

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

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

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

12 * 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 [WHICH] 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 [FOR THE PROPER PRESENTATION OF THE CLAIM IN A PROCEEDING] under this chapter. Subject to restrictions that [WHICH] 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

1 (3) collect money owed to the fund under this chapter.

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

6 (1) the purpose for the information;

7 (2) a description of the information to be provided;

8 (3) a description of the procedure for transmitting, securing, using, and
9 disposing of the information; and

10 (4) the method of reimbursement, if any, for the cost of providing the
11 information.

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

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

19 Sec. 23.20.247. EMPLOYER'S SECURITY FOR DELINQUENT
20 CONTRIBUTIONS. (a) If the department determines that an employer has been
21 delinquent in paying contributions owed to the fund for two or more calendar quarters,
22 the department may require an employer to deposit and keep on deposit with the
23 department a sum equal to the contributions payable to the fund for the four completed
24 calendar quarters immediately preceding the delinquency. If the employer does not
25 have four completed payroll quarters immediately before the delinquency, the
26 department shall estimate the employer's annual contributions, based on contributions
27 payable for the completed payroll quarters. In lieu of the deposit, the department may
28 accept a bond or other security equal in value to the required deposit. The deposit,
29 bond, or other security accepted by the department does not relieve the employer from
30 making contributions to the fund or paying delinquent contributions, interest, and
31 penalties as provided in this chapter. After notice and opportunity for hearing related

1 to the application of the security, the department may immediately apply all or part of
2 the deposit, bond, or other approved security to the employer's delinquent
3 contributions, interest, or penalties arising under this chapter.

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

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

14 Sec. 23.20.248. INJUNCTIVE RELIEF. (a) If an employer does not deposit
15 and keep on deposit the security required by the department under AS 23.20.247, the
16 department, through the attorney general, may bring an action in superior court to
17 enjoin the employer from operating any business as an employer within the state until

18 (1) the employer is current on all final assessments, including interest
19 and penalties made under this chapter; and

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

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

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

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

29 (c) Upon request, the department may notify an employing unit of its
30 contractor's or subcontractor's liability for contributions, interest, and penalties under
31 this chapter to allow the employing unit to comply with this section.

1 * **Sec. 6.** AS 23.20.277(h) is amended to read:

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

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

16 (a) The department shall promptly notify each employer of the rate of
17 contributions for the employer as determined for a calendar year under AS 23.20.280 -
18 23.20.310. The determination becomes conclusive upon the employer unless within
19 30 [15] days after the notice is mailed to the employer's last address of record or
20 delivered to the employer, the employer files an application for review and
21 redetermination, setting out the reasons for the application.

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

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

31 * **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

1 circumstances beyond the claimant's control.

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

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

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

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

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

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

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

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

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

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

30 (b) The department shall promptly prepare and deliver or mail to the individual
31 at the individual's last address of record a notice of determination of liability declaring

1 that the individual has been determined liable to refund the amount of benefits to
2 which the individual is not entitled. The amount, if not previously collected, shall be
3 deducted from future benefits payable to the individual. However, **the department**
4 **may absolve liability to the fund for repayment of all or a portion of those**
5 **benefits** if the department determines that an individual has died [,] or has acted in
6 good faith in claiming and receiving benefits to which the individual was not entitled
7 and **recovery of those benefits would be against equity and good conscience** [THAT
8 GREAT HARDSHIP WOULD RESULT FROM CHARGING THE INDIVIDUAL
9 WITH REPAYMENT OF THE BENEFITS, THE DEPARTMENT MAY ABSOLVE
10 THE INDIVIDUAL FROM LIABILITY TO THE FUND FOR REPAYMENT OF
11 ALL OR A PORTION OF THOSE BENEFITS].

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

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

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

18 (e) An appeal from the determination of liability under this section may be
19 made in the same manner and to the same extent as provided by AS 23.20.340 and
20 23.20.410 - 23.20.470 for an appeal relating to a determination in respect to a claim
21 for benefits. If no appeal is taken to the appeal tribunal by the individual within **30**
22 [15] days of the delivery of the notice of determination of liability, or within **30** [15]
23 days of the mailing of the notice of determination, whichever is earlier, the
24 determination of liability is final and the court shall, upon application of the
25 department, enter a judgment in the amount provided by the notice of determination.
26 The judgment has the same effect as a judgment entered in a civil action.

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

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

31 (1) unemployment compensation benefits are subject to federal income

1 tax;

2 (2) federal requirements exist pertaining to estimated federal tax
3 payments;

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

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

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

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

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

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

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

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

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

30 (B) hospitalized for treatment of an emergency or life-
31 threatening condition; **or**

1 (C) attending an approved vocational training course under

2 AS 23.20.382.

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

4 Sec. 23.20.430. NOTICE OF DECISION AND TIME FOR APPEAL. After
5 a hearing an appeal tribunal shall promptly make findings and conclusions and on the
6 basis of them shall affirm, modify, or reverse the determination. Each party shall be
7 promptly given a copy of the decision, the supporting findings and the conclusions.
8 This decision is final unless further review is initiated under AS 23.20.435 within 30
9 [15] days after the decision is mailed to each party at the party's last address of record
10 or delivered to the party. The period within which further review may be initiated
11 may be extended for a reasonable period of time upon a showing that the application
12 was delayed as a result of circumstances beyond the party's control.

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

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

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

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

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

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

1 the same or related parties or involved the same facts.

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

3 (20) "waiting week" means the first week of unemployment for which
4 an individual files a claim during the individual's benefit year and for which no
5 disqualification is imposed under AS 23.20.360, 23.20.362, 23.20.375, and 23.20.378 -
6 23.20.387 [AS 23.20.378 - 23.20.387];

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

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

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