

CS FOR SENATE BILL NO. 354(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 4/5/04

Referred: Judiciary

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

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 not later than 180 days after the alleged
8 discriminatory practice or, for a continuing discriminatory practice, not 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

28 (1) the complainant's objection to a proposed conciliation agreement is
29 unreasonable;

30 (2) the complainant is unavailable or unwilling to participate in a
31 hearing;

1 (3) relief is precluded by the absence of the person alleged to have
2 engaged in the discriminatory practice;

3 (4) a hearing will not benefit the complainant;

4 (5) the person aggrieved by the discriminatory practice has initiated or
5 wants to initiate an action or proceeding in another forum based on the same facts;

6 (6) a hearing will not represent the best use of commission resources;

7 (7) a hearing will not advance the purposes stated in AS 18.80.200;

8 (8) the probability of success of the complaint on the merits is low; or

9 (9) proceeding to a hearing will not serve the public interest.

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

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

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

14 * **Sec. 5.** AS 18.80.120 is repealed and reenacted to read:

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

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

30 (c) An accusation may be reasonably and fairly amended by the commission.
31 An amendment to name a different discriminatory practice must be supported by

1 substantial evidence, and the discriminatory practice must be referred for conciliation
2 as provided in AS 18.80.110, before a hearing may proceed.

3 (d) In a hearing on an accusation, each element of an accusation or defense
4 must be proven by a preponderance of the evidence.

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

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

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

21 (1) employment, the commission may order **one or more of the**
22 **following: the training of an employer, labor organization, or employment**
23 **agency, and its employees, concerning discriminatory practices;** [ANY
24 APPROPRIATE RELIEF, INCLUDING BUT NOT LIMITED TO,] the hiring,
25 reinstatement, or upgrading of an employee with or without back pay; **the payment of**
26 **front pay for a period of not more than one year if hiring, reinstatement, or**
27 **upgrading of an employee is inappropriate because no vacancy exists, the**
28 **employer's discriminatory practice rendered the employee incapable of returning**
29 **to work, or the relationship between the employer and employee has so**
30 **deteriorated as to make working conditions intolerable;** [,] restoration to
31 membership in a labor organization; [,] or admission to or participation in an

1 apprenticeship training program, on-the-job training program, or other retraining
 2 program; **however, an order for back pay or front pay must be reduced by the**
 3 **amount the employee could have earned or could earn by making reasonably**
 4 **diligent efforts to obtain similar employment;**

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

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

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

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

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

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

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

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

30 **Sec. 18.80.270. Penalty.** A person, employer, labor organization, or
 31 employment agency, who or that wilfully engages in an unlawful discriminatory

1 **practice** [CONDUCT] prohibited by this chapter, or wilfully resists, prevents,
2 impedes, or interferes with the commission or any of its authorized representatives in
3 the performance of duty under this chapter, or who or that wilfully violates an order of
4 the commission, is guilty of a misdemeanor and, upon conviction by a court of
5 competent jurisdiction, is punishable by a fine of not more than \$500, or by
6 imprisonment in a jail for not more than 30 days, or by both.

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

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

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

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

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

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

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

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

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

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