, Nov. 16, 1973, 87 Stat. 588.)

Historical Note

References in Text. The Federal antitrust laws, referred to in text, are classified generally to chapter 1 (section 1 et seq.) of Title 15, Commerce and Trade

Legislative History. For legislative history and purpose of Pub.L. 93-153, see 1973 U.S. Code Cong. and Adm. News, p. 2417.

§ 1655. Roads and airports

A right-of-way, permit, lease, or other authorization granted under section 1652(b) of this title for a road or airstrip as a related facility of the trans-Alaska pipeline may provide for the construction of a public road or airstrip.

(Pub.L. 93-153, Title II, § 206, Nov. 16, 1973, 87 Stat. 588.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 93-153, see 1973 U.S. Code Cong. and Adm. News, p. 2417.

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Sec. 09.40.310. Third party claims. If the property taken is claimed by any person other than the defendant, and that person makes an affidavit of title to the property or the right to the possession of it, stating the grounds of the title or right, and serves it upon the peace officer taking the property while the property is still in the peace officer's custody, the peace officer may release the property unless the plaintiff, on demand of the officer, indemnifies the peace officer against the third party claim by a written undertaking approved by the clerk of court and executed by sufficient sureties. (§ 24.06 ch 101 SLA 1962)

NOTES TO DECISIONS

Stated in *First Nat'l Bank v. Zawodny*,
Sup. Ct. Op. No. 1976 (File No. 4188), 602
P.2d 1254 (1979).

Chapter 43. Arbitration.

Article

1. Uniform Arbitration Act (§§ 09.43.010 — 09.43.180)
2. Arbitration of Small Claims (§§ 09.43.190 — 09.43.220)

Article 1. Uniform Arbitration Act.

Section	Section
10. Arbitration agreements valid; application of article	100. Fees and expenses of arbitration
20. Proceedings to compel or stay arbitration	110. Confirmation of an award
30. Appointment of arbitrators by court	120. Vacating an award
40. Majority action by arbitrators	130. Modification or correction of award by court
50. Hearing	140. Judgment or decree on award
60. Representation by attorney	150. Applications to court
70. Witnesses, subpoenas, depositions	160. Appeals
80. Award	170. Court, jurisdiction
90. Modification of award by arbitrators	180. Short title

Cross references. — For court rule provision on arbitration and award as an affirmative defense, see Civ. R. 8(c).

NOTES TO DECISIONS

Public policy in Alaska favors arbitration as a means of resolving disputes without court interference. *Arctic Contractors v. State*, Sup. Ct. Op. No. 1420 (File Nos. 2595, 2657), 564 P.2d 30 (1977), *aff'd* on other grounds. Sup. Ct. Op. No. 1557, 573 P.2d 1385 (1978).

And is demonstrated by adoption of this article. — Alaska's strong public policy in favor of arbitration is demonstrated by the adoption of this article. *Modern Constr., Inc. v. Barce, Inc.*, Sup. Ct. Op. No. 1336 (File No. 3060), 556 P.2d 528 (1976).

Freedom to contract for arbitration terms. — In the absence of statutory restrictions, parties are free to contract for

the terms of arbitration they desire. *Board of Educ. v. Ewig*, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1980).

Collateral references. — 5 Am. Jur. 2d, *Arbitration and Award*, § 1 et seq.

6 C.J.S., *Arbitration*, § 1 et seq.

Resolving real estate disputes through arbitration, 27 Am. Jur. *Trials*, pp. 621-678.

Validity of state statutory provisions for arbitration of labor disputes, as against the objection of delegation of legislative power without setting up adequate standards to guide the administrative agency, 9 ALR2d 871.

Quotient arbitration award or appraisal, 20 ALR2d 958.

Matters arbitrable under arbitration provisions of collective labor contract, 24 ALR2d 752.

Equity jurisdiction to determine valuation, where arbitration or appraisal has failed, under long-term lease providing for appraisal of premises and fixing rental value at stated intervals, 26 ALR2d 744.

Arbitrator's viewing or visiting premises or property alone as misconduct justifying vacation of award, 27 ALR2d 1160.

Laches or statute of limitations as bar to arbitration under agreement, 37 ALR2d 1125.

Arbitration provisions of employment contract providing for severance or dismissal pay, 40 ALR2d 1052.

Contract providing that it is governed by or subject to rules or regulations of a particular trade, business, or association as incorporating agreement to arbitrate, 41 ALR2d 872.

Validity and effect of arbitration agreement provision that, upon one party's failure to appoint arbitrator, controversy may be determined by arbitrator appointed by other party, 47 ALR2d 1346.

Arbitrator's consultation with outsider or outsiders as misconduct justifying vacation of award, 47 ALR2d 1362.

Effect of vacancy through resignation, withdrawal, or death of one of multiple arbitrators on authority of remaining arbitrators to render award, 49 ALR2d 900.

Constitutionality of arbitration statutes, 55 ALR2d 432.

Death of party to arbitration agreement before as revocation or termination of submission, 65 ALR2d 754.

Arbitration of disputes within close corporation, 64 ALR2d 643.

Construction and application of provisions of general arbitration statutes excluding from their operation contracts for labor or personal services, 64 ALR2d 1336.

Disqualification of arbitrator by court or stay of arbitration proceedings prior to award, on ground of interest, bias, prejudice, collusion, or fraud of arbitrators, 65 ALR2d 755.

Power of president of corporation to commence or to carry on arbitration proceedings, 65 ALR2d 1321.

Power of arbitrators to award injunction, 70 ALR2d 1055.

Dissolved corporation's power to participate in arbitration proceedings, 71 ALR2d 1121.

Agreement to arbitrate future controversies as binding on infants, 78 ALR2d 1292.

Covenant in lease to arbitrate, or to submit to appraisal, as running with the leasehold so as to bind assignee, 81 ALR2d 804.

Necessity that arbitrators, in making awards, make specific or detailed findings of fact or conclusions of law, 82 ALR2d 969.

Time for impeaching arbitration award, 85 ALR2d 779.

Claim of fraud in inducement of contract as subject to compulsory arbitration clause contained in contract, 91 ALR2d 936.

Appealability of order or decree compelling or refusing to compel arbitration, 94 ALR2d 1071.

Discovery in aid of arbitration proceedings, 98 ALR2d 1247.

Enforcement of contractual arbitration clause as affected by expiration of contract prior to demand for arbitration, 5 ALR3d 1008.

Confirming or setting aside award: appealability of judgment confirming or setting aside arbitration award, 7 ALR3d 608.

Availability and scope of declaratory judgment actions in determining rights of parties, or powers and exercise thereof by arbitrators, under arbitration agreements, 12 ALR3d 654.

Validity and effect, and remedy in respect, of contractual stipulation to submit disputes to arbitration in another jurisdiction, 12 ALR3d 892.

Validity and construction of provision for arbitration of disputes as to alimony or support payments, or child visitation or custody matters, 18 ALR3d 1264.

Municipal corporation's power to submit to arbitration, 20 ALR3d 569.

Validity and enforceability of provision for binding arbitration, and waiver thereof, 24 ALR3d 1325.

Necessity and sufficiency of notice of and hearing in proceedings before appraisers and arbitrators appointed to determine amount of loss, 25 ALR3d 680.

Delay in asserting contractual right to arbitration as precluding enforcement thereof, 25 ALR3d 1171.

Waiver, or estoppel to assert, substantive right or right to arbitrate as question for court or arbitrator, 26 ALR3d 604.

Breach or repudiation of collective labor contract as subject to, or as affecting right to enforce, arbitration provision in contract, 29 ALR3d 688.

Breach or repudiation of contract as affecting right to enforce arbitration clause therein, 32 ALR3d 377.

Participation in arbitration proceedings as waiver of objections to arbitrability, 33 ALR3d 1242.

Power of arbitrator to correct, or power of court to correct or resubmit, nonlabor award because of incompleteness or failure to pass on all matters submitted, 36 ALR3d 939.

Setting aside arbitration award on ground of interest or bias of arbitrators, 56 ALR3d 697.

Construction and effect of contractual or statutory provisions fixing time within which arbitration award must be made, 56 ALR3d 815.

Liability of parties to arbitration for costs, fees, and expenses, 57 ALR3d 633.

Privileged nature of communications

made in course of grievance or arbitration procedure provided for by collective bargaining agreement, 60 ALR3d 1041.

State court's power to consolidate arbitration proceedings, 64 ALR3d 528.

Validity and construction of statutes or ordinances providing for arbitration of labor disputes involving public employees, 68 ALR3d 885.

Demand for or submission to arbitration as affecting enforcement of mechanics' lien, 73 ALR3d 1042.

Filing of mechanics' lien or proceeding for its enforcement as affecting right to arbitration, 73 ALR3d 1066.

Refusal of arbitrators to receive evidence, or to permit briefs or arguments, on particular issues as grounds for relief from award, 75 ALR3d 132.

Admissibility of affidavit or testimony of arbitrator to impeach or explain award, 80 ALR3d 155.

Modern status of rules respecting concurrence of all arbitrators as condition of binding award under private agreement not specifying unanimity, 83 ALR3d 996.

Arbitration of medical malpractice claims, 84 ALR3d 375.

Arbitrator's power to award punitive damages, 83 ALR3d 1037.

Statute of limitations as bar to arbitration under agreement, 94 ALR3d 533.

Conflict of laws as to validity and effect of arbitration provision in contract for purchase or sale of goods, products, or services, 95 ALR3d 1145.

Defendant's participation in action as waiver of right to arbitration of dispute involved therein, 98 ALR3d 767.

Appealability of state court's order or decree compelling or refusing to compel arbitration, 6 ALR4th 652.

Claim of fraud in inducement of contract as subject to compulsory arbitration clause contained in contract, 11 ALR4th 774.

Validity of statute or rule providing for arbitration of fee disputes between attorneys and their clients, 17 ALR4th 993.

Sec. 09.43.010. Arbitration agreements valid; application of article. A written agreement to submit an existing controversy to arbitration or a provision in a written contract to submit to arbitration a subsequent controversy between the parties is valid, enforceable and irrevocable, except upon grounds which exist at law or in equity for the revocation of a contract. However, AS 09.43.010 — 09.43.180 do not apply to a labor-management contract unless they are incorporated into the contract by reference or their application is provided for by statute. (§ 1 ch 232 SLA 1968; am § 3 ch 113 SLA 1972)

Cross references. — For arbitration agreements under Public Employment Relations Act, see AS 23.40.200(f).

Legislative history reports. — For report on ch. 232, SLA 1968 (HB 212 am FCC), see 1968 House Journal, p. 861.

NOTES TO DECISIONS

Section applicable to option to arbitrate. — An option to arbitrate in a written contract is a provision in a written contract to submit a controversy to arbitration and is thus literally within the meaning of this section which states that such a provision is valid. *Willis Flooring, Inc. v. Howard S. Lease Constr. Co. & Assocs.*, Sup. Ct. Op. No. 2598 (File No. 6736), 656 P.2d 1184 (1983).

Cited in *Harold's Trucking v. Kelsey*, Sup. Ct. Op. No. 1739 (File No. 3695), 584 P.2d 1128 (1978); *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978); *City of Fairbanks v. Rice*, Sup. Ct. Op. No. 2354 (File No. 4951), 628 P.2d 565 (1981); *Masden v. University of Alaska*, Sup. Ct. Op. No. 2421 (File No. 5291), 633 P.2d 1374 (1981).

Sec. 09.43.020. Proceedings to compel or stay arbitration. (a) On application of a party showing an agreement described in AS 09.43.010, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue and if the agreement is found to exist shall order arbitration.

(b) On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. The issue, when in substantial and bona fide dispute, shall be immediately and summarily tried and the stay ordered if no agreement is found to exist. If found for the opposing party, the court shall order the parties to proceed to arbitration.

(c) If an issue subject to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under (a) of this section, the application shall be made in that court. Otherwise the application may be made in any court of competent jurisdiction.

(d) An action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application for the order has been made under this section or, if the issue is severable, the stay may be with respect to the issue only.

(e) An order for arbitration may not be refused on the ground that the claim in issue lacks merit or because a fault or ground for the claims sought to be arbitrated has not been shown. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

Arbitrability to be determined prior to rendition of award. — This section provides for court determination of the issue of arbitrability prior to rendition of

an award and before the parties have subjected themselves to the effort and expense of arguing the merits of the dispute to the panel. *University of Alaska v. Modern*

Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Possibility of waiver or estoppel where party fails to seek court review of the arbitrators' decision on arbitrability until after rendition of award. — See University of Alaska v.

Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Applied in Anchorage Daily News, Inc. v. Anchorage Times Publishing Co., Sup. Ct. Op. No. 2393 (File No. 4966), 631 P.2d 500 (1981).

Sec. 09.43.030. Appointment of arbitrators by court. If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. If no method of appointment is provided, or if the agreed method fails or for any reason cannot be followed, or when before the hearing an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement. (§ 1 ch 232 SLA 1968)

Sec. 09.43.040. Majority action by arbitrators. The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by AS 09.43.010 — 09.43.180. (§ 1 ch 232 SLA 1968)

Sec. 09.43.050. Hearing. Unless otherwise provided by the agreement,

(1) the arbitrators shall set a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing; appearance at the hearing waives the notice; the arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date; the arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a properly notified party to appear;

(2) the parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing;

(3) the hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award; if, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals shall continue with the hearing and determination of the controversy. (§ 1 ch 232 SLA 1968)

Sec. 09.43.060. Representation by attorney. A party has the right to be represented by an attorney at a proceeding or hearing under this chapter. A waiver of the right before the proceeding or hearing is ineffective. (§ 1 ch 232 SLA 1968)

Sec. 09.43.070. Witnesses, subpoenas, depositions. (a) The arbitrators may cause to be issued subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and have the power to administer oaths. Subpoenas shall be served, and upon application to the court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(b) On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(c) All provisions of law compelling a person under subpoena to testify are applicable.

(d) Fees for attendance as a witness shall be the same as for a witness in the superior court. (§ 1 ch 232 SLA 1968)

Sec. 09.43.080. Award. (a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.

(b) An award shall be made within the time fixed by the agreement or, if not so fixed, within the time the court orders on application of a party. The parties may extend the time in writing either before or after the expiration of the time. A party waives the objection that an award was not made within the time required unless the party notifies the arbitrators of the objection before the delivery of the award to that party. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

The law favors arbitration with a minimum of court interference. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974); *Board of Educ. v. Ewig*, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1980).

Whenever possible an arbitration award rendered in the form required by this section is presumptively valid and shall be upheld without inquiry into the merit of the dispute. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Subsection (a) sets out the minimum requirements as to the form of an

award. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Written findings and conclusions not required. — The language in subsection (a) does not require the arbitrators to submit written findings of fact or conclusions of law. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Authority to fashion remedies. — There is ample authority for the proposition that arbitrators generally have authority to fashion any remedy necessary to the resolution of the dispute. *Board of Educ. v. Ewig*, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1980).

Sec. 09.43.090. Modification of award by arbitrators. On application to the arbitrators by a party or, if an application to the court by

a party is pending under AS 09.43.110 — 09.43.130 on submission to the arbitrators by the court under the conditions the court may order, the arbitrators may modify or correct the award upon the grounds stated in AS 09.43.130(a)(1) and (3), or for the purpose of clarifying the award. An application to the arbitrators by a party shall be made within 20 days after delivery of the award to the applicant. Written notice of the application shall be given promptly to the opposing party, stating that objections to the application must be served within 10 days from the notice. A modified or corrected award is subject to the provisions of AS 09.43.110 — 09.43.130. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

Superior court authorized to order clarification. — This section clearly authorizes the superior court to return an award to the arbitrators for clarification.

