SENATE BILL NO. 261

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST

Introduced: 2/2/96  
Referred: L&C, JUD

A BILL

FOR AN ACT ENTITLED

"An Act relating to the release of employment security records; relating to an injunction or an employer’s security for delinquent unemployment insurance contributions; extending time periods for redeterminations and appeals for unemployment insurance; relating to the overpayment or the redetermination of unemployment insurance benefits; relating to availability for work, seeking work, and the calculation of wages for unemployment insurance purposes; relating to voluntary federal tax withholding from unemployment insurance benefits; relating to the binding effect of unemployment compensation decisions; relating to the definition of ‘waiting week’ for employment security purposes; and providing for an effective date."

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

* Section 1. AS 23.20.110(a) is amended to read:
(a) Except as provided in (h) and (i) of this section, the department shall hold information obtained from an employing unit or individual in the course of administering this chapter and determinations as to the benefit rights of an individual confidential and may not disclose them or open them to public inspection in a manner that reveals the identity of the individual or employing unit. A claimant or an employing unit, or the legal representative of the claimant or the employing unit, is entitled to information from the records of the department to the extent necessary to properly present or protest a claim or determination under this chapter. Subject to restrictions the department prescribes by regulation, the information may be made available to an agency of this state or another state or federal agency charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices, or, for the purposes of the Federal Unemployment Tax Act, to the Internal Revenue Service of the United States, or, for tax purposes, to the Department of Revenue. Information obtained in the course of administering this chapter or in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service or the administration of employment and training programs planned or coordinated by the Alaska Human Resource Investment Council under AS 44.19.620 - 44.19.627.

* Sec. 2. AS 23.20.110(d) is amended to read:

(d) The department may require that an agency or authorized person to which it provides information under this section reimburse the department for its costs of furnishing that information.

* Sec. 3. AS 23.20.110 is amended by adding new subsections to read:

(l) The department may provide information obtained under this chapter to an agency of this state or to a person under contract with the state to

(1) verify the eligibility of an applicant for a public benefit or a publicly financed payment;

(2) assist the state in the collection of fines, penalties, or other payments ordered by a court or an administrative agency; or
(3) collect money owed to the fund under this chapter.

(m) The department may not release information under this section to a state agency or to a person under contract with the state until the department and the agency or person have entered into a written agreement that governs the release of information. The written agreement must specify

1. the purpose for the information;
2. a description of the information to be provided;
3. a description of the procedure for transmitting, securing, using, and disposing of the information; and
4. the method of reimbursement, if any, for the cost of providing the information.

(n) The department may produce statistical and other public reports based on information obtained in the course of administering this chapter, so long as the reports do not reveal wage and payroll data for an employing unit or the name or number identifying an individual. The reports may include the firm name, address, standard industrial classification code, census area code, number of workers employed, and occupational staffing patterns for an employing unit.

Sec. 4. AS 23.20 is amended by adding new sections to read:

Sec. 23.20.247. EMPLOYER’S SECURITY FOR DELINQUENT CONTRIBUTIONS. (a) If the department determines that an employer has been delinquent in paying contributions owed to the fund for two or more calendar quarters, the department may require an employer to deposit and keep on deposit with the department a sum equal to the contributions payable to the fund for the four completed calendar quarters immediately preceding the delinquency. If the employer does not have four completed payroll quarters immediately before the delinquency, the department shall estimate the employer’s annual contributions, based on contributions payable for the completed payroll quarters. In lieu of the deposit, the department may accept a bond or other security equal in value to the required deposit. The deposit, bond, or other security accepted by the department does not relieve the employer from making contributions to the fund or paying delinquent contributions, interest, and penalties as provided in this chapter. After notice and opportunity for hearing related
to the application of the security, the department may immediately apply all or part of
the deposit, bond, or other approved security to the employer’s delinquent
contributions, interest, or penalties arising under this chapter.

(b) Unless precluded by other law, the deposit, bond, or other security accepted
by the department shall take priority over all other liens, claims, or encumbrances and
shall be exempt from any process, attachment, garnishment, or execution.

