

SENATE BILL NO. 354

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/27/04

Referred: State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to complaints filed with, and investigations, hearings, and orders of,
2 the State Commission for Human Rights; making conforming amendments; and
3 providing for an effective date."

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

5 * **Section 1.** AS 18.80.100 is amended to read:

6 **Sec. 18.80.100. Complaint; time limitations.** A person who is aggrieved by
7 a [ANY] discriminatory **practice** [CONDUCT] prohibited by this chapter may sign
8 and file with the commission a written, verified complaint stating the name and
9 address of the person alleged to have engaged in **the** discriminatory **practice**
10 [CONDUCT], and the particulars of the discrimination. **A complainant may**
11 **withdraw the complaint at any time before the service of an accusation under**
12 **AS 18.80.120. A withdrawal must be signed by the complainant and be in**
13 **writing. A withdrawal does not limit the discretion of the executive director**
14 **provided in (b) of this section.** [THE EXECUTIVE DIRECTOR MAY FILE A

1 COMPLAINT IN LIKE MANNER WHEN AN ALLEGED DISCRIMINATION
2 COMES TO THE ATTENTION OF THE DIRECTOR.]

3 * **Sec. 2.** AS 18.80.100 is amended by adding new subsections to read:

4 (b) The executive director may file a complaint in the manner provided in (a)
5 of this section when a discriminatory practice comes to the attention of the executive
6 director.

7 (c) A complaint may be filed no later than 180 days after the alleged
8 discriminatory practice or, for a continuing discriminatory practice, no later than 180
9 days after the alleged discriminatory practice stopped.

10 * **Sec. 3.** AS 18.80.110 is amended to read:

11 **Sec. 18.80.110. Investigation and conciliation.** The executive director or a
12 member of the commission's staff designated by the executive director shall
13 informally investigate the matters set out in a filed complaint, promptly and
14 impartially. If the investigator determines that **there is** [THE ALLEGATIONS ARE
15 SUPPORTED BY] substantial evidence **of a discriminatory practice under this**
16 **chapter**, the investigator shall immediately try to eliminate **or remedy** the
17 **discriminatory practice through an agreement reached** [DISCRIMINATION
18 COMPLAINED OF,] by conference, conciliation, and persuasion. **If an agreement is**
19 **reached, it must be reduced to writing and signed by the complainant, executive**
20 **director, and respondent. The agreement is binding and enforceable under this**
21 **chapter as an order of the commission. Any agreement reached under this**
22 **section may include the compromise of damages authorized under this chapter.**

23 * **Sec. 4.** AS 18.80 is amended by adding a new section to read:

24 **Sec. 18.80.112. Dismissal for administrative convenience.** (a) At any time
25 before the issuance of an accusation under AS 18.80.120, the executive director may
26 dismiss without prejudice a complaint for administrative convenience if the executive
27 director determines, in the executive director's discretion, that the complainant's
28 objection to a proposed conciliation agreement is unreasonable; the complainant is
29 unavailable or unwilling to participate in a hearing; relief is precluded by the absence
30 of the person alleged to have engaged in the discriminatory practice; a hearing will not
31 benefit the complainant; the person aggrieved by the discriminatory practice has

1 initiated or wants to initiate an action or proceeding in another forum based on the
 2 same facts; a hearing will not represent the best use of commission resources; a
 3 hearing will not advance the purposes stated in AS 18.80.200; the probability of
 4 success of the complaint on the merits is low; or proceeding to a hearing will not serve
 5 the public interest.

6 (b) Dismissal under this section does not prevent a complainant from

7 (1) initiating an action or proceeding in another forum; or

8 (2) filing a new complaint under AS 18.80.100 that resolves the
 9 grounds for the dismissal under (a) of this section.

10 * **Sec. 5.** AS 18.80.120 is repealed and reenacted to read:

11 **Sec. 18.80.120. Hearing.** (a) If informal efforts under AS 18.80.110 to
 12 eliminate or remedy the alleged discriminatory practice are unsuccessful and the
 13 executive director determines, in the executive director's discretion, to refer the
 14 complaint for hearing, the executive director shall issue an accusation based on the
 15 investigator's determination of substantial evidence and serve the person charged in
 16 the accusation and the complainant with notice of the referral and a copy of the
 17 accusation. The executive director's decision to refer the complaint to hearing is not
 18 reviewable by the commission under this chapter. The location of the hearing is the
 19 commission office unless the commission designates another location. The executive
 20 director, or the executive director's designee, presents the case in support of the
 21 accusation before the commission. The person charged in the accusation may file a
 22 written answer and may appear at the hearing, with or without counsel, and submit
 23 evidence.

24 (b) The commission shall follow the procedures in the Administrative
 25 Procedure Act, AS 44.62.330 - 44.62.630, except as otherwise provided in this
 26 chapter.

27 (c) An accusation may be amended by the commission only upon a showing
 28 of good cause. An amendment to name a different discriminatory practice must be
 29 supported by substantial evidence, and the discriminatory practice must be referred for
 30 conciliation as provided in AS 18.80.110, before a hearing may proceed.

31 (d) In a hearing on an accusation, each element of an accusation or defense

1 must be proven by a preponderance of the evidence.

2 (e) At any time after the issuance of an accusation, the executive director or
3 the person charged in the accusation may petition for a summary decision on the
4 accusation. The commission shall grant a petition if the record shows that there is no
5 genuine issue of material fact and the petitioner is entitled to an order under
6 AS 18.80.130 as a matter of law.