University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Sec. 09.43.100. Fees and expenses of arbitration. Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

Ordinarily attorney's fees are not awarded where matters are submitted to arbitration. This is consistent with the strong public policy favoring arbitration, which would be seriously undercut if a party could obtain attorney's fees merely by filing a complaint as an initial step in

the arbitration process. Harold's Trucking v. Kelsey, Sup. Ct. Op. No. 1739 (File No. 3695), 584 P.2d 1128 (1978).

Award of attorney's fees held proper. — See Harold's Trucking v. Kelsey, Sup. Ct. Op. No. 1739 (File No. 3695), 584 P.2d 1128 (1978).

Sec. 09.43.110. Confirmation of an award. Upon application of a party, the court shall confirm an award unless within the time limits imposed by AS 09.43.120 and 09.43.130 grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in AS 09.43.120 and 09.43.130. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

Applied in Willis Flooring, Inc. v. Howard S. Lease Constr. Co. & Assocs.,

Sup. Ct. Op. No. 2598 (File No. 6736), 656 P.2d 1184 (1983).

Sec. 09.43.120. Vacating an award. (a) On application of a party, the court shall vacate an award if

- (1) the award was procured by fraud or other undue means;
- (2) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of a party;
- (3) the arbitrators exceeded their powers;
- (4) the arbitrators refused to postpone the hearing upon sufficient cause being shown for postponement or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of AS 09.43.050, as to prejudice substantially the rights of a party; or
- (5) there was no arbitration agreement and the issue was not adversely determined in proceedings under AS 09.43.020 and the party did not participate in the arbitration hearing without raising the objection.

(b) The fact that the relief is such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(c) An application under this section shall be made within 90 days after delivery of a copy of the award to the applicant. However, if the application is predicated upon corruption, fraud or other undue means by either the opposing party or an arbitrator, it shall be made within 90 days after the grounds are known or should have been known.

(d) In vacating the award on grounds other than those stated in (a)(5) of this section the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence of a provision in the agreement, by the court in accordance with AS 09.43.030, or, if the award is vacated on grounds set out in (a)(3) or (4) of this section, the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with AS 09.43.030. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(e) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

This section and AS 09.43.130 define the superior court's power to review and either vacate or modify an arbitration award. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

An arbitrator's misconstruction of a contract is not open to judicial review,

except on questions of arbitrability. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

No review for gross errors. — The "fraud or other undue means" standard of this section does not authorize review for gross errors. *Alaska State Hous. Auth. v.*

Riley Pleas, Inc., Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

There is a substantial difference between procurement of an award by fraud or other undue means and an award in which the arbitrators have allegedly made large mistakes. The former instances connote affirmative wrongdoing by a party to the arbitration and often by an arbitrator; gross error carries no such connotation. Moreover, fraud or undue means in the procurement of an award does not require a review on the merits of the controversy; a review for gross errors is a review on the merits. Alaska State Hous. Auth. v. Riley Pleas, Inc., Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

Proceedings not reviewable for evidentiary sufficiency. — Since arbitration proceedings are not required by statute or by the rules of the American Arbitration Association to be conducted on the record, it is not possible to review them for evidentiary sufficiency. Alaska State Hous. Auth. v. Riley Pleas, Inc., Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

This article evinces a strong public policy in favor of arbitration. University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

The power of arbitrators are confined to those conferred upon them by the arbitration agreement, subject, of course, to further limitations imposed by the law of the jurisdiction. University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

A particular claim may be arbitrable although it is not so designated by "clear and unequivocal" contract language. University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Ambiguous contract terms may be construed in favor of arbitrability where such construction is not obviously contrary to the parties' intent, especially where the party contesting arbitrability drafted the contract. University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Claim not arbitrable. — Where the parties have clearly agreed to arbitrate only those "disputes arising in connection with this contract" a particular claim is not arbitrable if it is nowhere mentioned in the contract. University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

The question of whether the arbitrator exceeded his power in ordering monetary damages can be appealed. Board of Educ. v. Ewig, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1980).

Question on review. — When an award is attacked under this article on the grounds that the arbitrators exceeded their powers through erroneous interpretation of the contract, the reviewing court should determine whether the construction of the contract made by the arbitrators is a reasonably possible one that can seriously be made in the context in which the contract was made. University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974); Anchorage Medical & Surgical Clinic v. James, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

Stated affirmatively, if all fair and reasonable minds would agree that the construction of the contract made by the arbitrators was not possible under a fair interpretation of the contract, then the court would be bound to vacate or refuse to confirm the award. University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974); Anchorage Medical & Surgical Clinic v. James, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

Arbitrators' interpretation entitled to significant weight. — The arbitrators' interpretation of what is submitted to them is entitled to significant weight. Anchorage Medical & Surgical Clinic v. James, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

Arbitrators generally need not follow applicable law when deciding issues. — The general rule in both statutory and common-law arbitration is that arbitrators need not follow otherwise applicable law when deciding issues properly before them, unless they are commanded to do so by the terms of the arbitration agreement. University of Alaska v. Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974); Anchorage Medical & Surgical Clinic v. James, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

Authority to fashion remedies. — There is ample authority for the proposition that arbitrators generally have authority to fashion any remedy necessary to the resolution of the dispute. Board of Educ. v. Ewig, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1980).

Arbitrators held not to have exceeded their powers by awarding compensation based upon the claims of a party's subcontractors, who were not parties to the contract. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Right to object to the alleged bias of an arbitrator was waived where the objecting party did not raise the matter at

the arbitration hearing. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

Cited in *Kodiak Oilfield Haulers, Inc. v. Local 879, Hotel Union*, Sup. Ct. Op. No. 2471 (File No. 5758), 641 P.2d 11 (1982).

Applied in *Musden v. University of Alaska*, Sup. Ct. Op. No. 2421 (File No. 5291), 633 P.2d 1374 (1981).

Sec. 09.43.130. Modification or correction of award by court.

(a) On application made within 90 days after delivery of a copy of the award to the applicant, the court shall modify or correct the award if

(1) there was an evident miscalculation of figures or an evident mistake in the description of a person, thing or property referred to in the award;

(2) the arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(3) the award is imperfect in a matter of form not affecting the merits of the controversy.

(b) If the application is granted, the court shall modify and correct the award to effect its intent and shall confirm the award as modified and corrected. Otherwise, the court shall confirm the award as made.

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

This section and AS 09.43.120 define the superior court's power to review and either vacate or modify an arbitration award. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

An arbitrator's misconstruction of a contract is not open to judicial review, except on questions of arbitrability. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

Proceedings not reviewable for evidentiary sufficiency. — Since arbitration proceedings are not required by statute or by the rules of the American Arbitration Association to be conducted on the record, it is not possible to review them for evidentiary sufficiency. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct.

Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

Error calling for modification or correction must be manifestly clear. — Given the presumption that arbitration awards rendered in proper form are valid and the "evident mistake" prerequisite language of subsection (a), it follows that the error which calls for modification or correction of an arbitration award must be manifestly clear. *Anchorage Medical & Surgical Clinic v. James*, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

Arbitrators' interpretation entitled to significant weight. — The arbitrators' interpretation of what is submitted to them is entitled to significant weight. *Anchorage Medical & Surgical Clinic v. James*, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

Sec. 09.43.140. Judgment or decree on award. Upon the granting of an order confirming, modifying or correcting an award, a judgment or decree shall be entered in conformity with the award and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent to the application, and disbursements may be awarded by the court. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

Award of attorney's fees held proper. — See *Anchorage Medical & Surgical Clinic v. James*, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976). Cited in *Harold's Trucking v. Kelsey*, Sup. Ct. Op. No. 1739 (File No. 3695), 584 P.2d 1125 (1978).

Sec. 09.43.150. Applications to court. An application to the court under AS 09.43.010 — 09.43.180 shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action. (§ 1 ch 232 SLA 1968)

Cross references. — For court rules on service of motions and service procedures, see Civ. R. 77(a) and Civ. R. 5.

Sec. 09.43.160. Appeals. (a) An appeal may be taken from

- (1) an order denying an application to compel arbitration made under AS 09.43.020;
- (2) an order granting an application to stay arbitration made under AS 09.43.020(b);
- (3) an order conforming or denying confirmation of an award;
- (4) an order modifying or correcting an award;
- (5) an order vacating an award without directing a rehearing; or
- (6) a judgment or decree entered under the provisions of AS 09.43.010 — 09.43.180.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action. (§ 1 ch 232 SLA 1968)

Sec. 09.43.170. Court, jurisdiction. In AS 09.43.010 — 09.43.180, the term "court" means the superior court of this state. The making of an agreement described in AS 09.43.010 providing for arbitration in this state confers jurisdiction on the superior court to enforce the agreement under AS 09.43.010 — 09.43.180 and to enter judgment on an award under the agreement. (§ 1 ch 232 SLA 1968)

Sec. 09.43.180. Short title. AS 09.43.010 — 09.43.180 may be cited as the Uniform Arbitration Act. (§ 1 ch 232 SLA 1968; am § 1 ch 94 SLA 1972)

subsequent recording. Whenever the lien is discharged, it is the duty of the recorder, when requested, to record the transcript of an order, entry of satisfaction of judgment, or other proceeding of record whereby it appears that the lien has been discharged. (§ 7.05 ch 101 SLA 1962)

Revisor's notes. — Minor word changes related to the recording of documents were made in this section in 1988 because of the enactment of ch. 161, SLA 1988.

Chapter 43. Arbitration.

Article

1. Uniform Arbitration Act (§§ 09.43.160, 09.43.170)

NOTES TO DECISIONS

Cited in *City of Valdez v. 18.99 acres*,
Sup. Ct. Op. No. 2834 (File No. 6940), 686
P.2d 682 (1984).

Article 1. Uniform Arbitration Act.

Section

160. Appeals

170. Court, jurisdiction

- Sec. 09.43.160. Appeals.** (a) An appeal may be taken from
- (1) an order denying an application to compel arbitration made under AS 09.43.020;
 - (2) an order granting an application to stay arbitration made under AS 09.43.020(b);
 - (3) an order confirming or denying confirmation of an award;
 - (4) an order modifying or correcting an award;
 - (5) an order vacating an award without directing a rehearing; or
 - (6) a judgment or decree entered under the provisions of AS 09.43.010 — 09.43.180.
- (b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action. (§ 1 ch 232 SLA 1968)

Editor's notes. — This section is set out above to correct a minor error in the main pamphlet.

Sec. 09.43.170. Court, jurisdiction. In AS 09.43.010 — 09.43.180, the term "court" means the court with jurisdiction in this state. The making of an agreement described in AS 09.43.010 providing for arbitration in this state confers jurisdiction on the court to enforce the agreement under AS 09.43.010 — 09.43.180 and to enter judgment on

an award under the agreement. (§ 1 ch 232 SLA 1968; am § 4 ch 38 SLA 1987; am § 4 ch 38 SLA 1987)

Effect of amendments. — The 1987 amendment substituted "court with jurisdiction in" for "superior court of" in the first sentence and deleted "superior" preceding "court" in the second sentence.

Chapter 45. Actions Relating to Real Property.

Article

1. Adverse Claims and Boundary Disputes (§§ 09.45.010, 09.45.015)
2. Forcible Entry and Detainer (§ 09.45.090)
4. Nuisances (§ 09.45.235)
5. Partition (§ 09.45.480)
6. Recovery of Possession (§ 09.45.720)
7. Trespass (§§ 09.45.730 — 09.45.735)
9. Miscellaneous Provisions (§§ 09.45.790 — 09.45.795)
10. Earthslide Relief Act (§§ 09.45.840, 09.45.845)

Article 1. Adverse Claims and Boundary Disputes.

Section

10. Action to quiet title
15. Presumption in certain cases

Sec. 09.45.010. Action to quiet title. A person in possession of real property, or a tenant of that person, may bring an action against another who claims an adverse estate or interest in the property for the purpose of determining the claim. (§ 6.01 ch 101 SLA 1962)

Editor's notes. — This section is set out above to correct a minor error in the main pamphlet.

Sec. 09.45.015. Presumption in certain cases. (a) A conveyance of land after April 7, 1958, that, at the time the conveyance was made, adjoined a highway reservation listed in section 1 of Public Land Order 1613 of the Secretary of the Interior (April 7, 1958), is presumed to have conveyed land up to the center-line of the highway subject to any highway reservation created by Public Land Order 601 and any highway easement created by Public Land Order 1613.

(b) The burden of proof in litigation involving land adjoining a highway reservation created by Public Land Order 601 or a highway easement created by Public Land Order 1613 is on the person who claims that the conveyance did not convey an interest in land up to the center-line of the highway. (§ 2 ch 141 SLA 1986)

Article 2. Arbitration of Small Claims.

Section	Section
190. Arbitration under court rules	210. Practice and procedure
200. Appointment and compensation of arbitrator	220. Judgments and appeals

Cross references. — For small claims actions in district courts, see AS 22.15.040; for district court rules providing for practice and procedure in small claims actions, see DCR 8-22.

Editor's notes. — To date, the supreme court has not adopted rules under this article.

Sec. 09.43.190. Arbitration under court rules. The supreme court may provide by rule for compulsory arbitration of a cause of action filed in a superior or district court, demanding only a money judgment, when it appears that the demand on the cause of action is for \$3,000 or less, exclusive of costs, or when it appears to the trial court as a result of a pretrial conference that the amount which will be recovered on the cause is not likely to exceed \$3,000. (§ 2 ch 94 SLA 1972)

Sec. 09.43.200. Appointment and compensation of arbitrator. Arbitration of actions shall be by either a member of the Alaska Bar Association or a magistrate appointed and compensated by the court as provided by its rules. (§ 2 ch 94 SLA 1972)

Sec. 09.43.210. Practice and procedure. The practice and procedure for conducting arbitration, the powers of the arbitrators and the assessment of costs shall be prescribed by the court rules. (§ 2 ch 94 SLA 1972)

Sec. 09.43.220. Judgments and appeals. Unless an appeal is taken from the award to the court which ordered arbitration as provided by the court rules, the court shall enter and enforce judgment in accordance with the award of the arbitrator. Any party aggrieved by the award may appeal. All appeals shall be determined in the manner permitted by the rules. (§ 2 ch 94 SLA 1972)

Chapter 45. Actions Relating to Real Property.

Article

1. Adverse Claims and Boundary Disputes (§§ 09.45.010 — 09.45.050)
2. Forcible Entry and Detainer (§§ 09.45.060 — 09.45.160)
3. Foreclosure of Liens (§§ 09.45.170 — 09.45.220)
4. Nuisances (§§ 09.45.230 — 09.45.250)
5. Partition (§§ 09.45.260 — 09.45.620)
6. Recovery of Possession (§§ 09.45.630 — 09.45.720)
7. Trespass (§ 09.45.730)

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 12, 1989

SUBJECT: Arbitration under the TAPS
liability fund, SB 255

TO: Senator Tim Kelly
President of the Senate

FROM: Terri Lauterbach *TL*
Legislative Counsel

I have discovered some new information that might be relevant as you consider your options in relation to SB 255, a bill that would establish a special arbitration commission for Valdez disaster claims.

