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CS FOR HOUSE BILL NO. 182(FIN)(efd fld)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 4/19/05

Offered: 4/14/05

Sponsor(s): REPRESENTATIVES ROKEBERG, Foster

SENATORS Wilken, Green, Huggins, Dyson, Wagoner, Seekins, Ben Stevens

A BILL

FOR AN ACT ENTITLED

1 "An Act amending the Alaska Wage and Hour Act as it relates to the employment of a
2 person acting in a supervisory capacity or in an administrative, executive, or
3 professional capacity; relating to definitions under the Alaska Wage and Hour Act and
4 providing definitions for persons employed in administrative, executive, and
5 professional capacities, for persons working in the capacity of an outside salesman, for
6 persons working in the capacity of a salesman employed on a straight commission basis,
7 and for persons that perform computer-related occupations; directing retrospective
8 application of the provisions of this Act to work performed before the effective date of
9 this Act for purposes of claims filed on or after the effective date of this Act, and
10 disallowing retrospective application for purposes of claims for that work that are filed
11 before the effective date of this Act."

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

1 * **Section 1.** AS 23.10.055 is amended to read:

2 **Sec. 23.10.055. Exemptions; compensation of executives, administrators,**
 3 **and professionals.** The provisions of AS 23.10.050 - 23.10.150 do not apply to

4 (1) an individual employed in agriculture, which includes farming in
 5 all its branches and, among other things, includes the cultivation and tillage of the soil,
 6 dairying, the production, cultivation, growing, and harvesting of any agricultural or
 7 horticultural commodities, the raising of livestock, bees, fur-bearing animals, or
 8 poultry, and any practices, including forestry and lumbering operations, performed by
 9 a farmer or on a farm as an incident to or in conjunction with the farming operations,
 10 including preparation for market, **or** delivery to storage or to market or to carriers for
 11 transportation to market;

12 (2) an individual employed in the catching, trapping, cultivating or
 13 farming, netting, or taking of any kind of fish, shellfish, or other aquatic forms of
 14 animal and vegetable life;

15 (3) an individual employed in the hand picking of shrimp;

16 (4) an individual employed in domestic service, including a baby-
 17 sitter, in or about a private home;

18 (5) an individual employed by the United States or by the state or **a**
 19 political subdivision of the state, except as provided in AS 23.10.065(b), including
 20 prisoners not on furlough detained or confined in prison facilities;

21 (6) an individual engaged in the nonprofit activities of a nonprofit
 22 religious, charitable, cemetery, or educational organization or other nonprofit
 23 organization where the employer-employee relationship does not, in fact, exist, and
 24 where services rendered to the organization are on a voluntary basis and are related
 25 only to the organization's nonprofit activities; for purposes of this paragraph,
 26 "nonprofit activities" means activities for which the nonprofit organization does not
 27 incur a liability for unrelated business income tax under 26 U.S.C. 513, as amended;

28 (7) an employee engaged in the delivery of newspapers to the
 29 consumer;

30 (8) an individual employed solely as a watchman or caretaker of a
 31 plant or property that is not in productive use for a period of four months or more;

1 (9) an individual employed

2 (A) in a bona fide executive, administrative, or professional
3 capacity;

4 (B) [OR] in the capacity of an outside salesman or a salesman
5 who is employed on a straight commission basis; or

6 (C) as a computer systems analyst, computer programmer,
7 software engineer, or other similarly skilled worker;

8 (10) an individual employed in the search for placer or hard rock
9 minerals;

10 (11) an individual under 18 years of age employed on a part-time basis
11 not more than 30 hours in a week;

12 (12) employment by a nonprofit educational or child care facility to
13 serve as a parent of children while the children are in residence at the facility if the
14 employment requires residence at the facility and is compensated on a cash basis
15 exclusive of room and board at an annual rate of not less than

16 (A) \$10,000 for an unmarried person; or

17 (B) \$15,000 for a married couple;

18 (13) an individual who drives a taxicab, is compensated for taxicab
19 services exclusively by customers of the service, whose written contractual
20 arrangements with owners of taxicab vehicles, taxicab permits, or radio dispatch
21 services are based upon flat contractual rates and not based on a percentage share of
22 the individual's receipts from customers, and whose written contract with owners of
23 taxicab vehicles, taxicab permits, or radio dispatch services specifically provides that
24 the contract places no restrictions on hours worked by the individual or on areas in
25 which the individual may work except to comply with local ordinances;

26 (14) a person who holds a license under AS 08.54 and who is
27 employed by a registered guide or master guide licensed under AS 08.54, for the first
28 60 workdays [WORK DAYS] in which the person is employed by the registered
29 guide or master guide during a calendar year;

30 (15) an individual engaged in activities for a nonprofit religious,
31 charitable, civic, cemetery, recreational, or educational organization where the

1 employer-employee relationship does not, in fact, exist, and where services are
 2 rendered to the organization under a work activity requirement of AS 47.27 (Alaska
 3 temporary assistance program);

4 (16) an individual who

5 (A) provides emergency medical services only on a voluntary
 6 basis;

7 (B) serves with a full-time fire department only on a voluntary
 8 basis; or

9 (C) provides ski patrol services on a voluntary basis; or

10 (17) a student participating in a University of Alaska practicum
 11 described under AS 14.40.065.