7 * **Sec. 6.** AS 18.80.130(a) is amended to read:

8 (a) At the completion of the hearing **or after consideration of a petition for**
9 **summary decision under AS 18.80.120(e)**, if the commission finds that a person
10 **charged in an accusation** [AGAINST WHOM A COMPLAINT WAS FILED] has
11 engaged in the discriminatory **practice** [CONDUCT] alleged in the **accusation**
12 [COMPLAINT], it shall order the person to refrain from engaging in the
13 discriminatory **practice** [CONDUCT]. The order must include findings of fact, and
14 may prescribe conditions on [THE ACCUSED'S] future conduct relevant to the type
15 of **discriminatory practice** [DISCRIMINATION]. **The commission may not order**
16 **an award of noneconomic or punitive damages in any case.** In a case involving a
17 **discriminatory practice** [DISCRIMINATION] in

18 (1) employment, the commission may order **one or more of the**
19 **following: the training of an employer, labor organization, or employment**
20 **agency, and its employees, concerning discriminatory practices;** [ANY
21 APPROPRIATE RELIEF, INCLUDING BUT NOT LIMITED TO,] the hiring,
22 reinstatement or upgrading of an employee with or without back pay; **the payment of**
23 **front pay for a period of not more than two years if hiring, reinstatement, or**
24 **upgrading of an employee is inappropriate because no vacancy exists, the**
25 **employer's discriminatory practice rendered the employee incapable of returning**
26 **to work, or the relationship between the employer and employee has so**
27 **deteriorated as to make working conditions intolerable;** [,] restoration to
28 membership in a labor organization; [,] or admission to or participation in an
29 apprenticeship training program, on-the-job training program, or other retraining
30 program; **however, an order for back pay or front pay must be reduced by the**
31 **amount the employee could have earned or could earn by making reasonable and**

1 **diligent efforts to obtain similar employment;**

2 (2) housing, the commission may order the sale, lease, or rental of the
3 housing accommodation to the aggrieved person if it is still available, or the sale,
4 lease, or rental of a like accommodation owned by the person **charged in the**
5 **accusation** [AGAINST WHOM THE COMPLAINT WAS FILED] if one is still
6 available, or the sale, lease, or rental of the next vacancy in a like accommodation,
7 owned by the person **charged in the accusation** [AGAINST WHOM THE
8 COMPLAINT WAS FILED]; the commission may award actual damages which shall
9 include[, BUT NOT BE LIMITED TO,] the expenses incurred by the complainant for
10 obtaining alternative housing or space; for storage of goods and effects; for moving
11 and for other costs actually incurred as a result of the unlawful practice or violation.

12 * **Sec. 7.** AS 18.80.130(c) is amended to read:

13 (c) If the commission finds that a person **charged in an accusation**
14 [AGAINST WHOM A COMPLAINT WAS FILED] has not engaged in the
15 discriminatory **practice** [CONDUCT] alleged in the **accusation** [COMPLAINT], it
16 shall issue and cause to be served on the complainant an order dismissing the
17 complaint.

18 * **Sec. 8.** AS 18.80.130 is amended by adding a new subsection to read:

19 (f) The interest rate for an award under this section is determined in the
20 manner provided in AS 09.30.070.

21 * **Sec. 9.** AS 18.80.140 is amended to read:

22 **Sec. 18.80.140. Effect of compliance with order.** Immediate and continuing
23 compliance with all the terms of a commission order is a bar to criminal prosecution
24 for the particular instances of discriminatory **practice** [CONDUCT] described in the
25 accusation **issued under AS 18.80.120** [FILED BEFORE THE COMMISSION].

26 * **Sec. 10.** AS 18.80.270 is amended to read:

27 **Sec. 18.80.270. Penalty.** A person, employer, labor organization, or
28 employment agency, who or that wilfully engages in an unlawful discriminatory
29 **practice** [CONDUCT] prohibited by this chapter, or wilfully resists, prevents,
30 impedes, or interferes with the commission or any of its authorized representatives in
31 the performance of duty under this chapter, or who or that wilfully violates an order of

1 the commission, is guilty of a misdemeanor and upon conviction by a court of
2 competent jurisdiction is punishable by a fine of not more than \$500, or by
3 imprisonment in a jail for not more than 30 days, or by both.

4 * **Sec. 11.** AS 18.80.300 is amended by adding a new paragraph to read:

5 (17) "complainant" means a person who is aggrieved by a
6 discriminatory practice prohibited by this chapter and who has filed a complaint as
7 provided in AS 18.80.100.

8 * **Sec. 12.** AS 44.62.330(a) is amended by adding a new paragraph to read:

9 (61) State Commission for Human Rights, where procedures are not
10 otherwise expressly provided in AS 18.80.

11 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 APPLICABILITY. This Act applies to all complaints filed on or after the effective
14 date of secs. 1 - 12 of this Act.

15 * **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 TRANSITION: REGULATIONS. The State Commission for Human Rights may
18 proceed to adopt regulations necessary to implement the changes made by this Act. The
19 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the
20 effective date of the statutory change.

21 * **Sec. 15.** Section 14 of this Act takes effect immediately under AS 01.10.070(c).

22 * **Sec. 16.** Except as provided in sec. 15 of this Act, this Act takes effect July 1, 2004.