

HOUSE BILL NO. 213

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 4/1/09

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to contributions, interest, penalties, and payments under the Alaska**
2 **Employment Security Act; and providing for an effective date."**

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

4 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 LEGISLATIVE FINDINGS AND INTENT. (a) The legislature finds that

7 (1) P.L. 106-544 (Consolidated Appropriations Act, 2001) amended 26 U.S.C.
8 3301 - 3311 (Federal Unemployment Tax Act (FUTA)) to require certified state
9 unemployment insurance programs to provide federally recognized tribes and their wholly
10 owned subdivisions, subsidiaries, or businesses the option to be a reimbursable employer;

11 (2) the state's unemployment insurance program has been certified by the
12 United States Department of Labor;

13 (3) as a certified program, the Department of Labor and Workforce
14 Development receives federal funds to administer its unemployment insurance program;

(4) because this state has a certified program, Alaska employers receive a tax credit of up to 90 percent of the federal unemployment tax that employers are required to pay;

(5) to maintain its certified status, this state must conform AS 23.20 (Alaska Employment Security Act) with the requirements of FUTA;

(6) failure to bring AS 23.20 (Alaska Employment Security Act) into compliance with federal legislation could result in the loss of approximately \$20,000,000 in administrative funding from FUTA and the loss of approximately \$111,000,000 in FUTA tax credits to employers in this state;

(7) of the 33 states that have federally recognized tribes, Alaska is the only state that has not yet passed conforming legislation; and

(8) to bring AS 23.20 (Alaska Employment Security Act) into conformity with FUTA, the legislature finds that it is necessary to amend AS 23.20 to allow federally recognized tribes and their wholly owned subdivisions, subsidiaries, or businesses the option to be a reimbursable employer.

(b) It is the intent of the legislature that this Act not alter or expand in any way the governmental relationship between federally recognized tribes and the state.

* **Sec. 2.** AS 23.20.277(b) is amended to read:

(b) At the end of each calendar quarter, or at the end of any other period as determined by the department, the department shall bill each government entity, **federally recognized tribe**, nonprofit organization, or group of nonprofit organizations that has elected to make payments in place of contributions, for benefits paid during the quarter or other prescribed period that are attributable to service in the employ of the government entity, **federally recognized tribe**, nonprofit organization, or group. In the case of nonprofit organizations and groups of nonprofit organizations, the amount billed is an amount equal to the full amount of regular benefits plus extended benefits that are not reimbursable by the federal government. In the case of a government entity **or federally recognized tribe**, the amount billed is an amount equal to the full amount of the regular benefits plus the full amount of the extended benefits paid.

* **Sec. 3.** AS 23.20.277(e) is amended to read:

(e) At the end of each taxable year, the department shall determine whether

the total of payments for the year made by a nonprofit organization or group of nonprofit organizations is less than, or in excess of, the total amount of regular benefits plus extended benefits not reimbursable by the federal government paid to individuals during the taxable year based on wages attributable to service in the employ of the nonprofit organization or group. In the case of a government entity or federally recognized tribe that has elected to make payments under this section, the department shall determine whether the total of payments for the year is less than, or in excess of, the total amount of regular benefits plus the total amount of extended benefits as determined in this subsection. If [EACH ORGANIZATION OR GROUP WHOSE] total payments for the taxable year are less than the amount so determined, the employer is liable for payment of the unpaid balance to the fund in accordance with (f) of this section. If the total payments exceed the amount so determined for the taxable year, all or part of the excess may, at the discretion of the department, be refunded from the fund or retained in the fund as part of the payments that may be required for the next taxable year.

* Sec. 4. AS 23.20.277(f) is amended to read:

(f) Payment of any bill rendered under (b) or (c) of this section shall be made not later than 30 days after the bill was mailed to the last known address of the nonprofit organization, group of nonprofit organizations, government entity, or federally recognized tribe or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with (h) of this section.

* Sec. 5. AS 23.20.277(g) is amended to read:

(g) Payments made by any nonprofit organization, group of nonprofit organizations, government entity, or federally recognized tribe under the provisions of this section may not be deducted or deductible, in whole or in part, from the remuneration of an individual [INDIVIDUALS] in the employ of the organization, group of organizations, government entity, or federally recognized tribe; nor may contributions be required of an employee on the basis of wages paid to that employee for services performed by the employee in employment for a nonprofit organization, group of nonprofit organizations, government entity, or federally recognized tribe that [WHICH] makes an election to become liable for payments in

place of contributions under AS 23.20.276 - 23.20.278 [AS 23.20.276], and the wages are paid during the period of election.

* **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 employer [ORGANIZATION] unless, not later than 30 days after the bill was mailed to its last address of record or otherwise delivered to it, the employer [ORGANIZATION] files an application for redetermination by the department, setting out the grounds for the application. The department shall promptly review and reconsider 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 employer [ORGANIZATION] unless, not later than 30 days after the redetermination was mailed to its last address of record or otherwise delivered to it, the employer [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 AS 23.20.410 - 23.20.470.

