AN ACT

Amending the Alaska Wage and Hour Act as it relates to the employment of a person acting in a supervisory capacity or in an administrative, executive, or professional capacity; relating to definitions under the Alaska Wage and Hour Act and providing definitions for persons employed in administrative, executive, and professional capacities, for persons working in the capacity of an outside salesman, for persons working in the capacity of a salesman employed on a straight commission basis, and for persons that perform computer-related occupations; directing retrospective application of the provisions of this Act to work performed before the effective date of this Act for purposes of claims filed on or after the effective date of this Act, and disallowing retrospective application for purposes of claims for that work that are filed before the effective date of this Act.

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

THE ACT FOLLOWS ON PAGE 1
AN ACT

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*Section 1.* AS 23.10.055 is amended to read:

**Sec. 23.10.055. Exemptions; compensation of executives, administrators, and professionals.** The provisions of AS 23.10.050 - 23.10.150 do not apply to

(1) an individual employed in agriculture, which includes farming in all its branches and, among other things, includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices, including forestry and lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with the farming operations, including preparation for market, or delivery to storage or to market or to carriers for transportation to market;

(2) an individual employed in the catching, trapping, cultivating or farming, netting, or taking of any kind of fish, shellfish, or other aquatic forms of animal and vegetable life;

(3) an individual employed in the hand picking of shrimp;

(4) an individual employed in domestic service, including a baby-sitter, in or about a private home;

(5) an individual employed by the United States or by the state or a political subdivision of the state, except as provided in AS 23.10.065(b), including prisoners not on furlough detained or confined in prison facilities;

(6) an individual engaged in the nonprofit activities of a nonprofit religious, charitable, cemetery, or educational organization or other nonprofit organization where the employer-employee relationship does not, in fact, exist, and where services rendered to the organization are on a voluntary basis and are related only to the organization's nonprofit activities; for purposes of this paragraph, "nonprofit activities" means activities for which the nonprofit organization does not incur a liability for unrelated business income tax under 26 U.S.C. 513, as amended;

(7) an employee engaged in the delivery of newspapers to the consumer;

(8) an individual employed solely as a watchman or caretaker of a plant or property that is not in productive use for a period of four months or more;
(9) an individual employed

(A) in a bona fide executive, administrative, or professional
capacity;

(B) [OR] in the capacity of an outside salesman or a salesman
who is employed on a straight commission basis; or

(C) as a computer systems analyst, computer programmer,
software engineer, or other similarly skilled worker;

(10) an individual employed in the search for placer or hard rock
minerals;

(11) an individual under 18 years of age employed on a part-time basis
not more than 30 hours in a week;

(12) employment by a nonprofit educational or child care facility to
serve as a parent of children while the children are in residence at the facility if the
employment requires residence at the facility and is compensated on a cash basis
exclusive of room and board at an annual rate of not less than

(A) $10,000 for an unmarried person; or

(B) $15,000 for a married couple;

(13) an individual who drives a taxicab, is compensated for taxicab
services exclusively by customers of the service, whose written contractual
arrangements with owners of taxicab vehicles, taxicab permits, or radio dispatch
services are based upon flat contractual rates and not based on a percentage share of
the individual's receipts from customers, and whose written contract with owners of
taxicab vehicles, taxicab permits, or radio dispatch services specifically provides that
the contract places no restrictions on hours worked by the individual or on areas in
which the individual may work except to comply with local ordinances;

(14) a person who holds a license under AS 08.54 and who is
employed by a registered guide or master guide licensed under AS 08.54, for the first
60 workdays [WORK DAYS] in which the person is employed by the registered
guide or master guide during a calendar year;

(15) an individual engaged in activities for a nonprofit religious,
charitable, civic, cemetery, recreational, or educational organization where the

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employer-employee relationship does not, in fact, exist, and where services are
rendered to the organization under a work activity requirement of AS 47.27 (Alaska
temporary assistance program);

(16) an individual who

(A) provides emergency medical services only on a voluntary
basis;

(B) serves with a full-time fire department only on a voluntary
basis; or

(C) provides ski patrol services on a voluntary basis; or

(17) a student participating in a University of Alaska practicum
described under AS 14.40.065.