That new information relates to the federal Trans-Alaska Pipeline Liability Fund, the \$100,000,000 fund that may be sued for claims arising from discharges of oil that was carried through the pipeline and later carried by tankers. The Fund regulations provide for binding arbitration of claims if the parties to a claim agree.

The time line for claims filed against the Fund might also interest you. According to regulations in the Code of Federal Regulations, the Fund is supposed to be currently advertising its claims procedures (15 - 20 days after the incident). After a person presents a claim, the claim is sent to the responsible company where it is supposed to be paid within 90 days. If it is not paid, the claimant can file against the Fund or go to court. If a claim is presented to the Fund, the Fund must decide the claim within 120 days. 43 C.F.R. 29.1 - 29.13.

It is during the time the claim is being considered by the responsible company that arbitration is an option. So, it appears to me that arbitration is available to claimants under federal law without a special commission. Of course, arbitration is also available under state law without a special commission, by submission of a dispute to an

Senator Tim Kelly
Page 2
April 12, 1989

arbitrator under AS 09.43 (Uniform Arbitration Act),
referred to in SB 255.

If, in your judgment, you believe a special arbitration
commission would better serve the interests of the people of
the state than either the federally authorized arbitration
or the procedures already available under AS 09.43, then SB
255 is an appropriate vehicle. But I thought you would want
to know that binding arbitration is authorized under the
federal law.

If I can be of further assistance, please let me know.

TL:gc
WKG9/052

relationship of an employer and an employee) in any way related to the performance of any one or more contracts as defined above.

(f) The Authorized Officer means the employee of the Department, designated to act on behalf of the Secretary pursuant to the Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline or such other person to whom the Authorized Officer redelegates his authority pursuant to the delegation of authority to the Authorized Officer from the Secretary.

(g) The Department Compliance Officer means that officer of the Department of the Interior so designated by the Secretary.

PART 28—FIRE PROTECTION EMERGENCY ASSISTANCE

Secs.

- 28.1 Purpose.
28.2 Definitions.
28.3 Emergency assistance.

AUTHORITY: Act of May 27, 1955 (42 U.S.C. 1856, 1856b).

SOURCE: 41 FR 51794, Nov. 24, 1976, unless otherwise noted.

§ 28.1 Purpose.

The purpose of this part is to provide criteria for agencies in the Department to render fire protection emergency assistance to fire organizations not within the Department.

§ 28.2 Definitions.

As used in this part:

(a) The term "agency head" means the Secretary of the Interior or an official of the Department of the Interior who exercises authority delegated by the Secretary of the Interior.

(b) The term "fire protection" includes personnel services and equipment required for fire prevention, the protection of life and property, and firefighting; and

§ 28.3 Emergency assistance.

In the absence of a reciprocal fire protection agreement, each agency head may provide emergency fire protection will not jeopardize the property of the United States by making it impossible for the agency head to protect the property of the United States

43 CFR Subtitle A (10-1-87 Edition)

and such assistance is determined to be in the best interest of the United States. The providing of emergency assistance shall not be in the best interest of the United States and may not be granted by an agency head if:

(a) Persons other than those currently employed by the agency at the time of the emergency and trained in the type of emergency assistance being provided would be used in the providing of the emergency assistance.

(b) Assistance is provided to a place more than an hour's travel from where the agency maintains fire protection facilities. Assistance which requires more than an hour's travel may be given for those fire emergencies threatening to last more than 12 hours, or endangering human life.

PART 29—TRANS-ALASKA PIPELINE LIABILITY FUND

Sec.

- 29.1 Definitions
29.2 Creation of the Fund.
29.3 Fund administration.
29.4 General powers.
29.5 Officers and employees.
29.6 Financing, accounting and audit.
29.7 Imposition of strict liability.
29.8 Notification and advertisement.
29.9 Claims, settlement and adjudication.
29.10 Subrogation.
29.11 Investment.
29.12 Borrowing.
29.13 Termination.

AUTHORITY: Sec. 204(c), Trans-Alaska Pipeline Authorization Act, 43 U.S.C. 1653 (c); Secs. 311(p)(1) and 311(p)(2) of the Federal Water Pollution Control Act, 33 U.S.C. 1321(p) (1), (2).

SOURCE: 42 FR 31789, June 23, 1977, unless otherwise noted.

§ 29.1 Definitions.

As used in this part:

(a) Act means the Trans-Alaska Pipeline Authorization Act, Title II of Pub. L. 93-153, 43 U.S.C. Secs. 1651 *et seq.*

(b) "Affiliated" means:

(1) Any person owned or effectively controlled by the vessel owner or operators; or

(2) Any person that effectively controls or has the power to effectively control the vessel owner or operator by—

Office of the Secretary of the Interior

- (i) Stock interest, or
(ii) Representation on a board of directors or similar body, or
(iii) Contract or other agreement with other stockholders, or
(iv) Otherwise, or

(3) Any person which is under common ownership or control with the vessel owner or operator.

(c) "Claim" means a demand in writing for damages recoverable under this Part.

(d) "Damage" or "damages" means any economic loss, arising out of or directly resulting from an incident, including but not limited to:

- (1) Removal costs.
(2) Injury to, or destruction of, real or personal property.
(3) Loss of use of real or personal property.
(4) Injury to, or destruction of, natural resources.

(5) Loss of use of natural resources.

(6) Loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources, including loss of subsistence hunting, fishing and gathering opportunities.

(7) Loss of tax revenue for a period of one year due to injury to real or personal property.

(e) "Fund" means the Trans-Alaska Pipeline Liability Fund established as a non-profit corporate entity by section 204(c)(4) of the Trans-Alaska Pipeline Authorization Act.

(f) "Guarantor" means the person, other than the owner or operator who provides evidence of financial responsibility for an owner or operator, and includes an underwriter, insurer or surety company.

(g) "Incident" means a discharge of oil from a vessel that:

- (1) Violates applicable water quality standards, or
(2) Causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or causes a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

(h) "Oil" means petroleum in any form.

(i) "Operator of the pipeline" means the person or persons to whom payments are made for the costs of trans-

portation of oil through the Trans-Alaska Pipeline System.

(j) "Owner" means, in the case of oil, the owner of the oil at the time that such oil is loaded on a vessel at the terminal facilities of the pipeline.

(k) "Owner or Operator" means, in the case of a vessel, any person owning, operating, or chartering by demise such vessel.

(l) "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a business trust, an unincorporated organization, or a Government entity.

(m) "Person in Charge" means the individual immediately responsible for the operations of a vessel.

(n) "Permittees" means the holders of the Pipeline right-of-way for the Trans-Alaska Pipeline System and includes the Amerada Hess Pipeline Company, ARCO Pipe Line Company, BP Pipelines Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Petroleum Company, Sohio Pipe Line Company, Union Alaska Pipeline Company, and successors in interest to any one or more of the aforementioned companies.

(o) "Pipeline" means any pipeline in the Trans-Alaska Pipeline System.

(p) "Secretary" means the Secretary of the Interior or his authorized representatives.

(q) "Terminal facilities" means those facilities of the Trans-Alaska Pipeline System at which oil is taken from the pipeline and loaded on vessels or placed in storage for future loading onto vessels.

(r) "Trans-Alaska Pipeline System" or "System" means any pipeline or terminal facilities constructed by the Permittees under the authority of the Act.

(s) "United States" includes the various States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, the Trust Territory of the Pacific Islands.

(t) "Vessel" means any type of water-craft or other artificial contrivance, used or capable of being used as a means of transportation on water, which is engaged in any segment of transportation between the terminal facilities of the pipeline and ports

under the jurisdiction of the United States, and which is carrying oil that has been transported through the Trans-Alaska Pipeline System.

[42 FR 31789, June 23, 1977, as amended at 43 FR 27840, June 27, 1978]

§ 29.2 Creation of the Fund.

(a) The Trans-Alaska Pipeline Liability Fund was created by the Act as a non-profit corporation to be administered by the holders of the Trans-Alaska Pipeline right-of-way under regulations prescribed by the Secretary.

(b) The Fund shall take all steps necessary to carry out its responsibilities under the Act, including registering or otherwise qualifying to do business in all states and territories of the United States that it may reasonably be expected to do business in.

(c) The Fund shall be subject to the provisions of the Act, these implementing regulations, and, to the extent consistent with the Act and regulations, to the laws and regulations of the states in which it is registered to do business.

(d) The right to repeal, alter, or amend these regulations is expressly reserved.

§ 29.3 Fund administration.

(a) The Fund shall be administered by a Board of Trustees designated by the Permittees and the Secretary as provided in paragraph (b) of this section.

(b)(1) The Board of Trustees shall be comprised of one member designated by each Permittee and three members designated by the Secretary. At least one member designated by the Secretary shall be chosen from persons nominated by the Governor of the State of Alaska. Each member shall serve for a period of three years and may succeed himself. Each member shall have the right to one vote. If additional persons become holders of rights-of-way, each such additional Permittee shall have the right to designate a trustee, and if any holder of right-of-way sells his interest in such right-of-way, such holder's designated trustee shall resign from the Board. The Board shall elect by a

majority vote a Chairman and a Secretary annually.

(2) Where any activity of the Fund creates a conflict of interest, or the appearance of a conflict of interest, on the part of any member of the Board of Trustees, the member involved shall excuse himself or herself from any consideration of such activity by the Board of Trustees.

(c) If at any time there is a tie vote in the consideration of any matter by the Board of Trustees, the member designated by the Secretary with longest service on the Board shall break the tie by voting twice.

(d) The Board of Trustees by a majority vote shall select an Administrator to direct the day-to-day operations of the Fund.

(e) The Board of Trustees shall hold meetings every six months, or more frequently when necessary to consider pressing matters, including pending claims under § 29.9.

(f)(1) Each Board Member and officer of the Fund now or hereafter serving as such, shall be indemnified by the Fund against any and all claims and liabilities to which he has or shall become subject by reason of serving or having served as such Board Member or officer, or by reason of any action alleged to have been taken, omitted, or neglected by him as such Board Member or officer; and the Fund shall reimburse each such person for all legal expenses reasonably incurred by him in connection with any such claim or liability; *Provided, however,* That no such person shall be indemnified against, or be reimbursed for any expenses incurred in connection with, any claim or liability arising out of his own willful misconduct or gross negligence.

(2) The amount paid to any officer or Board Member by way of indemnification shall not exceed his actual liabilities and actual, reasonable, and necessary expenses incurred in connection with the matter involved. Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by the Fund in advance of the final disposition of such action, suit, or proceeding as authorized by the Board in the specific case upon receipt of an undertaking by or on

behalf of the Board Member or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Fund as authorized herein.

(3) The indemnification provided by this section shall continue as to a person who has ceased to be a Board Member or officer shall inure to the benefit of the heirs, executors, and administrators of such a person. The right of indemnification hereinabove provided for shall not be exclusive of any rights to which any Board Member or officer of the Fund may otherwise be entitled by law.

[42 FR 31789, June 23, 1977, as amended at 45 FR 1026, Jan. 4, 1980]

§ 29.4 General powers.

The Fund shall have such powers as may be necessary and appropriate for the exercise of the powers herein specifically and impliedly conferred upon the Fund and all such incidental powers as are customary in non-profit corporations generally, including but not limited to the following:

(a) By resolution of the Board of Trustees, the Fund shall adopt a corporate seal.

(b) The Fund may sue and be sued in its corporate name and may employ counsel to represent it.

(c) The Fund shall be a resident of the State of Alaska with its principal place of business in Alaska, and the Board of Trustees shall establish a business office or offices as deemed necessary for the operation of the Fund.

(d) In any civil action for the recovery of damages resulting from an incident the Fund shall waive personal jurisdiction upon being furnished with a copy of the summons and complaint in the action.

(e) The Board of Trustees of the Fund, by a majority of those present and voting, shall adopt and may amend and repeal by-laws governing the performance of its statutory duties.

(f) The Fund shall do all things necessary and proper in conducting its activities as Trustee including

(1) Receipt of fee collections pursuant to section 204(c)(6) of the act;

(2) Payment of costs and expenses reasonably necessary to the administration of the Fund as well as costs required to satisfy claims against the Fund;

(3) Investment of all sums not needed for administration and the satisfaction of claims in income producing securities as hereinafter provided; and

(4) Seeking recovery of any monies to which it is entitled as subrogee under circumstances set forth in section 204(c)(8) of the act.

(g) The Fund shall determine the character of and the necessity for its obligations and expenditures, and the manner in which they shall be incurred, allowed, and paid. The Board of Trustees shall establish an annual budget, subject to the approval of the Secretary.

(h) All costs and expenses reasonably necessary to the administration of the Fund, including costs and expenses incident to the termination, settlement, or payment of claims, are properly chargeable as expenses and payable out of fees or other income of the Fund.

[42 FR 31789, June 23, 1977, as amended at 43 FR 27841, June 27, 1978]

§ 29.5 Officers and employees.

(a) The Administrator is the Chief Executive Officer of the Fund and is responsible for carrying out all executive and administration functions as authorized by the Board of Trustees in accordance with the Act including the receipt and verification of fees collected from Owners of oil pursuant to § 29.6(a), the investment of Fund assets in securities according to guidelines approved by the Board of Trustees and the Secretary, and the disbursement of such assets in payment of expenses and approved claims.

(b) The Fund may employ such other persons as may be necessary to carry out its functions.

§ 29.6 Financing, accounting, and audit.

(a)(1) The Operator of the pipeline shall collect a fee of five cents per barrel from the Owner of the oil at the time it is loaded on a vessel at the terminal facilities of the pipeline.

Such fees shall be transferred forthwith to the Fund for receipt and verification by the Administrator. Collection of fees shall cease at the end of the month following the month in which \$100,000,000 has been accumulated in the Fund from any source. Collection of fees shall be resumed when the accumulation falls below \$100,000,000. The Administrator shall notify the pipeline carriers by the fifteenth of the month whether fees are to be collected during the following month.

(2) The value of the Fund shall be the current market value of the Fund on the day at the end of each month or other agreed upon accounting period, when the value is to be determined.

(b) Costs of administration shall be paid from the money received by the Fund, and all sums not needed for administration and the satisfaction of claims shall be invested in accordance with § 29.11. The interest on and the proceeds from the sale of any obligations held in the Fund shall be credited to and form a part of the Fund. Income from such securities shall be added to the principal of the Fund if not used for costs of administration or settlement of claims.

(c) At the end of each month, or other agreed upon accounting period, the Operator of the pipeline shall provide the Fund with a statement of the respective volumes of crude oil transported by the Operator of the pipeline and delivered to vessels, the amount of fees charged and collected, and the Owners from whom such fees were collected. The Administrator shall provide a copy of the statement to the Owners, and to the State of Alaska.

(d) The Fund shall undertake an annual accounting.

(e) The Fund shall be audited annually by the Comptroller General, in coordination with the Administrator and the Secretary. Authorized representatives of the Comptroller General and the Secretary shall have complete access, for purposes of the audit or otherwise, to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Fund and they shall be afforded full facilities

for verifying among other things, transactions with the balances on securities held by depositories, fiscal agents, and custodians. A report of each audit made by the Comptroller General shall be submitted to the Congress.

