

**CS FOR SENATE BILL NO. 131(L&C)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 4/8/05

Referred: Finance

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

**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; and providing for an  
8 effective date."

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

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

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

13 (1) an individual employed in agriculture, which includes farming in

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

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

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

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

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

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

24 (7) an employee engaged in the delivery of newspapers to the  
 25 consumer;

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

28 (9) an individual employed

29 **(A)** in a bona fide executive, administrative, or professional  
 30 capacity;

31 **(B)** [OR] in the capacity of an outside salesman or a salesman

1 who is employed on a straight commission basis; or

2 **(C) as a computer systems analyst, computer programmer,**  
 3 **software engineer, or other similarly skilled worker;**

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

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

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

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

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

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

22 (14) a person who holds a license under AS 08.54 and who is  
 23 employed by a registered guide or master guide licensed under AS 08.54, for the first  
 24 60 **workdays** [WORK DAYS] in which the person is employed by the registered  
 25 guide or master guide during a calendar year;

26 (15) an individual engaged in activities for a nonprofit religious,  
 27 charitable, civic, cemetery, recreational, or educational organization where the  
 28 employer-employee relationship does not, in fact, exist, and where services are  
 29 rendered to the organization under a work activity requirement of AS 47.27 (Alaska  
 30 temporary assistance program);

31 (16) an individual who

1 (A) provides emergency medical services only on a voluntary  
2 basis;

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

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

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

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

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

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

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

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

23 (3) "outside salesman" means an employee

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

26 (B) whose primary duty is making sales or contracts for sales,  
27 consignments, or shipment, or obtaining orders for service or for use of  
28 facilities for which consideration will be paid by the client or customer;

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

31 (A) who is customarily and regularly employed on the business

1 premises of the employer;

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

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

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

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

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

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

26 \* **Sec. 5.** AS 23.10.145 is amended to read:

27 **Sec. 23.10.145. Definitions.** If not defined in this title or in regulations  
28 adopted under this title, terms used in AS 23.10.050 - 23.10.150 shall be defined as  
29 they are defined in 29 U.S.C. 201 - 219 ([THE FEDERAL] Fair Labor Standards Act  
30 of 1938), as amended, or the regulations adopted under those sections [IT].

31 \* **Sec. 6.** This Act takes effect July 1, 2005.