

CS FOR HOUSE BILL NO. 81(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 2/2/05

Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVES ANDERSON, Crawford

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing an administrative fine and procedure for construction contractors
2 in certain circumstances; increasing the amount of a civil penalty for persons acting in
3 the capacity of contractors or home inspectors; modifying the elements of a crime
4 involving contractor registration and residential contractors; modifying the exemptions
5 from regulation under AS 08.18 for contractors; and exempting the administrative
6 hearings for imposing an administrative fine on construction contractors from the
7 hearings conducted by the office of administrative hearings in the Department of
8 Administration."

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

10 * **Section 1.** AS 08.18.117 is amended to read:

11 **Sec. 08.18.117. Issuance of citations.** Except as provided in AS 08.18.125,
12 either [EITHER] the Department of Commerce, Community, and Economic

1 Development or the Department of Labor and Workforce Development may issue a
 2 citation for a violation if there is probable cause to believe a person has violated this
 3 chapter with respect to contractor activities. The Department of Commerce,
 4 Community, and Economic Development may issue a citation for a violation if there is
 5 probable cause to believe a person has violated this chapter with respect to home
 6 inspection activities. Each day a violation continues after a citation for the violation
 7 has been issued constitutes a separate violation.

8 * **Sec. 2.** AS 08.18 is amended by adding a new section to read:

9 **Sec. 08.18.125. Administrative fine and procedure.** (a) Notwithstanding
 10 any other remedy available under this chapter and except as provided in (e) of this
 11 section, the department may impose an administrative fine of not more than \$1,000 for
 12 the first violation and not more than \$1,500 for a second or subsequent violation of
 13 either AS 08.18.011 or 08.18.025.

14 (b) The department shall issue a written notice of an administrative fine
 15 imposed under (a) of this section, together with a statement of the reason for the fine, a
 16 copy of the applicable procedures, and notice of an opportunity to request a hearing,
 17 including the contact information for making the request, within 30 days after the date
 18 of the notice of the fine.

19 (c) If a person who is issued a notice of an administrative fine under (b) of this
 20 section fails to request a hearing within 30 days after the date of the notice, the right to
 21 a hearing is waived and the administrative fine is not subject to judicial review. A
 22 hearing request must be in writing and must clearly state the issues to be raised at the
 23 hearing. The department shall schedule a hearing before a hearing officer not earlier
 24 than 10 days after receiving the request for a hearing.

25 (d) A decision of a hearing officer under this section is a final administrative
 26 decision subject to review by a superior court under AS 44.62 (Administrative
 27 Procedure Act).

28 (e) The department may not impose an administrative fine on a person who is
 29 acting as a contractor or home inspector in an area with a population of 1,000 or less
 30 that is not connected by road or rail to Anchorage or Fairbanks.

31 * **Sec. 3.** AS 08.18.131 is amended to read:

1 **Sec. 08.18.131. Injunction; civil penalty.** In an action instituted in the
 2 superior court by the Department of Commerce, Community, and Economic
 3 Development or the Department of Labor and Workforce Development, the court may
 4 enjoin a person from acting in the capacity of a contractor in violation of this chapter.
 5 In an action instituted in the superior court by the Department of Commerce,
 6 Community, and Economic Development, the court may enjoin a person from acting
 7 in the capacity of a home inspector in violation of this chapter. In addition to other
 8 relief, the court may impose a civil penalty of not more than **\$1,000** [\$250] for each
 9 violation. Each day that an unlawful act continues constitutes a separate violation.

10 * **Sec. 4.** AS 08.18.141 is repealed and reenacted to read:

11 **Sec. 08.18.141. Violations.** (a) A contractor or a person acting in the
 12 capacity of a contractor is guilty of a class B misdemeanor if the person

13 (1) knowingly violates AS 08.18.011 or 08.18.025; and

14 (2) has been previously

15 (A) convicted of violating AS 08.18.011 or 08.18.025;

16 (B) found guilty of a violation under AS 08.18.117 if the
 17 violation involved AS 08.18.011 or 08.18.025; or

18 (C) fined under AS 08.18.125.

19 (b) A contractor or a person acting in the capacity of a contractor who violates
 20 a provision of this chapter, other than a violation under (a) of this section, is guilty of a
 21 violation punishable under AS 12.