§ 29.7 Imposition of strict liability.

(a) Notwithstanding the provisions of any other law, where a vessel is engaged in any segment of transportation between the terminal facilities of the pipeline and ports under the jurisdiction of the United States, and is carrying oil which has been transported through the Trans-Alaska Pipeline System, the owner and operator of the vessel (jointly and severally), and the Fund established by section 204(c) of the act, shall be strictly liable without regard to fault in accordance with that section for all damages, including clean-up costs, sustained by any person or entity, public or private, including residents of Canada, as a result of any discharge of oil from such vessel. Strict liability under this section shall cease when the oil has first been brought ashore at a port under the jurisdiction of the United States.

(b) Strict liability shall not be imposed under this part if the owner or operator of the vessel, or the Fund, can prove that the damages were caused by an act of war or by the negligence of the United States or other governmental agency. Strict liability shall not be imposed under the act with respect to the claim of a damaged party if the owner or operator of the vessel, or the Fund, can prove that the damage was caused by the negligence of such damaged party.

(c) Strict liability for all claims arising out of any one incident shall not exceed \$100,000,000. The owner and operator of the vessel shall be jointly and severally liable for the first \$14,000,000 of such claims that are allowed. The Fund shall be liable for the balance of the claims that are allowed up to \$100,000,000. If these total claims allowed exceed \$100,000,000, they shall be reduced proportionately. The unpaid portion of any claim may be as-

serted and adjudicated under other applicable Federal or State law.

(d)(1) Each owner or operator of a vessel shall obtain from the Federal Maritime Commission a "Certificate of Financial Responsibility (Alaska Pipeline)" demonstrating compliance with the provisions of section 311(p) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(p)), and regulations promulgated pursuant to such act (46 CFR Part 543). Notwithstanding inconsistent language in such act, financial responsibility in the amount of \$14,000,000 for all such vessels must be established.

(2) The certificate obtained in accordance with this subsection shall be carried on board the vessel, and a copy shall be filed with the Fund. No oil may be loaded on any vessel which has not been issued a valid certificate which is still in effect at the time of loading.

§ 29.8 Notification and advertisement.

(a) The person in charge of a vessel, as soon as he has knowledge of an incident in which the vessel is involved, shall immediately notify the Fund of the incident using the fastest available method of communication. Notification under this section is in addition to any notification required of the owner or operator of the vessel under section 311 (b)(5) of the Federal Water Pollution Control Act Amendments of 1972 and the regulations of the U.S. Coast Guard promulgated pursuant to such Act (33 CFR 153.203).

(b) When the Fund receives information pursuant to paragraph (a) of this section or otherwise of an incident, the Fund shall, where possible, designate the source or sources of oil pollution and shall immediately notify the owner and operator of such source designation. In making the designation, the Fund may ask the assistance and cooperation of the U.S. Coast Guard.

(c)(1) In all cases where there is any likelihood of damages from an incident, the Fund shall advertise the designation, if such designation has been made, the procedures by which claims may be processed, and the information which must be included in such claims.

(2) The Fund shall establish, subject to the approval of the Secretary, uniform procedures and forms for advertisement under this section.

(d) Advertisement under this section shall commence no later than fifteen days from the date of the designation under paragraph (b) of this section, and in any event no later than twenty days from the date the Fund learns of the incident. The advertisement shall continue for a period of not less than thirty days.

[42 FR 31789, June 23, 1977, as amended at 43 FR 27841, June 27, 1978]

§ 29.9 Claims, settlement and adjudication.

(a)(1) Claims in accordance with this section may be submitted by any damaged party, his duly authorized agent, or his successor in interest.

(2) Claims submitted in accordance with this section must contain the following information:

(i) A detailed statement of the circumstances, if known, by which the claimed loss occurred.

(ii) A detailed listing of damages incurred, categorized according to the type of damage involved (§ 29.1(d)), and including a monetary claim for each type of damage listed.

(iii) Where documentation, where available, of all monetary claims asserted.

(c)(1) All claims arising out of an incident shall be initially presented to the Fund.

(2) Where designation under § 29.8(b)(1) has been accomplished and where the owner or operator does not deny the designation, the Fund shall transmit all related claims to the owner or operator. The Fund shall transmit such claims within 5 days after their receipt by the Fund.

(3) Where the Fund is unable to designate the source or sources of discharge under § 29.8(b), all related claims shall be processed and adjudicated by the Fund.

(c) In the case of a claim transmitted under paragraph (b)(2) of this section not submitted to arbitration under paragraph (h) of this section, and in which:

(1) The owner, operator or guarantor to whom the claim is presented denies all liability for the claim, for any reason, or

(2) The claim is not settled by any person by payment to the claimant within ninety days of the date upon which the claim was presented to the owner or operator or upon which advertising was commenced, whichever is later, the claimant may elect to commence an action in court against the owner or operator or to present the claim to the Fund, that election to be irrevocable and exclusive.

(d) In the case of a claim transmitted in accordance with paragraph (b)(2) of this section, any person intending to pay or settle any such claim shall notify the Fund of such intention, and of all terms of the intended settlement, at least twenty days before such payment or settlement is made final. Whenever the Fund objects, for any reason, to the intended payment or settlement, it may request modification of such payment or settlement, or it may seek appropriate relief in Federal District Court in order to halt or modify such payment or settlement.

(e) In the case of a claim transmitted in accordance with paragraph (b)(2) of this section, where full and adequate compensation is unavailable, either because the claim exceeds the \$14,000,000 limit of liability, or because the owner, operator, or guarantor is financially incapable of meeting his obligations in full, a claim for the amount not compensated may be presented to the Fund.

(f) Where any part of the first \$14,000,000 of claims arising from an incident is paid by the Fund, for any reason, the owner and operator of the vessel involved shall be liable to the Fund for such amount paid in accordance with section 204(c)(3) of the Act. The Fund shall commence an action in court or pursue any other reasonable means to recover such amount from the owner, operator, and guarantor. Where the owner, operator and guarantor all deny liability for a claim without any reasonable basis for doing so, the Fund may request that the Federal Maritime Commission revoke the applicable Certificate of Financial Responsibility and prohibit the guar-

antor from providing evidence of financial responsibility in the future.

(g) The Fund may settle or compromise any claim presented to it for adjudication in accordance with paragraphs (b)(3) and (c) of this section, provided that all claims not submitted to arbitration under paragraph (h) of this section shall be settled and paid within 120 days of the date upon which the claim was so presented to the Fund, or upon which advertising was commenced, whichever is later.

(h) A disputed claim may be submitted to binding arbitration, if the parties to the dispute so agree, under terms and procedures agreed to by the parties. The Fund shall be afforded an opportunity to participate as a party in the arbitration, and if it does so it shall be bound by the results of the arbitration.

(i) No claim may be presented, nor any action be commenced, for damages recoverable under this part unless that claim is presented to or that action is commenced against, the owner, operator, or guarantor, or against the Fund, as to their respective liabilities, within three years from the date of discovery of the damages caused by an incident, or within six years of the date of the incident causing the damages, whichever is earlier.

(j)(1) The Board of Trustees, by a majority vote, shall decide to allow or deny claims or settlements presented to the Fund in accordance with this section. In its discretion the Board may delegate the authority to settle classes of claims to the Administrator.

(2)(i) Where a claim is presented to the Fund by or on behalf of any person having a close business, personal or governmental association with any member of the Board of Trustees, such as to create a conflict of interest or the appearance of such conflict of interest on the part of such member of the Board of Trustees, the member involved shall excuse himself or herself from any consideration of such claim.

(ii) Where a claim presented to the Fund has previously been presented to an owner or operator pursuant to § 29.9(b)(2), and such owner or operator has a close business, personal or governmental association with any member of the Board of Trustees,

such as to create a conflict of interest or the appearance of a conflict of interest on the part of such member of the Board of Trustees, the member involved shall excuse himself or herself from any consideration of such claim.

(k) The Fund, subject to the approval of the Secretary, shall establish uniform procedures and standards for the appraisal and settlement of claims against the Fund.

(l) The Fund may use the facilities and services of private insurance and claims adjusting organizations in administering this part and may contract to pay compensation for those facilities and services.

(m) Any claimant aggrieved by the Fund's decision on a claim under this section may appeal the decision in the appropriate Federal District Court.

[42 FR 31789, June 23, 1977, as amended at 43 FR 27841, June 27, 1978]

§ 29.10 Subrogation.

If the Fund pays compensation to any claimant, the Fund shall be subrogated to all rights claims and causes of action which that claimant has to the extent permitted by law.

§ 29.11 Investment.

(a) The monies accumulated in the Fund shall be prudently invested in the following types of income-producing obligations having a high degree of reliability and security, or in such other obligations as the Secretary may approve:

(1) Fixed income securities issued by the United States or any of its agencies, at the same interest rates and terms available to private investors; and

(2) Fixed income securities or obligations issued by a corporation or issued or guaranteed by a State or local government or any political subdivision, agency or instrumentality thereof, provided such obligations having a rating by Standard and Poors, or Moody, of "A" or better, or an equivalent rating, or provided further that the security or obligation is of the same priority as another security or obligation of the same issuer which has been rated "A" or better, and provided that the portfolio has an overall rating of "AA". *Provided, however,*

That no securities or obligations of the permittees or their affiliates or of any investment advisor or custodian to the Fund, or their affiliates may be purchased or held by the Fund.

(3) Time certificates of deposit and commercial paper provided that the commercial paper has a rating of either A1 or P1 or both.

(b) No more than two percent of the total principal amount outstanding of fixed income obligations of a single issuer may be held by the Fund at any one time, *Provided, however,* That this restriction shall not apply to obligations of the United States or any of its agencies.

[42 FR 31789, June 23, 1977, as amended at 43 FR 33721, Aug. 1, 1978]

§ 29.12 Borrowing.

In the event the Fund is unable to satisfy a claim determined to be justified, or is in need of money with which to initiate the operation of the Fund, the Fund may borrow the money needed from any commercial credit source at the lowest available rate of interest. If the amount to be borrowed is \$500,000 or less, the Administrator may arrange to pledge the credit of the Fund pursuant to a resolution of the Board of Trustees. If the proposed borrowing exceeds \$500,000, the Administrator shall, prior to issuance of a note or other security pledging the credit of the Fund, secure the approval of the Secretary. No money may be borrowed from any of the Permittees or their affiliates.

§ 29.13 Termination.

Upon termination of operations of the pipeline, the full disposition of all claims, and the expiration of time for the filing of claims against the Fund, all assets remaining in the Fund shall be placed in a temporary trust fund account within the State of Alaska. The terms of the trust arrangement shall be determined by the Secretary. During the next succeeding session of Congress, the Secretary shall request that Congress provide for final disposition of the Fund. If Congress at any time establishes a comprehensive oil pollution liability fund which supercedes or repeals the Fund, the Fund

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

(1) The owner, operator or guarantor to whom the claim is presented denies all liability for the claim, for any reason, or

(2) The claim is not settled by any person by payment to the claimant within ninety days of the date upon which the claim was presented to the owner or operator or upon which advertising was commenced, whichever is later, the claimant may elect to commence an action in court against the owner or operator or to present the claim to the Fund, that election to be irrevocable and exclusive.

(d) In the case of a claim transmitted in accordance with paragraph (b)(2) of this section, any person intending to pay or settle any such claim shall notify the Fund of such intention, and of all terms of the intended settlement, at least twenty days before such payment or settlement is made final. Whenever the Fund objects, for any reason, to the intended payment or settlement, it may request modification of such payment or settlement, or it may seek appropriate relief in Federal District Court in order to halt or modify such payment or settlement.

(e) In the case of a claim transmitted in accordance with paragraph (b)(2) of this section, where full and adequate compensation is unavailable, either because the claim exceeds the \$14,000,000 limit of liability, or because the owner, operator, or guarantor is financially incapable of meeting his obligations in full, a claim for the amount not compensated may be presented to the Fund.

(f) Where any part of the first \$14,000,000 of claims arising from an incident is paid by the Fund, for any reason, the owner and operator of the vessel involved shall be liable to the Fund for such amount paid in accordance with section 204(c)(3) of the Act. The Fund shall commence an action in court or pursue any other reasonable means to recover such amount from the owner, operator, and guarantor. Where the owner, operator and guarantor all deny liability for a claim without any reasonable basis for doing so, the Fund may request that the Federal Maritime Commission revoke the applicable Certificate of Financial Responsibility and prohibit the guar-

antor from providing evidence of financial responsibility in the future.

(g) The Fund may settle or compromise any claim presented to it for adjudication in accordance with paragraphs (b)(3) and (c) of this section, provided that all claims not submitted to arbitration under paragraph (b) of this section shall be settled and paid within 120 days of the date upon which the claim was so presented to the Fund, or upon which advertising was commenced, whichever is later.

(h) A disputed claim may be submitted to binding arbitration, if the parties to the dispute so agree, under terms and procedures agreed to by the parties. The Fund shall be afforded an opportunity to participate as a party in the arbitration, and if it does so it shall be bound by the results of the arbitration.

(i) No claim may be presented, nor any action be commenced, for damages recoverable under this part unless that claim is presented to or that action is commenced against, the owner, operator, or guarantor, or against the Fund, as to their respective liabilities, within three years from the date of discovery of the damages caused by an incident, or within six years of the date of the incident causing the damages, whichever is earlier.

(j)(1) The Board of Trustees, by a majority vote, shall decide to allow or deny claims or settlements presented to the Fund in accordance with this section. In its discretion the Board may delegate the authority to settle classes of claims to the Administrator.

(2)(i) Where a claim is presented to the Fund by or on behalf of any person having a close business, personal or governmental association with any member of the Board of Trustees, such as to create a conflict of interest or the appearance of such conflict of interest on the part of such member of the Board of Trustees, the member involved shall excuse himself or herself from any consideration of such claim.

(ii) Where a claim presented to the Fund has previously been presented to an owner or operator pursuant to § 29.9(b)(2), and such owner or operator has a close business, personal or governmental association with any member of the Board of Trustees,

such as to create a conflict of interest or the appearance of a conflict of interest on the part of such member of the Board of Trustees, the member involved shall excuse himself or herself from any consideration of such claim.

(k) The Fund, subject to the approval of the Secretary, shall establish uniform procedures and standards for the appraisal and settlement of claims against the Fund.

(l) The Fund may use the facilities and services of private insurance and claims adjusting organizations in administering this part and may contract to pay compensation for those facilities and services.

(m) Any claimant aggrieved by the Fund's decision on a claim under this section may appeal the decision in the appropriate Federal District Court.

[42 FR 31789, June 23, 1977, as amended at 43 FR 27841, June 27, 1978]

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(2) Fixed income securities or obligations issued by a corporation or issued or guaranteed by a State or local government or any political subdivision, agency or instrumentality thereof, provided such obligations having a rating by Standard and Poors, or Moody, of "A" or better, or an equivalent rating, or provided further that the security or obligation is of the same priority as another security or obligation of the same issuer which has been rated "A" or better, and provided that the portfolio has an overall rating of "AA". *Provided, however,*

That no securities or obligations of the permittees or their affiliates or of any investment advisor or custodian to the Fund, or their affiliates may be purchased or held by the Fund.

(3) Time certificates of deposit and commercial paper provided that the commercial paper has a rating of either A1 or P1 or both.