* **Sec. 7.** AS 23.20.277(j) is amended to read:

(j) At the discretion of the department, a nonprofit organization, group of nonprofit organizations, government entity, or federally recognized tribe that elects to become liable for payments in place of contributions under AS 23.20.276 - 23.20.278 [AS 23.20.276] is required, within 30 days after the effective date of its election, to execute and file with the department a surety bond approved by the department or it may elect instead to deposit with the department money or securities. The amount of the bond or deposit shall be determined by the department in accordance with regulations adopted by the department.

* **Sec. 8.** AS 23.20.277(k) is amended to read:

(k) If a nonprofit organization, group of nonprofit organizations, government entity, or federally recognized tribe is delinquent in making payments in place of contributions as required under this section and after having been given notice, the department shall [MAY] terminate that employer's [ORGANIZATION'S] election to make payments in place of contributions until a time as provided by

1 regulations adopted by the department [AS OF THE BEGINNING OF THE NEXT
2 TAXABLE YEAR, AND THE TERMINATION IS EFFECTIVE FOR THAT AND
3 THE NEXT TAXABLE YEAR].

4 * **Sec. 9.** AS 23.20.277(l) is amended to read:

5 (l) Each employer that is liable for payments in place of contributions shall
6 pay to the department for the fund the amount of regular benefits plus the extended
7 benefits not reimbursable by the federal government paid to individuals that are
8 attributable to service in the employ of that employer. However, a government entity
9 or federally recognized tribe that has elected to make payments under this section is
10 liable for the amount of regular benefits plus the full amount of extended benefits that
11 are attributable to service in the employ of that entity or tribe. If benefits paid to an
12 individual are based on wages paid by more than one employer and one or more of
13 these employers is liable for payments in place of contributions, the amount payable to
14 the fund by each employer that is liable for payments shall be determined by the
15 department in accordance with regulations adopted by the department.

16 * **Sec. 10.** AS 23.20.277 is amended by adding a new subsection to read:

17 (m) The department may not approve an election to make payments in place
18 of contributions if, at the time of the election, a nonprofit organization, group of
19 nonprofit organizations, government entity, or federally recognized tribe is delinquent
20 in making contributions under AS 23.20.165.

21 * **Sec. 11.** AS 23.20.278 is amended to read:

22 **Sec. 23.20.278. Financing benefits paid to employees of the state, [AND**
23 **ITS] political subdivisions of the state, or a federally recognized tribe. A federally**
24 **recognized tribe or** political subdivision or a department, division, or other agency of
25 the state subject to this chapter, under AS 23.20.525(a)(14) [AS 23.20.525(a)(4) AND
26 (14)], shall pay contributions under the provisions of AS 23.20.165, unless it elects to
27 reimburse the department for the unemployment compensation fund according to the
28 provisions applicable to nonprofit organizations, government entities, or federally
29 recognized tribes under AS 23.20.276 and 23.20.277.

30 * **Sec. 12.** AS 23.20.381(j) is amended to read:

31 (j) Benefits based on services described in (e) and (h) of this section shall be

denied under (e), (h), and (i) of this section to an individual who performed those services in an educational institution while in the employ of an educational service agency. In this subsection, "educational service agency" means a governmental agency, [OR] governmental entity, or federally recognized tribe that is established and operated exclusively for the purpose of providing services to one or more educational institutions [INSTITUTION].

* **Sec. 13.** AS 23.20.520(10) is amended to read:

(10) "employing unit" means one or more departments or other agencies of the state, a political subdivision of the state, a federally recognized tribe, an individual, or a type of organization, partnership, association, trust, estate, joint trust company, insurance company, or domestic or foreign corporation, or the receiver, referee in bankruptcy, trustee, or successor of one of these, or the legal representative of a deceased person, that [WHICH] has or [, AFTER JANUARY 1, 1937,] had one or more individuals performing service for it in the state; an individual performing services in the state for an employing unit that [WHICH] maintains two or more separate establishments in the state is considered as employed by a single employing unit for the purposes of this chapter; notwithstanding any provision in this chapter, any employing unit that [WHICH] employs individuals whose services must be covered by the unemployment insurance laws of this state [AFTER DECEMBER 31, 1971] as a condition of approval of the unemployment insurance laws of this state under 26 U.S.C. 3304(a) (Internal Revenue Code of 1954), as amended, will be considered an employer as to those individuals and is subject to contributions on all wages paid [AFTER DECEMBER 31, 1971,] or reimbursement payments to cover benefits paid based on services performed [AFTER DECEMBER 31, 1971], depending on the applicable law;

* **Sec. 14.** AS 23.20.520(14) is amended to read:

(14) "institution of higher education" means an educational institution that [WHICH]

(A) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of a high school graduation certificate;

(B) is legally authorized in the state in which it is located to provide a program of education beyond high school;

(C) provides an educational program for which it awards a bachelor's or higher degree, or provides a program that [WHICH] is acceptable for full credit toward either degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(D) is operated by a federally recognized tribe or is a public or other nonprofit institution;

* **Sec. 15.** AS 23.20.520 is amended by adding a new paragraph to read:

(22) "federally recognized tribe"

(A) means a tribe that is recognized by the United States Secretary of the Interior to exist as an Indian tribe under 25 U.S.C. 479a (Federally Recognized Indian Tribe List Act of 1994);

(B) includes any subdivision, subsidiary, or business enterprise wholly owned by a federally recognized tribe.