(c) If an employer ceases to be an employer subject to this chapter, the
department shall, upon receipt of all payments due the fund, refund to the employer
the deposits remaining to the employer’s credit and shall cancel any bond or other
security accepted by the department under this section. The department may return,
in whole or part, the deposit, bond, or other security accepted by the department under
this section to the employer if the employer is current in paying contributions under
this section for eight consecutive quarters.

Sec. 23.20.248. INJUNCTIVE RELIEF. (a) If an employer does not deposit
and keep on deposit the security required by the department under AS 23.20.247, the
department, through the attorney general, may bring an action in superior court to
enjoin the employer from operating any business as an employer within the state until
(1) the employer is current on all final assessments, including interest
and penalties made under this chapter; and

(2) if requested, the employer deposits and keeps on deposit the
security described in AS 23.20.247 to protect against future failures and to comply
with this chapter.

(b) The department may not seek injunctive relief under (a) of this section
until the department has given the employer at least 30 days to comply with an order
relating to security under AS 23.20.247.

(c) The department may not be required to post a bond for injunctive relief
under this section.

* Sec. 5. AS 23.20.265 is amended by adding a new subsection to read:

(c) Upon request, the department may notify an employing unit of its
contractor’s or subcontractor’s liability for contributions, interest, and penalties under
this chapter to allow the employing unit to comply with this section.
* Sec. 6. AS 23.20.277(h) is amended to read:

(h) The amount due, specified in a bill from the department, is conclusive on the organization unless, not later than 30 [15] days after the bill was mailed to its last address of record or otherwise delivered to it, the organization files an application for redetermination by the department, setting out the grounds for the application. The department shall promptly review and reconsider [THE AMOUNT DUE SPECIFIED IN] the bill and shall thereafter issue a redetermination in any case in which an application for redetermination has been filed. Any redetermination is conclusive on the organization unless, not later than 30 [15] days after the redetermination was mailed to its last address of record or otherwise delivered to it, the organization files an appeal to the commissioner, setting out the grounds for the appeal. Proceedings on appeal to the commissioner from the amount of a bill rendered under this subsection or a redetermination of the amount shall be in accordance with [THE PROVISIONS OF] AS 23.20.410 - 23.20.470.

* Sec. 7. AS 23.20.305(a) is amended to read:

(a) The department shall promptly notify each employer of the rate of contributions for the employer as determined for a calendar year under AS 23.20.280 - 23.20.310. The determination becomes conclusive upon the employer unless within 30 [15] days after the notice is mailed to the employer’s last address of record or delivered to the employer, the employer files an application for review and redetermination, setting out the reasons for the application.

* Sec. 8. AS 23.20.315(d) is amended to read:

(d) Within 30 [15] days after a notice of a determination has been mailed or delivered to the last address of record of an employing unit, the employing unit may apply to the department to reconsider its determination in the light of additional evidence and to issue a redetermination. The department shall, if the request is granted, mail or deliver to the last address of record of the employing unit affected a notice of the redetermination. The notice must include a statement of the supporting facts found by the department. If the department denies the request for redetermination, it shall furnish a notice of the denial of the application.

* Sec. 9. AS 23.20.315(e) is amended to read:
(e) Within 30 [15] days after a notice of a determination made under (a), (b), or (d) of this section or a denial of the application under (d) of this section has been mailed or delivered to the last address of record of an employing unit, the employing unit may appeal from the determination to the department. The department shall give the parties a reasonable opportunity for a fair hearing as provided in the case of hearings before appeal tribunals in AS 23.20.410 - 23.20.470. The decision of the department is final unless, within 30 days after the decision is mailed or delivered to the last address of record of a party, the party initiates judicial review in accordance with AS 23.20.445.

* Sec. 10. AS 23.20.340(b) is amended to read:

(b) Within one year from the date of the initial determination of the weekly benefit amount and the maximum potential benefit amount established under AS 23.20.350, the department shall reconsider [ONLY] the determination or any subsequent determination under this chapter [OF THE MONETARY AMOUNTS] and shall issue a redetermination amending the [INITIAL] determination if the department [IT] finds that

(1) [THAT] an error in computation or identity has been made;

(2) [OR THAT] additional wages or other facts pertinent to the claimant’s insured status or eligibility for benefits have become available;

(3) [OR THAT] the [INITIAL] determination resulted from a nondisclosure or misrepresentation of a material fact; or

(4) the determination resulted from a misapplication of law by the department [CONCERNING THE DETERMINATION OF MONETARY AMOUNTS].