(b) No more than two percent of the total principal amount outstanding of fixed income obligations of a single issuer may be held by the Fund at any one time, *Provided, however,* That this restriction shall not apply to obligations of the United States or any of its agencies.

[42 FR 31789, June 23, 1977, as amended at 43 FR 33721, Aug. 1, 1978]

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assets and any pending claims shall be disposed of as Congress or the Secretary shall direct.

EDITORIAL NOTE: For the Table of Public Land Orders formerly appearing in this volume, see the Appendix to Title 43 CFR Chapter II.

PART 32—GRANTS TO STATES FOR ESTABLISHING YOUNG ADULT CONSERVATION CORPS (YACC) PROGRAM

Sec.

- 32.1 Introduction.
- 32.2 Definitions.
- 32.3 Program purpose and objectives.
- 32.4 Program operation requirements.
- 32.5 Administrative requirements.
- 32.6 Request for grant.
- 32.7 Application format, instructions, and guidelines.
- 32.8 Program reporting requirements.
- 32.9 Consideration and criteria for awarding grants.

AUTHORITY: Pub. L. 95-93, sec. 806, 91 Stat. 630 (29 U.S.C. 801).

SOURCE: 43 FR 12266, Mar. 23, 1978, unless otherwise noted.

§ 32.1 Introduction.

(a) The Young Adult Conservation Corps (YACC) is authorized by Title I of the Youth Employment and Demonstration Projects Act of 1977 (Pub.L. 95-93), which amends the Comprehensive Employment and Training Act (CETA) of 1973 by adding a new Title VIII.

(b) The Young Adult Conservation Corps (YACC) is a year-round employment program for young men and women aged 16 through 23 inclusive. Financial assistance is available through grants-in-aid for employment and work to be performed on projects affecting both Federal and non-Federal public lands and waters or projects limited to non-Federal public lands and waters. YACC grants do not require matching.

(c) The YACC grant program is jointly managed by the Secretaries of the Interior and Agriculture under an interagency agreement with the Secretary of Labor.

(d) Thirty percent of the sums appropriated to carry out the YACC program for any fiscal year will be available for grants during such year.

Grant funds will be allocated on the basis of the total youth population within each State. State YACC programs must consist of both residential and nonresidential projects. At least 25 percent of the State YACC program must be residential by September 30, 1978.

§ 32.2 Definitions.

The terms used in these regulations are defined as follows:

(a) *Act.* The Comprehensive Employment and Training Act of 1973, as amended.

(b) *YACC.* Young Adult Conservation Corps.

(c) *Secretaries.* The Secretaries of the Interior and Agriculture or their designated representatives. The YACC program is managed within Interior by the Office of Youth Programs, and within Agriculture, by the Forest Service.

(d) *State.* Any of the several States of the United States, District of Columbia, Commonwealth of Puerto Rico, Virgin Islands, Guam, American Samoa, and The Trust Territories of the Pacific Islands and the Northern Marianas.

(e) *Refugee/parolee.* An alien who is admitted into the United States under the Immigration and Nationality Act, and who is legally authorized to take permanent employment in the United States.

(f) *Enrollee.* An individual enrolled in the YACC grant program.

(g) *Grant.* Funding furnished by the Secretaries to a State pursuant to the Act in order to carry out the YACC program.

(h) *Grantee.* Any State recipient of a grant for the operation of a YACC program affecting both Federal and non-Federal public lands and waters, or projects limited to non-Federal public lands and waters as designated by the Governor in each State.

(i) *Subgrantee.* Any unit of general local government or any public agency or organization or any private non-profit agency or organization which has been in existence at least 2 years which has successfully applied to a State for funds to operate a YACC project affecting both Federal and

non-Federal public lands and waters within that State or projects limited to non-Federal public lands and waters.

(j) *Contractor.* Any public agency or organization, or any private non-profit agency or organization which has been in existence for at least 2 years and is under contract with the grantee or sub-grantee for the conduct of a YACC project affecting both Federal and non-Federal public lands or waters, or projects limited to non-Federal public lands and waters.

(k) *State grant program.* The YACC program consisting of one or more projects operated by a State with Federal Funding.

(l) *Project.* A YACC residential camp operation or nonresidential project:

(1) *Residential camp.* A YACC facility established and maintained to provide 7 days-per-week, 24 hours-per-day residential support services for enrollees.

(2) *Nonresidential project.* A designated area from which daily work activities are assigned and to/from which nonresidential enrollees commute daily.

(m) *In consultation with.* Advance discussion shall occur on the matter under consideration.

(n) *Non-Federal public lands and waters.* Any lands or waters within the territorial limits of a State owned either in fee simple by a State or political subdivision thereof or over which a State or political subdivision thereof has, as determined by the Secretaries, sufficient long-term jurisdiction so that improvements made as the result of a grant will accrue primarily to the benefit of the public as a whole. Federally owned public lands and waters administered by a State or political subdivision thereof under agreements with a Department or Agency of the Federal Government are eligible under such definition if the Secretaries determine that the State or political subdivision thereof is entitled or is likely to retain administrative responsibility for an extended period of time sufficient to justify treatment as non-Federal public lands or waters.

(o) *Total youth population.* Number of youth in a State ages 16 through 23,

consistent with the most current Bureau of Census estimate.

(p) *Labor.* U.S. Department of Labor.

(q) *Interior.* U.S. Department of the Interior.

(r) *Forest Service.* Agency within the U.S. Department of Agriculture.

§ 32.3 Program purpose and objectives.

It is the purpose of the Young Adult Conservation Corps to provide employment and other benefits to youths of both sexes from all social, economic and racial classifications who would not otherwise be currently productively employed. The youths will be employed for a period of service during which they engage in useful conservation work which would otherwise be accomplished if adequate funding were made available.

§ 32.1 Program operation requirements.

(a) The State agencies cooperating with Interior and Forest Service having natural resource management responsibilities should be involved in the planning and implementation of the program.

(b) Grantees shall be responsible for the management of each Corps camp and project, final selection of enrollees, determination of enrollee work assignments, training, discipline and termination, and camp operations in accordance with this part and guidelines issued by Interior and Forest Service.

(1) Grantees shall assure that YACC program activities will not result in the displacement of employed workers (including partial displacement such as reduction in the hours of non-over-time work or wages or employment benefits), or impair existing contracts for services, or result in the substitution of YACC funds for other funds in connection with work that would otherwise be performed, or substitute jobs assisted under YACC for existing Federally-assisted jobs, or result in the hiring of any youth when any other person is on layoff from the same or any substantially equivalent job.

(2) Grantees shall assure that the activities in which the YACC enrollees are employed will result in an increase in employment opportunities over

relationship of an employer and an employee) in any way related to the performance of any one or more contracts as defined above.

(f) The Authorized Officer means the employee of the Department, designated to act on behalf of the Secretary pursuant to the Agreement and Grant of Right-of-Way for Trans-Alaska Pipeline or such other person to whom the Authorized Officer redelegates his authority pursuant to the delegation of authority to the Authorized Officer from the Secretary.

(g) The Department Compliance Officer means that officer of the Department of the Interior so designated by the Secretary.

PART 28—FIRE PROTECTION EMERGENCY ASSISTANCE

Secs.

- 28.1 Purpose.
- 28.2 Definitions.
- 28.3 Emergency assistance.

AUTHORITY: Act of May 27, 1955 (42 U.S.C. 1856, 1856b).

SOURCE: 41 FR 51794, Nov. 24, 1976, unless otherwise noted.

§ 28.1 Purpose.

The purpose of this part is to provide criteria for agencies in the Department to render fire protection emergency assistance to fire organizations not within the Department.

§ 28.2 Definitions.

As used in this part:

(a) The term "agency head" means the Secretary of the Interior or an official of the Department of the Interior who exercises authority delegated by the Secretary of the Interior.

(b) The term "fire protection; includes personnel services and equipment required for fire prevention, the protection of life and property, and firefighting; and

§ 28.3 Emergency assistance.

In the absence of a reciprocal fire protection agreement, each agency head may provide emergency fire protection will not jeopardize the property of the United States by making it impossible for the agency head to protect the property of the United States

and such assistance is determined to be in the best interest of the United States. The providing of emergency assistance shall not be in the best interest of the United States and may not be granted by an agency head if:

(a) Persons other than those currently employed by the agency at the time of the emergency and trained in the type of emergency assistance being provided would be used in the providing of the emergency assistance.

(b) Assistance is provided to a place more than an hour's travel from where the agency maintains fire protection facilities. Assistance which requires more than an hour's travel may be given for those fire emergencies threatening to last more than 12 hours, or endangering human life.

PART 29—TRANS-ALASKA PIPELINE LIABILITY FUND

Sec.

- 29.1 Definitions.
- 29.2 Creation of the Fund.
- 29.3 Fund administration.
- 29.4 General powers.
- 29.5 Officers and employees.
- 29.6 Financing, accounting and audit.
- 29.7 Imposition of strict liability.
- 29.8 Notification and advertisement.
- 29.9 Claims, settlement and adjudication.
- 29.10 Subrogation.
- 29.11 Investment.
- 29.12 Borrowing.
- 29.13 Termination.

AUTHORITY: Sec. 204(c), Trans-Alaska Pipeline Authorization Act, 43 U.S.C. 1653 (c); Secs. 311(p)(1) and 311(p)(2) of the Federal Water Pollution Control Act, 33 U.S.C. 1321(p) (1), (2).

SOURCE: 42 FR 31789, June 23, 1977, unless otherwise noted.

§ 29.1 Definitions.

As used in this part:

(a) Act means the Trans-Alaska Pipeline Authorization Act, Title II of Pub. L. 93-153, 43 U.S.C. Secs. 1651 *et seq.*

(b) "Affiliated" means:

(1) Any person owned or effectively controlled by the vessel owner or operators; or

(2) Any person that effectively controls or has the power to effectively control the vessel owner or operator by—

- (i) Stock interest, or
- (ii) Representation on a board of directors or similar body, or
- (iii) Contract or other agreement with other stockholders, or
- (iv) Otherwise, or
- (3) Any person which is under common ownership or control with the vessel owner or operator.
- (c) "Claim" means a demand in writing for damages recoverable under this Part.

(d) "Damage" or "damages" means any economic loss, arising out of or directly resulting from an incident, including but not limited to:

- (1) Removal costs.
- (2) Injury to, or destruction of, real or personal property.
- (3) Loss of use of real or personal property.
- (4) Injury to, or destruction of, natural resources.
- (5) Loss of use of natural resources.
- (6) Loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources, including loss of subsistence hunting, fishing and gathering opportunities.
- (7) Loss of tax revenue for a period of one year due to injury to real or personal property.

(e) "Fund" means the Trans-Alaska Pipeline Liability Fund established as a non-profit corporate entity by section 204(c)(4) of the Trans-Alaska Pipeline Authorization Act.

(f) "Guarantor" means the person, other than the owner or operator who provides evidence of financial responsibility for an owner or operator, and includes an underwriter, insurer or surety company.

(g) "Incident" means a discharge of oil from a vessel that:

- (1) Violates applicable water quality standards, or
- (2) Causes a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or causes a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

(h) "Oil" means petroleum in any form.

(i) "Operator of the pipeline" means the person or persons to whom payments are made for the costs of transportation of oil through the Trans-Alaska Pipeline System.

(j) "Owner" means, in the case of oil, the owner of the oil at the time that such oil is loaded on a vessel at the terminal facilities of the pipeline.

(k) "Owner or Operator" means, in the case of a vessel, any person owning, operating, or chartering by demise such vessel.

(l) "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a business trust, an unincorporated organization, or a Government entity.

(m) "Person in Charge" means the individual immediately responsible for the operations of a vessel.

(n) "Permittees" means the holders of the Pipeline right-of-way for the Trans-Alaska Pipeline System and includes the Amerada Hess Pipeline Company, ARCO Pipe Line Company, BP Pipelines Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Petroleum Company, Sohio Pipe Line Company, Union Alaska Pipeline Company, and successors in interest to any one or more of the aforementioned companies.

(o) "Pipeline" means any pipeline in the Trans-Alaska Pipeline System.

(p) "Secretary" means the Secretary of the Interior or his authorized representatives.

(q) "Terminal facilities" means those facilities of the Trans-Alaska Pipeline System at which oil is taken from the pipeline and loaded on vessels or placed in storage for future loading onto vessels.

(r) "Trans-Alaska Pipeline System" or "System" means any pipeline or terminal facilities constructed by the Permittees under the authority of the Act.

(s) "United States" includes the various States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, the Trust Territory of the Pacific Islands.

(t) "Vessel" means any type of water-craft or other artificial contrivance, used or capable of being used as a means of transportation on water, which is engaged in any segment of transportation between the terminal facilities of the pipeline and ports

under the jurisdiction of the United States, and which is carrying oil that has been transported through the Trans-Alaska Pipeline System.

(42 FR 31789, June 23, 1977, as amended at 43 FR 27840, June 27, 1978)

§ 29.2 Creation of the Fund.

(a) The Trans-Alaska Pipeline Liability Fund was created by the Act as a non-profit corporation to be administered by the holders of the Trans-Alaska Pipeline right-of-way under regulations prescribed by the Secretary.

(b) The Fund shall take all steps necessary to carry out its responsibilities under the Act, including registering or otherwise qualifying to do business in all states and territories of the United States that it may reasonably be expected to do business in.

(c) The Fund shall be subject to the provisions of the Act, these implementing regulations, and, to the extent consistent with the Act and regulations, to the laws and regulations of the states in which it is registered to do business.

(d) The right to repeal, alter, or amend these regulations is expressly reserved.

§ 29.3 Fund administration.

(a) The Fund shall be administered by a Board of Trustees designated by the Permittees and the Secretary as provided in paragraph (b) of this section.

(b)(1) The Board of Trustees shall be comprised of one member designated by each Permittee and three members designated by the Secretary. At least one member designated by the Secretary shall be chosen from persons nominated by the Governor of the State of Alaska. Each member shall serve for a period of three years and may succeed himself. Each member shall have the right to one vote. If additional persons become holders of rights-of-way, each such additional Permittee shall have the right to designate a trustee, and if any holder of right-of-way sells his interest in such right-of-way, such holder's designated trustee shall resign from the Board. The Board shall elect by a

majority vote a Chairman and a Secretary annually.

(2) Where any activity of the Fund creates a conflict of interest, or the appearance of a conflict of interest, on the part of any member of the Board of Trustees, the member involved shall excuse himself or herself from any consideration of such activity by the Board of Trustees.

(c) If at any time there is a tie vote in the consideration of any matter by the Board of Trustees, the member designated by the Secretary with longest service on the Board shall break the tie by voting twice.

(d) The Board of Trustees by a majority vote shall select an Administrator to direct the day-to-day operations of the Fund.

(e) The Board of Trustees shall hold meetings every six months, or more frequently when necessary to consider pressing matters, including pending claims under § 29.9.

(f)(1) Each Board Member and officer of the Fund now or hereafter serving as such, shall be indemnified by the Fund against any and all claims and liabilities to which he has or shall become subject by reason of serving or having served as such Board Member or officer, or by reason of any action alleged to have been taken, omitted, or neglected by him as such Board Member or officer; and the Fund shall reimburse each such person for all legal expenses reasonably incurred by him in connection with any such claim or liability: *Provided, however,* That no such person shall be indemnified against, or be reimbursed for any expenses incurred in connection with, any claim or liability arising out of his own willful misconduct or gross negligence.