22 (c) Criminal prosecution for a violation of this chapter does not preclude the
 23 Department of Commerce, Community, and Economic Development or the
 24 Department of Labor and Workforce Development from seeking available civil or
 25 administrative remedies.

26 * **Sec. 5.** AS 08.18.161 is amended to read:

27 **Sec. 08.18.161. Exemptions.** To the extent that this chapter governs
 28 contractors, this chapter does not apply to

29 (1) an authorized representative of the United States government, the
 30 State of Alaska, or a political subdivision or agency of the state;

31 (2) an officer of a court when acting within the scope of office;

1 (3) a public utility operating under the regulations of the public service
2 commission in construction, maintenance, or development work incidental to its own
3 business;

4 (4) a construction, repair, or operation incidental to the discovering or
5 producing of petroleum or gas, or the drilling, testing, abandoning, or other operation
6 of a petroleum or gas well or a surface or underground mine or mineral deposit when
7 performed by an owner or lessee;

8 (5) the sale or installation of finished products, materials, or articles of
9 merchandise that are not actually fabricated into and do not become a permanent,
10 fixed part of a structure;

11 (6) construction, alteration, or repair of personal property;

12 (7) a person who only furnished materials, supplies, or equipment
13 without fabricating them into, or consuming them in the performance of, the work of
14 the contractor;

15 (8) work on one project under one or more contracts, the aggregate
16 contract price of which for labor and materials and all other items is less than \$5,000;
17 this exemption does not apply when the work is only a part of a larger or major
18 operation, whether undertaken by the same or a different contractor, or when the work
19 is divided into contracts of amounts less than \$5,000 for the purpose of evasion of this
20 chapter or otherwise; this exemption does not apply to a person who advertises or puts
21 out a sign or card or other device that might indicate to the public that the person is a
22 contractor, or that the person is qualified to engage in the contracting business; a
23 contractor who performs work priced at \$2,500 or more, under this exemption, shall
24 nevertheless keep in force public liability and property damage insurance with
25 coverage in at least the amounts set out in AS 08.18.101;

26 (9) an owner who contracts for a project with a registered contractor;

27 (10) a person working on that person's own property, whether occupied
28 by the person or not, and a person working on that person's own residence, whether
29 owned by the person or not;

30 (11) an owner or tenant of commercial property who uses the owner's
31 or tenant's own employees to do maintenance, repair, and alteration work upon that

1 property;

2 (12) an owner who occupies the property after construction for not
 3 less than two consecutive years and acts as the owner's own contractor and in doing
 4 so hires workers on an hourly basis, hires subcontractors, purchases materials and, as
 5 such, sees to the paying for all labor, subcontractors, and materials; in this case, the
 6 owner shall be limited to construction of one home, duplex, triplex, four-plex, or one
 7 commercial building every two years; however, if the construction under this
 8 paragraph is for an improvement that is the owner's primary residence and the
 9 owner can demonstrate to the satisfaction of the department that the two-year
 10 occupancy requirement will cause undue hardship, the department may waive
 11 the occupancy requirement [A YEAR];

12 (13) a person performing construction work incidental to farming,
 13 dairying, agriculture, horticulture, stock or poultry raising, mining, logging, fishing,
 14 clearing, or other work upon the land in rural districts for fire prevention purposes, or
 15 access road building, unless the person is a licensee.

16 * **Sec. 6.** AS 44.64.030(a)(6) is amended to read:

17 (6) AS 08 (occupational licensing), other than AS 08.08,
 18 AS 08.18.125, and AS 08.62.046;

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

21 APPLICABILITY. (a) AS 08.18.125, 08.18.131, and 08.18.141, as added or
 22 amended by secs. 2 - 4 of this Act, apply to a violation occurring on or after the effective date
 23 of this Act. However, for the purposes of AS 08.18.141, a previous conviction or fine may
 24 have occurred before, on, or after the effective date of this Act.

25 (b) AS 08.18.161(12), as amended by sec. 5 of this Act, applies to contract work
 26 begun on or after the effective date of this Act.

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

29 REVISOR'S INSTRUCTION. The amendment to AS 44.64.030(a)(6) by sec. 6 of this
 30 Act is to be reconciled with secs. 82 and 96, ch. 163, SLA 2004, so that both are given effect.