* **Sec. 16.** AS 23.20.525(a)(14) is amended to read:

(14) service performed [AFTER DECEMBER 31, 1977,] in the employ of this state or any of its instrumentalities or any political subdivision of this state or any of its instrumentalities or any instrumentality of any of the foregoing and one or more other states or political subdivisions, or in the employ of a federally recognized tribe, if that service is excluded from "employment" under 26 U.S.C. 3306(c)(7) (Federal Unemployment Tax Act, Internal Revenue Code) and is not excluded from "employment" under AS 23.20.526(d) [AS 23.20.526(d)(8)];

* **Sec. 17.** AS 23.20.526(d) is amended to read:

(d) For the purposes of AS 23.20.525(a)(6) and (14) [AS 23.20.525(a)(4) - (6) and (14)], the term "employment" does not apply to service performed

(1) by a duly ordained, commissioned, or licensed minister of a church in the exercise of the person's ministry or by a member of a religious order in the exercise of duties required by the order;

(2) in a facility conducted for the purpose of carrying out a program of

1 rehabilitation for individuals whose earning capacity is impaired by age or physical or
 2 mental deficiency or injury or providing remunerative work for individuals who,
 3 because of their impaired physical or mental capacity, cannot be readily absorbed in
 4 the competitive labor market by an individual receiving the rehabilitation or
 5 remunerative work;

6 (3) as part of an unemployment work-relief or work-training program
 7 assisted or financed in whole or in part by any federal agency or any agency of a state
 8 or political subdivision of the state or of a federally recognized tribe, by an
 9 individual receiving work relief or work training;

10 (4) for a state hospital by an inmate of a prison or correctional
 11 institution;

12 (5) in the employ of a school, college, or university if the service is
 13 performed by a student who is enrolled and is regularly attending classes at the school,
 14 college, or university;

15 (6) by an individual under the age of 22 who is enrolled at a nonprofit
 16 or public educational institution that normally maintains a regular faculty and
 17 curriculum and normally has a regularly organized body of students in attendance at
 18 the place where its educational activities are carried on as a student in a full-time
 19 program, taken for credit at the institution, that combines academic instruction with
 20 work experience if the service is an integral part of the program and the institution has
 21 so certified to the employer, except that this paragraph does not apply to service
 22 performed in a program established for or on behalf of an employer or group of
 23 employers;

24 (7) in the employ of a hospital if the service is performed by a patient
 25 of the hospital, as defined in AS 23.20.520;

26 (8) in the employ of the state or a political subdivision of the state if
 27 the service is performed by an individual in the exercise of duties

28 (A) as a judicial officer, the governor, the lieutenant governor,
 29 a person hired or appointed as the head or deputy head of a department in the
 30 executive branch, a person hired or appointed as the director of a division of a
 31 department in the executive branch, an assistant to the governor, a chair or

1 member of a state commission or board, state investment officers and the state
 2 comptroller in the Department of Revenue, an appointed or elected municipal
 3 officer, any other elected official, the fiscal analyst of the legislative finance
 4 division, the legislative auditor of the legislative audit division, the executive
 5 director of the Legislative Affairs Agency, and the directors of the divisions
 6 within the Legislative Affairs Agency;

7 (B) as a member of the Alaska Army National Guard or Alaska
 8 Air National Guard or Alaska Naval Militia;

9 (C) as an employee serving on only a temporary basis in case
 10 of fire, storm, snow, earthquake, flood, or similar emergency; or

11 (D) as an election official or election worker if the amount of
 12 remuneration received by the individual during the calendar year for services
 13 as an election official or election worker is less than \$1,000;

14 (9) in the employ of

15 (A) a church or a convention or association of churches; or

16 (B) an organization that is operated primarily for religious
 17 purposes and that is operated, supervised, controlled, or principally supported
 18 by a church or a convention or association of churches;

19 **(10) in the employ of a federally recognized tribe in this state if the**
 20 **service is performed by an individual in the exercise of duties as an officer of the**
 21 **federally recognized tribe and meets the requirements of 26 U.S.C. 3309(b)(3)(E)**
 22 **(Federal Unemployment Tax Act, Internal Revenue Code).**

23 * **Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section to
 24 read:

25 REVISOR'S CHANGES. The revisor of statutes shall change the heading of
 26 AS 23.20.277 from "Reimbursement payments by nonprofit organizations and government
 27 entities" to "Reimbursement payments by nonprofit organizations, government entities, and
 28 federally recognized tribes."

29 * **Sec. 19.** This Act takes effect immediately under AS 01.10.070(c).