(2) The amount paid to any officer or Board Member by way of indemnification shall not exceed his actual liabilities and actual, reasonable, and necessary expenses incurred in connection with the matter involved. Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by the Fund in advance of the final disposition of such action, suit, or proceeding as authorized by the Board in the specific case upon receipt of an undertaking by or on

behalf of the Board Member or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Fund as authorized herein.

(3) The indemnification provided by this section shall continue as to a person who has ceased to be a Board Member or officer shall inure to the benefit of the heirs, executors, and administrators of such a person. The right of indemnification hereinabove provided for shall not be exclusive of any rights to which any Board Member or officer of the Fund may otherwise be entitled by law.

(42 FR 31789, June 23, 1977, as amended at 45 FR 1026, Jan. 4, 1980)

§ 29.4 General powers.

The Fund shall have such powers as may be necessary and appropriate for the exercise of the powers herein specifically and impliedly conferred upon the Fund and all such incidental powers as are customary in non-profit corporations generally, including but not limited to the following:

(a) By resolution of the Board of Trustees, the Fund shall adopt a corporate seal.

(b) The Fund may sue and be sued in its corporate name and may employ counsel to represent it.

(c) The Fund shall be a resident of the State of Alaska with its principal place of business in Alaska, and the Board of Trustees shall establish a business office or offices as deemed necessary for the operation of the Fund.

(d) In any civil action for the recovery of damages resulting from an incident the Fund shall waive personal jurisdiction upon being furnished with a copy of the summons and complaint in the action.

(e) The Board of Trustees of the Fund, by a majority of those present and voting, shall adopt and may amend and repeal by-laws governing the performance of its statutory duties.

(f) The Fund shall do all things necessary and proper in conducting its activities as Trustee including

(1) Receipt of fee collections pursuant to section 204(c)(6) of the act;

(2) Payment of costs and expenses reasonably necessary to the administration of the Fund as well as costs required to satisfy claims against the Fund;

(3) Investment of all sums not needed for administration and the satisfaction of claims in income producing securities as hereinafter provided; and

(4) Seeking recovery of any monies to which it is entitled as subrogee under circumstances set forth in section 204(c)(8) of the act.

(g) The Fund shall determine the character of and the necessity for its obligations and expenditures, and the manner in which they shall be incurred, allowed, and paid. The Board of Trustees shall establish an annual budget, subject to the approval of the Secretary.

(h) All costs and expenses reasonably necessary to the administration of the Fund, including costs and expenses incident to the termination, settlement, or payment of claims, are properly chargeable as expenses and payable out of fees or other income of the Fund.

(42 FR 31789, June 23, 1977, as amended at 43 FR 27841, June 27, 1978)

§ 29.5 Officers and employees.

(a) The Administrator is the Chief Executive Officer of the Fund and is responsible for carrying out all executive and administration functions as authorized by the Board of Trustees in accordance with the Act including the receipt and verification of fees collected from Owners of oil pursuant to § 29.6(a), the investment of Fund assets in securities according to guidelines approved by the Board of Trustees and the Secretary, and the disbursement of such assets in payment of expenses and approved claims.

(b) The Fund may employ such other persons as may be necessary to carry out its functions.

§ 29.6 Financing, accounting, and audit.

(a)(1) The Operator of the pipeline shall collect a fee of five cents per barrel from the Owner of the oil at the time it is loaded on a vessel at the terminal facilities of the pipeline.

Such fees shall be transferred forthwith to the Fund for receipt and verification by the Administrator. Collection of fees shall cease at the end of the month following the month in which \$100,000,000 has been accumulated in the Fund from any source. Collection of fees shall be resumed when the accumulation falls below \$100,000,000. The Administrator shall notify the pipeline carriers by the fifteenth of the month whether fees are to be collected during the following month.

(2) The value of the Fund shall be the current market value of the Fund on the day at the end of each month or other agreed upon accounting period, when the value is to be determined.

(b) Costs of administration shall be paid from the money received by the Fund, and all sums not needed for administration and the satisfaction of claims shall be invested in accordance with § 29.11. The interest on and the proceeds from the sale of any obligations held in the Fund shall be credited to and form a part of the Fund. Income from such securities shall be added to the principal of the Fund if not used for costs of administration or settlement of claims.

(c) At the end of each month, or other agreed upon accounting period, the Operator of the pipeline shall provide the Fund with a statement of the respective volumes of crude oil transported by the Operator of the pipeline and delivered to vessels, the amount of fees charged and collected, and the Owners from whom such fees were collected. The Administrator shall provide a copy of the statement to the Owners, and to the State of Alaska.

(d) The Fund shall undertake an annual accounting.

(e) The Fund shall be audited annually by the Comptroller General, in coordination with the Administrator and the Secretary. Authorized representatives of the Comptroller General and the Secretary shall have complete access, for purposes of the audit or otherwise, to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Fund and they shall be afforded full facilities

for verifying among other things, transactions with the balances on securities held by depositories, fiscal agents, and custodians. A report of each audit made by the Comptroller General shall be submitted to the Congress.

§ 29.7 Imposition of strict liability.

(a) Notwithstanding the provisions of any other law, where a vessel is engaged in any segment of transportation between the terminal facilities of the pipeline and ports under the jurisdiction of the United States, and is carrying oil which has been transported through the Trans-Alaska Pipeline System, the owner and operator of the vessel (jointly and severally), and the Fund established by section 204(c) of the act, shall be strictly liable without regard to fault in accordance with that section for all damages, including clean-up costs, sustained by any person or entity, public or private, including residents of Canada, as a result of any discharge of oil from such vessel. Strict liability under this section shall cease when the oil has first been brought ashore at a port under the jurisdiction of the United States.

(b) Strict liability shall not be imposed under this part if the owner or operator of the vessel, or the Fund, can prove that the damages were caused by an act of war or by the negligence of the United States or other governmental agency. Strict liability shall not be imposed under the act with respect to the claim of a damaged party if the owner or operator of the vessel, or the Fund, can prove that the damage was caused by the negligence of such damaged party.

(c) Strict liability for all claims arising out of any one incident shall not exceed \$100,000,000. The owner and operator of the vessel shall be jointly and severally liable for the first \$14,000,000 of such claims that are allowed. The Fund shall be liable for the balance of the claims that are allowed up to \$100,000,000. If the total claims allowed exceed \$100,000,000, they shall be reduced proportionately. The unpaid portion of any claim may be as-

serted and adjudicated under other applicable Federal or State law.

(d)(1) Each owner or operator of a vessel shall obtain from the Federal Maritime Commission a "Certificate of Financial Responsibility (Alaska Pipeline)" demonstrating compliance with the provisions of section 211(p) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321(p)), and regulations promulgated pursuant to such act (46 CFR Part 543). Notwithstanding inconsistent language in such act, financial responsibility in the amount of \$14,000,000 for all such vessels must be established.

(2) The certificate obtained in accordance with this subsection shall be carried on board the vessel, and a copy shall be filed with the Fund. No oil may be loaded on any vessel which has not been issued a valid certificate which is still in effect at the time of loading.

§ 29.8 Notification and advertisement.

(a) The person in charge of a vessel, as soon as he has knowledge of an incident in which the vessel is involved, shall immediately notify the Fund of the incident using the fastest available method of communication. Notification under this section is in addition to any notification required of the owner or operator of the vessel under section 311 (b)(5) of the Federal Water Pollution Control Act Amendments of 1972 and the regulations of the U.S. Coast Guard promulgated pursuant to such Act (33 CFR 153.203).

(b) When the Fund receives information pursuant to paragraph (a) of this section or otherwise of an incident, the Fund shall, where possible, designate the source or sources of oil pollution and shall immediately notify the owner and operator of such source designation. In making the designation, the Fund may ask the assistance and cooperation of the U.S. Coast Guard.

(c)(1) In all cases where there is any likelihood of damages from an incident, the Fund shall advertise the designation, if such designation has been made, the procedures by which claims may be presented, and the information which must be included in such claims.

(2) The Fund shall establish, subject to the approval of the Secretary, uniform procedures and forms for advertisement under this section.

(d) Advertisement under this section shall commence no later than fifteen days from the date of the designation under paragraph (b) of this section, and in any event no later than twenty days from the date the Fund learns of the incident. The advertisement shall continue for a period of not less than thirty days.

[42 FR 31789, June 23, 1977, as amended at 43 FR 27841, June 27, 1978]

§ 29.9 Claims, settlement and adjudication.

(a)(1) Claims in accordance with this section may be submitted by any damaged party, his duly authorized agent, or his successor in interest.

(2) Claims submitted in accordance with this section must contain the following information:

(i) A detailed statement of the circumstances, if known, by which the claimed loss occurred.

(ii) A detailed listing of damages incurred, categorized according to the type of damage involved (§ 29.1(d)), and including a monetary claim for each type of damage listed.

(iii) Where documentation, where available, of all monetary claims asserted.

(b)(1) All claims arising out of an incident shall be initially presented to the Fund.

(2) Where designation under § 29.8(b)(1) has been accomplished and where the owner or operator does not deny the designation, the Fund shall transmit all related claims to the owner or operator. The Fund shall transmit such claims within 5 days after their receipt by the Fund.

(3) Where the Fund is unable to designate the source or sources of discharge under § 29.8(b), all related claims shall be processed and adjudicated by the Fund.

(c) In the case of a claim transmitted under paragraph (b)(2) of this section not submitted to arbitration under paragraph (h) of this section, and in which:

(1) The owner, operator or guarantor to whom the claim is presented denies all liability for the claim, for any reason, or

(2) The claim is not settled by any person by payment to the claimant within ninety days of the date upon which the claim was presented to the owner or operator or upon which advertising was commenced, whichever is later, the claimant may elect to commence an action in court against the owner or operator or to present the claim to the Fund, that election to be irrevocable and exclusive.

(d) In the case of a claim transmitted in accordance with paragraph (b)(2) of this section, any person intending to pay or settle any such claim shall notify the Fund of such intention, and of all terms of the intended settlement, at least twenty days before such payment or settlement is made final. Whenever the Fund objects, for any reason, to the intended payment or settlement, it may request modification of such payment or settlement, or it may seek appropriate relief in Federal District Court in order to halt or modify such payment or settlement.

(e) In the case of a claim transmitted in accordance with paragraph (b)(2) of this section, where full and adequate compensation is unavailable, either because the claim exceeds the \$14,000,000 limit of liability, or because the owner, operator, or guarantor is financially incapable of meeting his obligations in full, a claim for the amount not compensated may be presented to the Fund.

(f) Where any part of the first \$14,000,000 of claims arising from an incident is paid by the Fund, for any reason, the owner and operator of the vessel involved shall be liable to the Fund for such amount paid in accordance with section 204(c)(3) of the Act. The Fund shall commence an action in court or pursue any other reasonable means to recover such amount from the owner, operator, and guarantor. Where the owner, operator and guarantor all deny liability for a claim without any reasonable basis for doing so, the Fund may request that the Federal Maritime Commission revoke the applicable Certificate of Financial Responsibility and prohibit the guar-

antor from providing evidence of financial responsibility in the future.

(g) The Fund may settle or compromise any claim presented to it for adjudication in accordance with paragraphs (b)(3) and (c) of this section, provided that all claims not submitted to arbitration under paragraph (h) of this section shall be settled and paid within 120 days of the date upon which the claim was so presented to the Fund, or upon which advertising was commenced, whichever is later.

(h) A disputed claim may be submitted to binding arbitration, if the parties to the dispute so agree, under terms and procedures agreed to by the parties. The Fund shall be afforded an opportunity to participate as a party in the arbitration, and if it does so it shall be bound by the results of the arbitration.

(i) No claim may be presented, nor any action be commenced, for damages recoverable under this part unless that claim is presented to or that action is commenced against, the owner, operator, or guarantor, or against the Fund, as to their respective liabilities, within three years from the date of discovery of the damages caused by an incident, or within six years of the date of the incident causing the damages, whichever is earlier.

(j)(1) The Board of Trustees, by a majority vote, shall decide to allow or deny claims or settlements presented to the Fund in accordance with this section. In its discretion the Board may delegate the authority to settle classes of claims to the Administrator.

(2)(i) Where a claim is presented to the Fund by or on behalf of any person having a close business, personal or governmental association with any member of the Board of Trustees, such as to create a conflict of interest or the appearance of such conflict of interest on the part of such member of the Board of Trustees, the member involved shall excuse himself or herself from any consideration of such claim.

(ii) Where a claim presented to the Fund has previously been presented to an owner or operator pursuant to § 29.9(b)(2), and such owner or operator has a close business, personal or governmental association with any member of the Board of Trustees,

such as to create a conflict of interest or the appearance of a conflict of interest on the part of such member of the Board of Trustees, the member involved shall excuse himself or herself from any consideration of such claim.

(k) The Fund, subject to the approval of the Secretary, shall establish uniform procedures and standards for the appraisal and settlement of claims against the Fund.

(l) The Fund may use the facilities and services of private insurance and claims adjusting organizations in administering this part and may contract to pay compensation for those facilities and services.

(m) Any claimant aggrieved by the Fund's decision on a claim under this section may appeal the decision in the appropriate Federal District Court.

[42 FR 31789, June 23, 1977, as amended at 43 FR 27841, June 27, 1978]

§ 29.10 Subrogation.

If the Fund pays compensation to any claimant, the Fund shall be subrogated to all rights claims and causes of action which that claimant has to the extent permitted by law.

§ 29.11 Investment.

(a) The monies accumulated in the Fund shall be prudently invested in the following types of income-producing obligations having a high degree of reliability and security, or in such other obligations as the Secretary may approve:

(1) Fixed income securities issued by the United States or any of its agencies, at the same interest rates and terms available to private investors; and

(2) Fixed income securities or obligations issued by a corporation or issued or guaranteed by a State or local government or any political subdivision, agency or instrumentality thereof, provided such obligations having a rating by Standard and Poors, or Moody, of "A" or better, or an equivalent rating, or provided further that the security or obligation is of the same priority as another security or obligation of the same issuer which has been rated "A" or better, and provided that the portfolio has an overall rating of "AA". *Provided, however,*

That no securities or obligations of the permittees or their affiliates or of any investment advisor or custodian to the Fund, or their affiliates may be purchased or held by the Fund.

(3) Time certificates of deposit and commercial paper provided that the commercial paper has a rating of either A1 or P1 or both.

(b) No more than two percent of the total principal amount outstanding of fixed income obligations of a single issuer may be held by the Fund at any one time, *Provided, however,* That this restriction shall not apply to obligations of the United States or any of its agencies.

[42 FR 31789, June 23, 1977, as amended at 43 FR 33721, Aug. 1, 1978]

§ 29.12 Borrowing.

In the event the Fund is unable to satisfy a claim determined to be justified, or is in need of money with which to initiate the operation of the Fund, the Fund may borrow the money needed from any commercial credit source at the lowest available rate of interest. If the amount to be borrowed is \$500,000 or less, the Administrator may arrange to pledge the credit of the Fund pursuant to a resolution of the Board of Trustees. If the proposed borrowing exceeds \$500,000, the Administrator shall, prior to issuance of a note or other security pledging the credit of the Fund, secure the approval of the Secretary. No money may be borrowed from any of the Permittees or their affiliates.

§ 29.13 Termination.

