

**HOUSE CS FOR CS FOR SENATE BILL NO. 354(STA)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 5/9/04

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; and making conforming amendments."

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

4 \* **Section 1.** AS 18.80.100 is amended to read:

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

1 COMES TO THE ATTENTION OF THE DIRECTOR].

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

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

6 (c) A complaint may be filed not later than 180 days after the alleged  
7 discriminatory practice or, for a continuing discriminatory practice, not later than 180  
8 days after the alleged discriminatory practice stopped.

9 \* **Sec. 3.** AS 18.80.110 is amended to read:

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

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

23 **Sec. 18.80.112. Dismissal of complaint without prejudice.** (a) At any time  
24 before the issuance of an accusation under AS 18.80.120, the executive director may  
25 dismiss without prejudice a complaint if the executive director determines, and the  
26 commission concurs, that

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

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

31 (3) relief is precluded by the absence of the person alleged to have

1 engaged in the discriminatory practice;

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

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

5 (6) a hearing will not advance the purposes stated in AS 18.80.200; or

6 (7) the probability of success of the complaint on the merits is low.

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

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

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

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

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

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

28 (c) An accusation may be reasonably and fairly amended by the commission.  
29 An amendment to name a different discriminatory practice must be supported by  
30 substantial evidence, and the discriminatory practice must be referred for conciliation  
31 as provided in AS 18.80.110, before a hearing may proceed.

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

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

8 \* **Sec. 6.** AS 18.80.130(c) is amended to read:

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

14 \* **Sec. 7.** AS 18.80.130 is amended by adding a new subsection to read:

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

17 \* **Sec. 8.** AS 18.80.140 is amended to read:

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

22 \* **Sec. 9.** AS 18.80.270 is amended to read:

23 **Sec. 18.80.270. Penalty.** A person, employer, labor organization, or  
24 employment agency, who or that wilfully engages in an unlawful discriminatory  
25 **practice** [CONDUCT] prohibited by this chapter, or wilfully resists, prevents,  
26 impedes, or interferes with the commission or any of its authorized representatives in  
27 the performance of duty under this chapter, or who or that wilfully violates an order of  
28 the commission, is guilty of a misdemeanor and, upon conviction by a court of  
29 competent jurisdiction, is punishable by a fine of not more than \$500, or by  
30 imprisonment in a jail for not more than 30 days, or by both.

31 \* **Sec. 10.** AS 18.80.300 is amended by adding a new paragraph to read:

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

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

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

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

9                   APPLICABILITY. This Act applies to all complaints filed on or after the effective  
10                  date of secs. 1 - 11 of this Act.

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

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