* Sec. 2. AS 23.10.055 is amended by adding new subsections to read:

(b) Notwithstanding (c) of this section, an individual employed in a bona fide
executive, administrative, or professional capacity shall be compensated on a salary or
fee basis at a rate of not less than two times the state minimum wage for the first 40
hours of employment each week, exclusive of board or lodging that is furnished by the
individual's employer.

(c) In (a)(9) of this section,

(1) "bona fide executive, administrative, or professional capacity" has
the meaning and shall be interpreted in accordance with 29 U.S.C. 201 - 219 (Fair
Labor Standards Act of 1938), as amended, or the regulations adopted under those
sections;

(2) "computer systems analyst, computer programmer, software
engineer, or other similarly skilled worker" has the meaning and shall be interpreted in
accordance with 29 U.S.C. 201 - 219 (Fair Labor Standards Act of 1938), as amended,
or the regulations adopted under those sections;

(3) "outside salesman" means an employee

(A) who is customarily and regularly away from the employer's
place of business; and

(B) whose primary duty is making sales or contracts for sales,
consignments, or shipments, or obtaining orders for services or for use of
facilities for which consideration will be paid by the client or customer;

(4) "salesman who is employed on a straight commission basis" means an employee

(A) who is customarily and regularly employed on the business premises of the employer;

(B) who is compensated on a straight commission basis for the purpose of making sales or contracts for sales, consignments, shipments, or obtaining orders for services or the use of facilities for which a consideration will be paid by the client or customer; and

(C) whose primary duty is making sales or contracts for sales, consignments, shipments, or obtaining orders for service or the use of facilities for which a consideration will be paid by the client or customer.

* Sec. 3. AS 23.10.060(a) is amended to read:

(a) An employer who employs employees engaged in commerce or other business, or in the production of goods or materials in the state, may not employ an employee for a workweek longer than 40 hours or for more than eight hours a day. [THIS SECTION DOES NOT APPLY TO THE EMPLOYMENT OF A PERSON ACTING IN A SUPERVISORY CAPACITY.]

* Sec. 4. AS 23.10.085(b) is amended to read:

(b) The regulations may, without limiting the generality of (a) of this section, define terms used in AS 23.10.050 - 23.10.150, and restrict or prohibit industrial homework or other acts or practices that the director finds appropriate to carry out the purpose of AS 23.10.050 - 23.10.150, or to prevent the circumvention or evasion of AS 23.10.050 - 23.10.150. [IF THE REGULATIONS DEFINING AN INDIVIDUAL EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR PROFESSIONAL CAPACITY FOR PURPOSES OF AS 23.10.055 REQUIRE THAT THE INDIVIDUAL RECEIVE A MINIMUM SALARY, THE REQUIRED MINIMUM SALARY MUST BE TWO TIMES THE STATE MINIMUM WAGE FOR THE FIRST 40 HOURS OF EMPLOYMENT EACH WEEK.]

* Sec. 5. AS 23.10.145 is amended to read:

Sec. 23.10.145. Definitions. If not defined in this title or in regulations
adopted under this title, terms used in AS 23.10.050 - 23.10.150 shall be defined as
they are defined in 29 U.S.C. 201 - 219 ( [THE FEDERAL] Fair Labor Standards Act
of 1938), as amended, or the regulations adopted under those sections [IT].

* Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to
read:

APPLICATION AS TO WORK PERFORMED BEFORE THE EFFECTIVE DATE
OF THIS ACT. (a) This Act applies retrospectively to work performed before the effective
date of this Act for purposes of any claim or proceeding based on AS 23.10.050 - 23.10.150
(Alaska Wage and Hour Act) that is filed on or after the effective date of this Act.

(b) This Act does not apply to work performed before the effective date of this Act for
purposes of any claim or proceeding based on AS 23.10.050 - 23.10.150 that is filed before
the effective date of this Act.