Upon termination of operations of the pipeline, the full disposition of all claims, and the expiration of time for the filing of claims against the Fund, all assets remaining in the Fund shall be placed in a temporary trust fund account within the State of Alaska. The terms of the trust arrangement shall be determined by the Secretary. During the next succeeding session of Congress, the Secretary shall request that Congress provide for final disposition of the Fund. If Congress at any time establishes a comprehensive oil pollution liability fund which supersedes or repeals the Fund, the Fund

assets and any pending claims shall be disposed of as Congress or the Secretary shall direct.

EDITORIAL NOTE: For the Table of Public Land Orders formerly appearing in this volume, see the Appendix to title 43 CFR Chapter II.

PART 32—GRANTS TO STATES FOR ESTABLISHING YOUNG ADULT CONSERVATION CORPS (YACC) PROGRAM

Sec.

- 32.1 Introduction.
- 32.2 Definitions.
- 32.3 Program purpose and objectives.
- 32.4 Program operation requirements.
- 32.5 Administrative requirements.
- 32.6 Request for grant.
- 32.7 Application format, instructions, and guidelines.
- 32.8 Program reporting requirements.
- 32.9 Consideration and criteria for awarding grants.

AUTHORITY: Pub. L. 95-93, sec. 808, 91 Stat. 630 (29 U.S.C. 801).

SOURCE: 43 FR 12266, Mar. 23, 1978, unless otherwise noted.

§ 32.1 Introduction.

(a) The Young Adult Conservation Corps (YACC) is authorized by Title I of the Youth Employment and Demonstration Projects Act of 1977 (Pub. L. 95-93), which amends the Comprehensive Employment and Training Act (CETA) of 1973 by adding a new Title VIII.

(b) The Young Adult Conservation Corps (YACC) is a year-round employment program for young men and women aged 16 through 23 inclusive. Financial assistance is available through grants-in-aid for employment and work to be performed on projects affecting both Federal and non-Federal public lands and waters or projects limited to non-Federal public lands and waters. YACC grants do not require matching.

(c) The YACC grant program is jointly managed by the Secretaries of the Interior and Agriculture under an interagency agreement with the Secretary of Labor.

(d) Thirty percent of the sums appropriated to carry out the YACC program for any fiscal year will be available for grants during such year.

Grant funds will be allocated on the basis of the total youth population within each State. State YACC programs must consist of both residential and nonresidential projects. At least 25 percent of the State YACC program must be residential by September 30, 1978.

§ 32.2 Definitions.

The terms used in these regulations are defined as follows:

(a) *Act*. The Comprehensive Employment and Training Act of 1973, as amended.

(b) *YACC*. Young Adult Conservation Corps.

(c) *Secretaries*. The Secretaries of the Interior and Agriculture or their designated representatives. The YACC program is managed within Interior by the Office of Youth Programs, and within Agriculture, by the Forest Service.

(d) *State*. Any of the several States of the United States, District of Columbia, Commonwealth of Puerto Rico, Virgin Islands, Guam, American Samoa, and The Trust Territories of the Pacific Islands and the Northern Marianas.

(e) *Refugee/parolee*. An alien who is admitted into the United States under the Immigration and Nationality Act, and who is legally authorized to take permanent employment in the United States.

(f) *Enrollee*. An individual enrolled in the YACC grant program.

(g) *Grant*. Funding furnished by the Secretaries to a State pursuant to the Act in order to carry out the YACC program.

(h) *Grantee*. Any State recipient of a grant for the operation of a YACC program affecting both Federal and non-Federal public lands and waters, or projects limited to non-Federal public lands and waters as designated by the Governor in each State.

(i) *Subgrantee*. Any unit of general local government or any public agency or organization or any private non-profit agency or organization which has been in existence at least 2 years which has successfully applied to a State for funds to operate a YACC project affecting both Federal and

non-Federal public lands and waters within that State or projects limited to non-Federal public lands and waters.

(j) *Contractor*. Any public agency or organization, or any private non-profit agency or organization which has been in existence for at least 2 years and is under contract with the grantee or sub-grantee for the conduct of a YACC project affecting both Federal and non-Federal public lands or waters, or projects limited to non-Federal public lands and waters.

(k) *State grant program*. The YACC program consisting of one or more projects operated by a State with Federal Funding.

(l) *Project*. A YACC residential camp operation or nonresidential project:

(1) *Residential camp*. A YACC facility established and maintained to provide 7 days-per-week, 24 hours-per-day residential support services for enrollees.

(2) *Nonresidential project*. A designated area from which daily work activities are assigned and to/from which nonresidential enrollees commute daily.

(m) *In consultation with*. Advance discussion shall occur on the matter under consideration.

(n) *Non-Federal public lands and waters*. Any lands or waters within the territorial limits of a State owned either in fee simple by a State or political subdivision thereof or over which a State or political subdivision thereof has, as determined by the Secretaries, sufficient long-term jurisdiction so that improvements made as the result of a grant will accrue primarily to the benefit of the public as a whole. Federally owned public lands and waters administered by a State or political subdivision thereof under agreements with a Department or Agency of the Federal Government are eligible under such definition if the Secretaries determine that the State or political subdivision thereof is entitled or is likely to retain administrative responsibility for an extended period of time sufficient to justify treatment as non-Federal public lands or waters.

(o) *Total youth population*. Number of youth in a State ages 16 through 23,

consistent with the most current Bureau of Census estimate.

(p) *Labor*. U.S. Department of Labor.

(q) *Interior*. U.S. Department of the Interior.

(r) *Forest Service*. Agency within the U.S. Department of Agriculture.

§ 32.3 Program purpose and objectives.

It is the purpose of the Young Adult Conservation Corps to provide employment and other benefits to youths of both sexes from all social, economic and racial classifications who would not otherwise be currently productively employed. The youths will be employed for a period of service during which they engage in useful conservation work which would otherwise be accomplished if adequate funding were made available.

§ 32.4 Program operation requirements.

(a) The State agencies cooperating with Interior and Forest Service having natural resource management responsibilities should be involved in the planning and implementation of the program.

(b) Grantees shall be responsible for the management of each Corps camp and project, final selection of enrollees, determination of enrollee work assignments, training, discipline and termination, and camp operations in accordance with this part and guidelines issued by Interior and Forest Service.

(1) Grantees shall assure that YACC program activities will not result in the displacement of employed workers (including partial displacement such as reduction in the hours of non-over-time work or wages or employment benefits), or impair existing contracts for services, or result in the substitution of YACC funds for other funds in connection with work that would otherwise be performed, or substitute jobs assisted under YACC for existing Federally-assisted jobs, or result in the hiring of any youth when any other person is on layoff from the same or any substantially equivalent job.

(2) Grantees shall assure that the activities in which the YACC enrollees are employed will result in an increase in employment opportunities over

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HARTFORD (06106-1943) • KAREN M. JALKUT •
 Two Hartford Square West • (203) 278-5000
HONOLULU (96813-4728) • KEITH W. HUNTER •
 810 Richards Street, Suite 641 • (808) 531-0541
HOUSTON (77002-4891) • THERESE TILLEY •
 One Allen Center, Suite 1000 • (713) 739-1302
KANSAS CITY, MO (64106-2110) • LORI A. MADDEN •
 1101 Walnut Street, Suite 903 • (816) 221-6401
LOS ANGELES (90020-0994) • JERROLD L. MURASE •
 443 Shatto Place • (213) 383-6516
MIAMI (33129-2092) • RENE GRAFALS •
 2250 SW 3rd Avenue • (305) 854-1616
MINNEAPOLIS (55402-2975) • JAMES R. DEYE •
 514 Nicollet Mall, Suite 670 • (612) 332-6545
NASHVILLE (37219-2412) • TONY DALTON •
 162 Fourth Avenue North, Suite 103 • (615) 256-5857
NEW JERSEY (SOMERSET 08873-4002) • RICHARD NAIMARK •
 265 Davidson Avenue, Suite 149 • (201) 560-9560
NEW ORLEANS (70130-6101) • ANN PETERSON •
 650 Poydras Street, Suite 2035 • (504) 522-6181
NEW YORK (10020-1203) • CAROLYN M. PENNA •
 140 West 51st Street • (212) 484-4000
PHILADELPHIA (19102-4121) • ARTHUR R. MEHR •
 230 South Broad Street • (215) 732-5260
PHOENIX (85012-2803) • DEBORAH A. KRELL •
 3033 North Central Avenue, Suite 608 • (602) 234-0950
PITTSBURGH (15222-1207) • JOHN F. SCHANO •
 Four Gateway Center, Room 221 • (412) 261-3617
ST. LOUIS (63101-1643) • NEIL MOLDENHAUER •
 One Mercantile Center, Suite 2512 • (314) 621-7175
SAN DIEGO (92101-5278) • DENNIS SHARP •
 525 C Street, Suite 400 • (619) 239-3051
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 445 Bush Street • (415) 981-3901
SAN JOSE (95110-7409) • WALTER A. MERLINO •
 50 Airport Parkway, Suite 64 • (408) 293-7993
SAN JUAN (00918-3628) • JACINTO A. JIMENEZ-CARLO •
 Esquire Building, Suite 800 • (809) 764-8515
SEATTLE (98104-1455) • NEAL M. BLACKER •
 811 First Avenue, Suite 200 • (206) 622-6435
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 Ten Oak Hollow, Suite 17C • (313) 352-5500
SYRACUSE (13202-1838) • DEBORAH A. BROWN •
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WASHINGTON, DC (20036-3169) • GARYLEE COX •
 1730 Rhode Island Avenue, NW, Suite 509 • (202) 296-8510
WHITE PLAINS, NY (10601-4485) • MARION J. ZINMAN •
 34 South Broadway • (914) 946-1119

AAA-20M-1/88



RULES

Commercial Arbitration Rules

As amended and in effect January 1, 1988

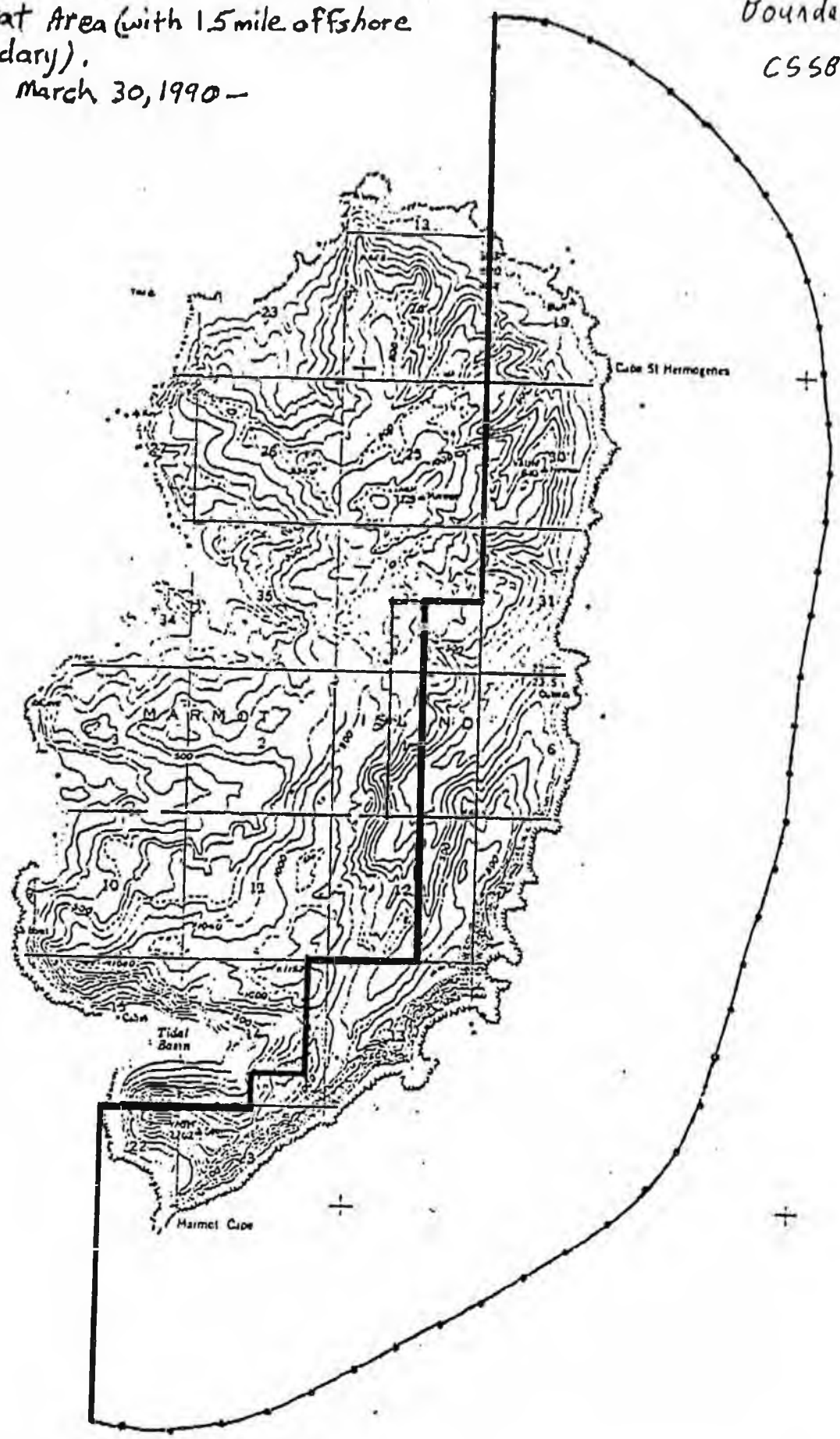


American Arbitration Association
 140 West 51st Street, New York, NY 10020-1203
 Telephone: (212) 484-4000
 Fax: (212) 765-4874

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Proposed Marmot Island Critical
Habitat Area (with 1.5 mile offshore
boundary).
- as of March 30, 1990 -