* Sec. 11. AS 23.20.340(e) is amended to read:

(e) The claimant may file an appeal from an initial determination or a redetermination under (b) of this section not later than 30 [15] days after the claimant is notified in person of the determination or redetermination or not later than 30 [15] days after the date the determination or redetermination is mailed to the claimant’s last address of record. The period for filing an appeal may be extended for a reasonable period if the claimant shows that the application was delayed as a result of
circumstances beyond the claimant’s control.

*Sec. 12.* AS 23.20.378(a) is amended to read:

(a) An insured worker is entitled to receive waiting-week credit or benefits for a week of unemployment if for that week the insured worker is able to work and available for suitable work. An insured worker is not considered available for work unless registered for work in accordance with regulations adopted by the department. An insured worker may not be disqualified for failure to comply with this subsection if

(1) the insured worker is not available for work because the insured worker

(A) [THE INSURED WORKER] is ill or disabled;

(B) [THE INSURED WORKER] is traveling to obtain medical services that are not available in the area in which the insured worker resides, or, if a physician determines it is necessary, the insured worker is accompanying a spouse or dependent who is traveling to obtain medical services;

(C) [THE INSURED WORKER] resides in the state and is noncommercially hunting or fishing for personal survival or the survival of dependents; [OR]

(D) [THE INSURED WORKER] is serving as a prospective or impaneled juror in a court; or

(E) is attending the funeral of an immediate family member for a period of no longer than seven days; and

(2) a condition described in (1) [(1)(A) - (C)] of this subsection occurs during an uninterrupted period of unemployment immediately following a week for which the insured worker has filed a compensable claim, and work has not been offered that would have been suitable for the insured worker before the illness, disability, hunting, fishing, [OR] medical travel, jury service, or funeral attendance.

*Sec. 13.* AS 23.20.390(b) is amended to read:

(b) The department shall promptly prepare and deliver or mail to the individual at the individual’s last address of record a notice of determination of liability declaring
that the individual has been determined liable to refund the amount of benefits to 
which the individual is not entitled. The amount, if not previously collected, shall be 
deducted from future benefits payable to the individual. However, the department 
may absolve liability to the fund for repayment of all or a portion of those 
benefits if the department determines that an individual has died [,] or has acted in 
good faith in claiming and receiving benefits to which the individual was not entitled 
and recovery of those benefits would be against equity and good conscience [THAT 
GREAT HARDSHIP WOULD RESULT FROM CHARGING THE INDIVIDUAL 
WITH REPAYMENT OF THE BENEFITS, THE DEPARTMENT MAY ABSOLVE 
THE INDIVIDUAL FROM LIABILITY TO THE FUND FOR REPAYMENT OF 
ALL OR A PORTION OF THOSE BENEFITS].

* Sec. 14. AS 23.20.390(d) is amended to read:

(d) If paid-out benefit sums have neither been repaid by the recipient nor 
deducted from benefits payable to the recipient within two [SIX] years following the 
last day of the year in which payment was made, the commissioner may declare the 
sums uncollectible and cancel both the resulting shortage and related records.

* Sec. 15. AS 23.20.390(e) is amended to read:

(e) An appeal from the determination of liability under this section may be 
made in the same manner and to the same extent as provided by AS 23.20.340 and 
23.20.410 - 23.20.470 for an appeal relating to a determination in respect to a claim 
for benefits. If no appeal is taken to the appeal tribunal by the individual within 30 
[15] days of the delivery of the notice of determination of liability, or within 30 [15] 
days of the mailing of the notice of determination, whichever is earlier, the 
determination of liability is final and the court shall, upon application of the 
department, enter a judgment in the amount provided by the notice of determination. 
The judgment has the same effect as a judgment entered in a civil action.