12 * **Sec. 2.** AS 23.10.055 is amended by adding new subsections to read:

13 (b) Notwithstanding (c) of this section, an individual employed in a bona fide
 14 executive, administrative, or professional capacity shall be compensated on a salary or
 15 fee basis at a rate of not less than two times the state minimum wage for the first 40
 16 hours of employment each week, exclusive of board or lodging that is furnished by the
 17 individual's employer.

18 (c) In (a)(9) of this section,

19 (1) "bona fide executive, administrative, or professional capacity" has
 20 the meaning and shall be interpreted in accordance with 29 U.S.C. 201 - 219 (Fair
 21 Labor Standards Act of 1938), as amended, or the regulations adopted under those
 22 sections;

23 (2) "computer systems analyst, computer programmer, software
 24 engineer, or other similarly skilled worker" has the meaning and shall be interpreted in
 25 accordance with 29 U.S.C. 201 - 219 (Fair Labor Standards Act of 1938), as amended,
 26 or the regulations adopted under those sections;

27 (3) "outside salesman" means an employee

28 (A) who is customarily and regularly away from the employer's
 29 place of business; and

30 (B) whose primary duty is making sales or contracts for sales,
 31 consignments, or shipment, or obtaining orders for service or for use of

1 facilities for which consideration will be paid by the client or customer;

2 (4) "salesman who is employed on a straight commission basis" means
3 an employee

4 (A) who is customarily and regularly employed on the business
5 premises of the employer;

6 (B) who is compensated on a straight commission basis for the
7 purpose of making sales or contracts for sales, consignments, shipments, or
8 obtaining orders for services or the use of facilities for which a consideration
9 will be paid by the client or customer; and

10 (C) whose primary duty is making sales or contracts for sales,
11 consignments, shipments, or obtaining orders for service or the use of facilities
12 for which a consideration will be paid by the client or customer.

13 * **Sec. 3.** AS 23.10.060(a) is amended to read:

14 (a) An employer who employs employees engaged in commerce or other
15 business, or in the production of goods or materials in the state, may not employ an
16 employee for a workweek longer than 40 hours or for more than eight hours a day.
17 [THIS SECTION DOES NOT APPLY TO THE EMPLOYMENT OF A PERSON
18 ACTING IN A SUPERVISORY CAPACITY.]

19 * **Sec. 4.** AS 23.10.085(b) is amended to read:

20 (b) The regulations may, without limiting the generality of (a) of this section,
21 define terms used in AS 23.10.050 - 23.10.150, and restrict or prohibit industrial
22 homework or other acts or practices that the director finds appropriate to carry out the
23 purpose of AS 23.10.050 - 23.10.150, or to prevent the circumvention or evasion of
24 AS 23.10.050 - 23.10.150. [IF THE REGULATIONS DEFINING AN INDIVIDUAL
25 EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR
26 PROFESSIONAL CAPACITY FOR PURPOSES OF AS 23.10.055 REQUIRE THAT
27 THE INDIVIDUAL RECEIVE A MINIMUM SALARY, THE REQUIRED
28 MINIMUM SALARY MUST BE TWO TIMES THE STATE MINIMUM WAGE
29 FOR THE FIRST 40 HOURS OF EMPLOYMENT EACH WEEK.]

30 * **Sec. 5.** AS 23.10.145 is amended to read:

31 **Sec. 23.10.145. Definitions.** If not defined in this title or in regulations

1 adopted under this title, terms used in AS 23.10.050 - 23.10.150 shall be defined as
2 they are defined in **29 U.S.C. 201 - 219** ([THE FEDERAL] Fair Labor Standards Act
3 of 1938), as amended, or the regulations adopted under **those sections** [IT].

4 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 APPLICATION AS TO WORK PERFORMED BEFORE THE EFFECTIVE DATE
7 OF THIS ACT. (a) This Act applies retrospectively to work performed before the effective
8 date of this Act for purposes of any claim or proceeding based on AS 23.10.050 - 23.10.150
9 (Alaska Wage and Hour Act) that is filed on or after the effective date of this Act.

10 (b) This Act does not apply to work performed before the effective date of this Act for
11 purposes of any claim or proceeding based on AS 23.10.050 - 23.10.150 that is filed before
12 the effective date of this Act.