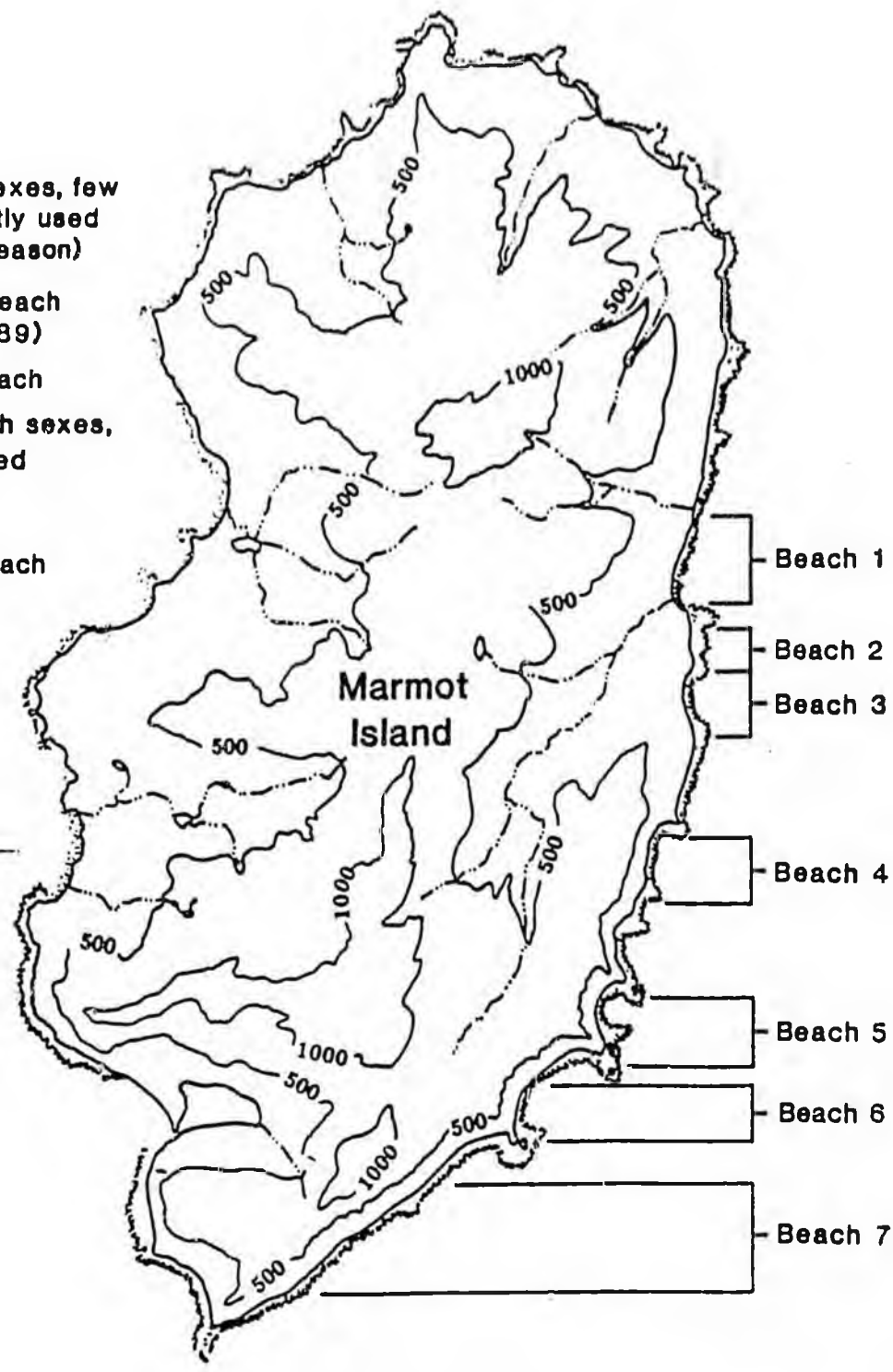
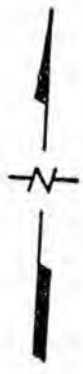
Boundary For
CSSB 545



Location of Marmot Island Northern Sea Lion Rookeries

LEGEND

- Beach 1. Males only
- Beach 2. All ages, both sexes, few pups, not currently used (1987 pupping season)
- Beach 3. Major pupping beach (Not used in 1989)
- Beach 4. Major pupping beach
- Beach 5. All ages and both sexes, not currently used
- Beach 6. Same as 5
- Beach 7. Major pupping beach



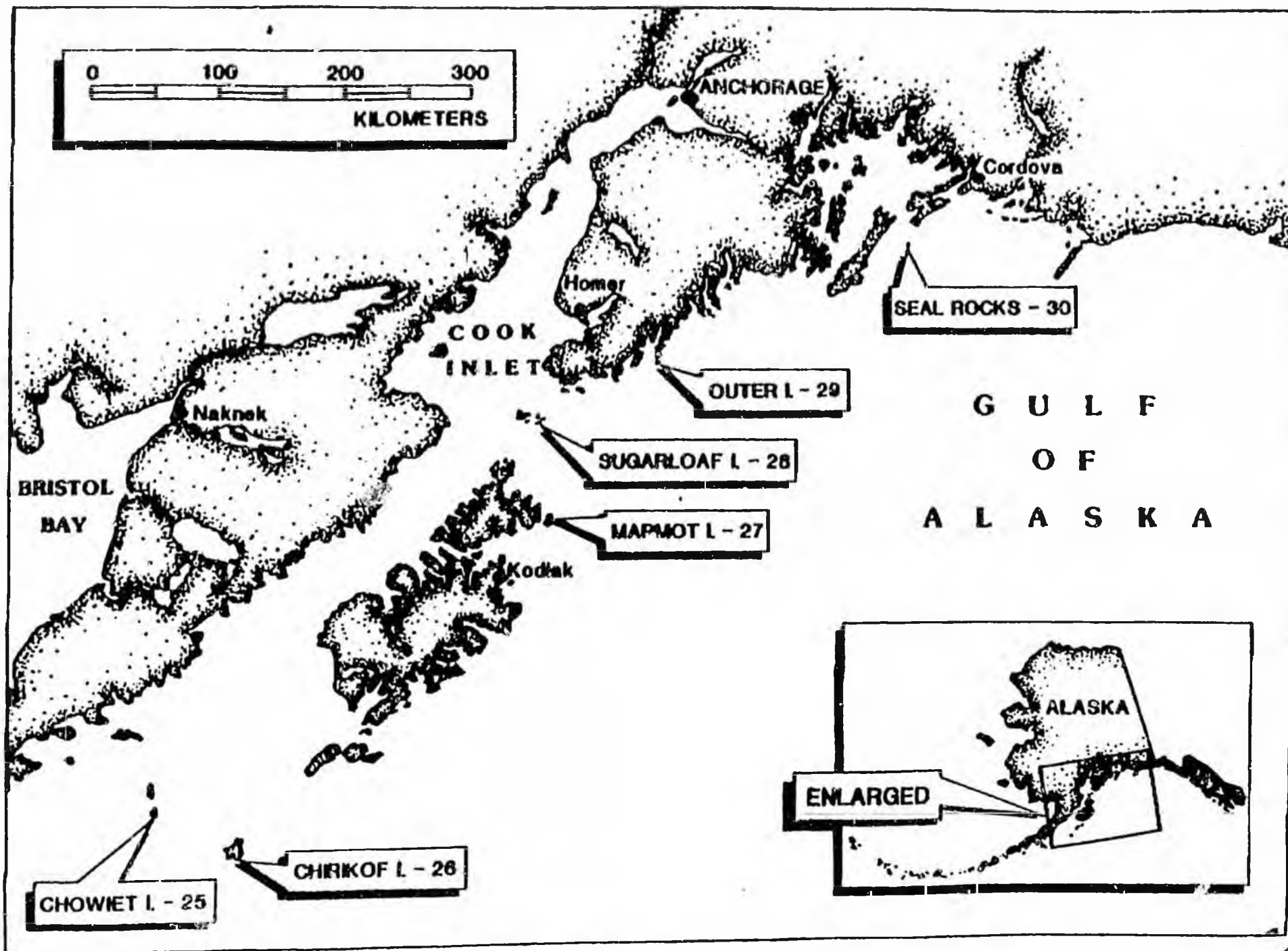


Figure 3 --- DRAFT ---

6

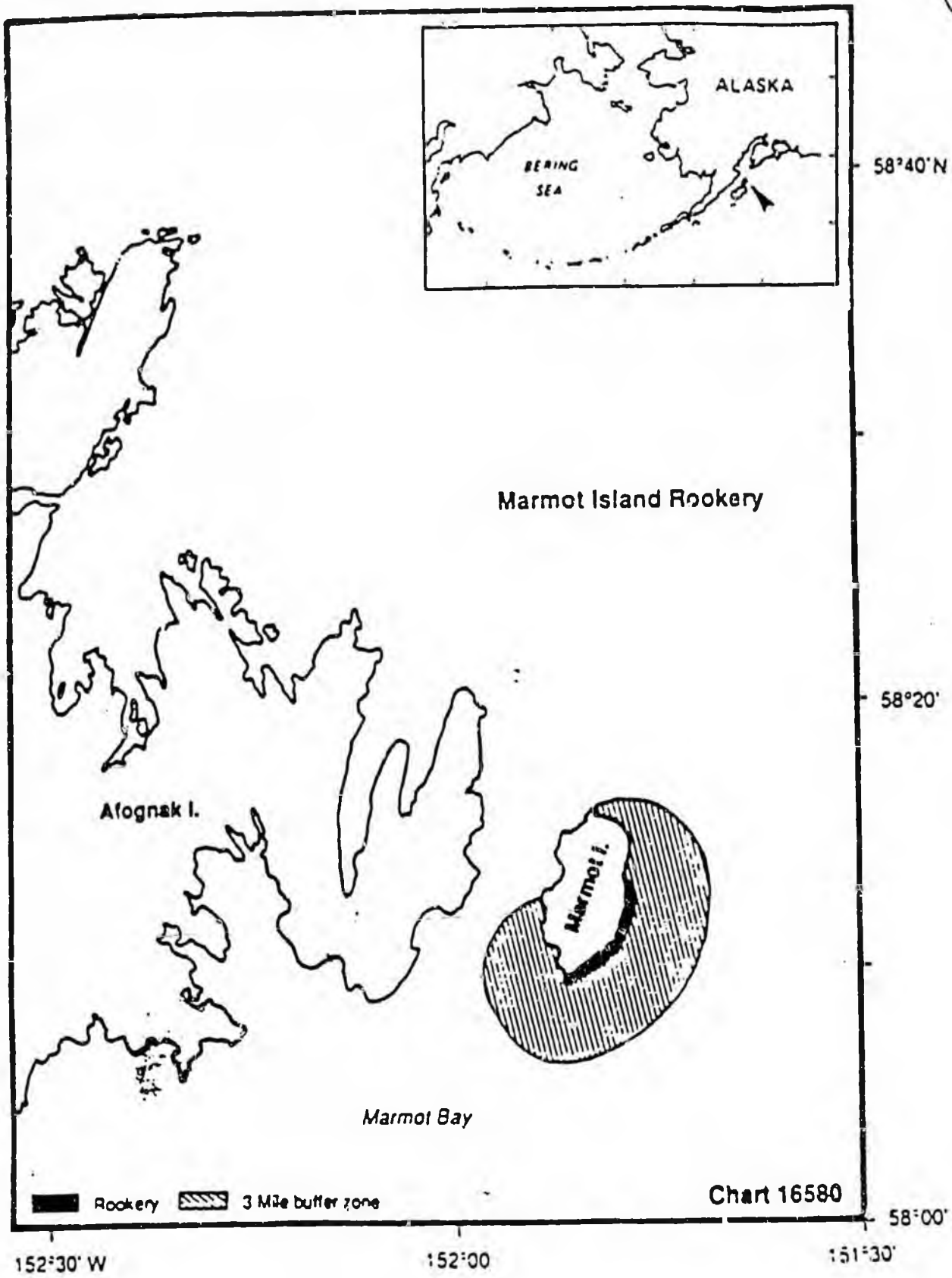


Chart 16580



STATE OF ALASKA
OFFICE OF THE GOVERNOR

7

BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Habitat	BILL NUMBER SB 545	SPONSOR Resources Committee
SHORT TITLE OF BILL Marmot Island Critical Habitat Area			
DEPARTMENT POSITION Support with Amendments			
PREPARED BY Frank Rue, Director	DATE 4/17/90	COMMISSIONER'S SIGNATURE <i>[Signature]</i>	DATE 4/17/90

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Department of Natural Resources	CONSTITUENT GROUPS AFFECTED BY BILL Kodiak Island Residents, Wildlife Enthusiasts, Commercial Fisherman
ORGANIZATIONAL SUPPORT FOR BILL	ORGANIZATIONAL OPPOSITION TO BILL

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

The purpose of the bill is to establish the Marmot Island Critical Habitat Area and provide for an effective date.

ANALYSIS OF BILL/PROGRAM EFFECTS

The bill achieves the following:

1. Establishes the Marmot Island Critical Habitat Area for the purpose of protection and enhancement of fish and wildlife habitat and populations, especially marine mammals, and seabirds.
2. Directs the Commissioner of Fish and Game to report biennially on the status of Stellar sea lions and the Marmot Island rookery.
3. Closes the area to mineral entry until the Steller sea lion population is removed from the threatened, endangered, and depleted species status under 16 USC 1531-1543.
4. Repeals the critical habitat area July 1, 2005.

AMENDMENTS PROPOSED

The Department of Fish and Game supports the bill with the following amendments.
(See attached)

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

Attachment to Bill Analysis for SB 545
Amendments Proposed
Amend AS 16.20.630(a) as follows:

- (a) The following land and water is designated as the Marmot Island Critical Habitat Area:
- (1) Township 22 South, Range 15 West Seward Meridian
Section 19
Sections 30-31
 - (2) Township 22 South, Range 16 West, Seward Meridian
[SECTION 36: E1/2 E1/2 SE1/4 , E1/2 W1/2 E1/2 SE1/4]
Section 36: SE/4 , E1/2 E1/2 SW1/4
 - (3) Township 23 South, Range 15 West, Seward Meridian
Sections 6-7
Section 18
 - (4) Township 23 South, Range 16 West, Seward Meridian
[SECTION 1: E1/2 E1/2 , E1/2 W1/2 E1/2]
Section 1: E1/2 , E1/2 E1/2 W1/2
Section 12: E1/2 E1/2 , E1/2 W1/2 E1/2
Section 13
Section 14: E1/2 E1/2 E1/2 NE1/4 , E1/2 E1/2 E1/2 N1/2
SE1/4, S1/2 SE1/4
[SECTION 23]
Sections 22-24
 - (5) The State tideland, [AND] submerged land and water for a distance of one and one-half miles from the mean high tide line of the shoreline found on state land that is described in (1), (3), and (4) of this subsection; the boundary lines of the water described in this paragraph include the water of the state on the eastern shores of Marmot Island between lines extending
 - (A) one and one-half miles from the shoreline on a line extended northward from the boundary between Section 24, Township 22 South, Range 16 West, Seward Meridian and Section 19, Township 22 South, Range 15 West, Seward Meridian; and
 - (B) one and one-half miles from the shoreline on a line extended [SOUTHWARD] westward from the boundary between Sections 15 and 22 AND 23, Township 23 South, Range 16 West, Seward Meridian.

These changes are necessary to correct an error in the legal description (Section 7, Township 23 South, Range 15 West, Seward Meridian, and Section 24, Township 23 South, Range 16 West, Seward Meridian, were inadvertantly omitted); to include important sea

lion haulouts on the southern tip of the island; and to include a critical access point along the boundary of the critical habitat area.

Amend AS 16.20.630(c) as follows:

- (c) The commissioner shall report biennially to the legislature on the status of the Steller sea lions and the Marmot Island rookeries. The land and water described in (a) of this section is closed to mineral entry under AS 38.05.185-38.05.275 [UNTIL THE STELLER SEA LION POPULATION IS REMOVED FROM THREATENED, ENDANGERED, AND DEPLETED SPECIES STATUS UNDER 16 U.S.C. 1531-1543].

Proper protection and management of the Steller sea lions and their rookeries requires the closing of Marmot Island Critical Habitat Area to mineral entry to prevent surface disturbance and displacement of animals. These closures are essential for not only the recovery of Steller sea lion populations but for their long term maintenance and protection as well.

Omit Sec. 2. AS 16.20.630, [AS ENACTED IN SEC. 1 OF THIS ACT, IS REPEALED JULY 1, 2005].

Proper protection and management of the Steller sea lions and their rookeries requires critical habitat area status for not only the recovery of Steller sea lion populations but for their long term maintenance and protection as well.