* Sec. 16. AS 23.20 is amended by adding a new section to read:

Sec. 23.20.403. VOLUNTARY INCOME TAX WITHHOLDING. (a) When 
an individual files a new claim for unemployment compensation, the department shall 
advise the individual that 

(1) unemployment compensation benefits are subject to federal income
(2) federal requirements exist pertaining to estimated federal tax payments;

(3) the individual may elect to have federal income tax deducted and withheld from the individual’s payment of unemployment compensation benefits at the amount specified in 26 U.S.C. (Internal Revenue Code); and

(4) the individual is permitted to change a previously elected status for the withholding of federal income tax.

(b) Amounts deducted for federal income taxes and withheld from unemployment compensation benefits shall remain in the unemployment fund until transferred to the federal Internal Revenue Service as payment of federal income tax.

(c) The department shall comply with legal requirements of the federal Department of Labor and the Internal Revenue Service regarding the deduction and withholding of federal income tax.

* Sec. 17. AS 23.20.406(c) is amended to read:

(c) Notwithstanding (a) and (b) of this section, an individual is ineligible for payment of extended benefits for any week of unemployment in the individual’s eligibility period if the department finds that during that period the individual failed to

(1) [FAILED TO] accept an offer of suitable work as defined under (k) of this section or failed to apply for suitable work to which the individual was referred by the department; or

(2) [FAILED TO] actively seek work as prescribed under (f) of this section, except that the eligibility of the individual will be determined under AS 23.20.378 without regard to the disqualification provisions otherwise applicable under (d) of this section if the individual is not actively engaged in seeking work because the individual is

(A) summoned for jury duty before a court of the United States or any state; [OR]

(B) hospitalized for treatment of an emergency or life-threatening condition; or
(C) attending an approved vocational training course under AS 23.20.382.

* Sec. 18. AS 23.20.430 is amended to read:

Sec. 23.20.430. NOTICE OF DECISION AND TIME FOR APPEAL. After a hearing an appeal tribunal shall promptly make findings and conclusions and on the basis of them shall affirm, modify, or reverse the determination. Each party shall be promptly given a copy of the decision, the supporting findings and the conclusions. This decision is final unless further review is initiated under AS 23.20.435 within 30 [15] days after the decision is mailed to each party at the party’s last address of record or delivered to the party. The period within which further review may be initiated may be extended for a reasonable period of time upon a showing that the application was delayed as a result of circumstances beyond the party’s control.

* Sec. 19. AS 23.20.435(b) is amended to read:

(b) The department on its own motion may initiate a review of a decision or determination of an appeal tribunal within 30 [15] days after the date of the decision. The department may affirm, modify, or reverse the findings or conclusions of the appeal tribunal solely on the basis of evidence previously submitted, or upon the basis of additional evidence that [WHICH] it may take or direct to be taken.

* Sec. 20. AS 23.20.455(a) is amended to read:

(a) Final decisions of the department and the principles of law declared in their support are binding in all subsequent proceedings under this chapter involving similar questions unless expressly or impliedly overruled by a later decision of the department or of a court. Final decisions of appeal tribunals and the principles of law declared in their support are binding on the employees and representatives of the department and are persuasive authority in subsequent appeal tribunal proceedings.

* Sec. 21. AS 23.20 is amended by adding a new section to read:

Sec. 23.20.497. BINDING EFFECT OF DEPARTMENT DECISIONS. A finding of fact or law, judgment, conclusion, or final order made with respect to a claim for unemployment compensation under this chapter is not conclusive or binding in any separate or subsequent action or proceeding in another forum concerning proceedings not under this chapter, regardless of whether the prior action was between
the same or related parties or involved the same facts.

* Sec. 22. AS 23.20.520(20) is amended to read:

(20) "waiting week" means the first week of unemployment for which an individual files a claim during the individual’s benefit year and for which no disqualification is imposed under AS 23.20.360, 23.20.362, 23.20.375, and 23.20.378 - 23.20.387 [AS 23.20.378 - 23.20.387];

* Sec. 23. AS 23.20.530(b) is amended by adding a new paragraph to read:

(12) the amount of a payment made to or on behalf of an employee or the employee’s beneficiary under a cafeteria plan as defined in 26 U.S.C. 125, if the payment would not be treated as wages under this section without regard to the cafeteria plan.

* Sec. 24. This Act takes effect July 1, 1996.