

SENATE BILL NO. 132(efd fld)

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Amended: 4/20/05
Introduced: 3/4/05

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to complaints filed with, investigations, hearings, and orders of, and
2 the interest rate on awards of the State Commission for Human Rights; and making
3 conforming amendments."

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 occurred or, for a continuing discriminatory practice, not later
9 than 180 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 an unlawful discriminatory practice**
16 **under this 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. An agreement reached under this section**
22 **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 of complaint without prejudice.** (a) If an
25 investigation of a complaint under AS 18.80.110 fails to discover substantial evidence
26 of an unlawful discriminatory practice under this chapter, the executive director shall
27 issue an order dismissing the complaint without prejudice. The commission, in its
28 discretion, may review the executive director's order of dismissal and may affirm the
29 order, remand the complaint for further investigation, or refer the complaint for
30 conference, conciliation, and persuasion as provided in AS 18.80.110 if it concludes
31 that substantial evidence supports the complaint of an unlawful discriminatory

1 practice.

2 (b) At any time before the issuance of an accusation under AS 18.80.120, the
3 executive director may dismiss without prejudice a complaint if the executive director
4 determines, in the executive director's discretion, that

5 (1) the complainant's objection to a proposed agreement under
6 AS 18.80.110 is unreasonable;

7 (2) the complainant is unavailable or unwilling to participate in a
8 hearing;

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

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

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

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

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

16 (c) Dismissal under this section does not prevent a complainant from

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

18 (2) filing a new complaint under AS 18.80.100 that resolves the
19 grounds for the dismissal under this section.

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

21 **Sec. 18.80.120. Hearing.** (a) If no agreement is reached under AS 18.80.110
22 and the executive director determines, in the executive director's discretion, to refer
23 the complaint for hearing, the executive director shall issue an accusation based on the
24 investigator's determination of substantial evidence and serve the person charged in
25 the accusation and the complainant with notice of the referral and a copy of the
26 accusation. The executive director's decision to refer the complaint to hearing is not
27 reviewable by the commission under this chapter. The location of the hearing is the
28 commission office unless the commission designates another location. The executive
29 director, or the executive director's designee, shall present the case in support of the
30 accusation before the commission. The person charged in the accusation may file a
31 written answer and may appear at the hearing, with or without counsel, and submit

1 evidence.

2 (b) The commission shall request the chief administrative law judge to appoint
3 under AS 44.64.020 an administrative law judge employed or retained by the office of
4 administrative hearings to preside over a hearing conducted under this section.
5 AS 44.64.040, 44.64.050, 44.64.055, 44.64.070, 44.64.080, 44.64.090, 44.64.095, and
6 44.64.200, and the procedures in AS 44.62.330 - 44.62.630 (Administrative Procedure
7 Act), apply to the hearing except as otherwise provided in this chapter.

8 (c) An accusation may be reasonably and fairly amended by the commission.
9 An amendment to name a different discriminatory practice must be supported by
10 substantial evidence, and the discriminatory practice must be referred for conference,
11 conciliation, and persuasion as provided in AS 18.80.110, before a hearing may
12 proceed.

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

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

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

21 (a) At the completion of the hearing **or after consideration of a petition for**
22 **summary decision under AS 18.80.120(e)**, if the commission finds that a person
23 **charged in an accusation** [AGAINST WHOM A COMPLAINT WAS FILED] has
24 engaged in the discriminatory **practice** [CONDUCT] alleged in the **accusation**
25 [COMPLAINT], it shall order the person to refrain from engaging in the
26 discriminatory **practice** [CONDUCT]. The order must include findings of fact [,] and
27 may **order the person to take affirmative action to correct the discriminatory**
28 **practice** [PRESCRIBE CONDITIONS ON THE ACCUSED'S FUTURE CONDUCT
29 RELEVANT TO THE TYPE OF DISCRIMINATION]. **The commission may not**
30 **order an award of noneconomic or punitive damages in any case.** In a case
31 involving **a discriminatory practice** [DISCRIMINATION] in

1 (1) employment, the commission may order any appropriate relief,
 2 including [BUT NOT LIMITED TO,] **one or more of the following: training of an**
 3 **employer, labor organization, or employment agency, and its employees**
 4 **concerning discriminatory practices; an accommodation for a person with a**
 5 **disability; removal of or changes to a personnel record; posting of signs;**
 6 **backpay; the hiring, reinstatement, or upgrading of an employee with or without back**
 7 **pay; the payment of front pay for a period of not more than one year if hiring,**
 8 **reinstatement, or upgrading of an employee is inappropriate because no vacancy**
 9 **exists, the employer's discriminatory practice rendered the employee incapable of**
 10 **returning to work, or the relationship between the employer and employee has so**
 11 **deteriorated as to make working conditions intolerable;** [,] restoration to
 12 membership in a labor organization; [, or] admission to or participation in an
 13 apprenticeship training program, on-the-job training program, or other retraining
 14 program; **or restoration of seniority; however, an order for back pay or front pay**
 15 **must be reduced by the amount the employee could have earned or could earn by**
 16 **making reasonably diligent efforts to obtain similar employment;**

17 (2) housing, the commission may order the sale, lease, or rental of the
 18 housing accommodation to the aggrieved person if it is still available, or the sale,
 19 lease, or rental of a like accommodation owned by the person **charged in the**
 20 **accusation** [AGAINST WHOM THE COMPLAINT WAS FILED] if one is still
 21 available, or the sale, lease, or rental of the next vacancy in a like accommodation,
 22 owned by the person **charged in the accusation** [AGAINST WHOM THE
 23 COMPLAINT WAS FILED]; the commission may award actual damages, which shall
 24 include [, BUT NOT BE LIMITED TO,] the expenses incurred by the complainant for
 25 obtaining alternative housing or space; for storage of goods and effects; for moving;
 26 and for other costs actually incurred as a result of the unlawful practice or violation.

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

28 (c) If the commission finds that a person **charged in an accusation**
 29 [AGAINST WHOM A COMPLAINT WAS FILED] has not engaged in the
 30 discriminatory **practice** [CONDUCT] alleged in the **accusation** [COMPLAINT], it
 31 shall issue and cause to be served on the complainant an order dismissing the

1 complaint.

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

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

5 * **Sec. 9.** AS 18.80.135(b) is amended to read:

6 (b) The commission may obtain a court order for the enforcement of any of its
7 orders by filing a complaint with the superior court in the judicial district in which the
8 unlawful **practice** [CONDUCT] is alleged to have occurred.

9 * **Sec. 10.** AS 18.80.140 is amended to read:

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

14 * **Sec. 11.** AS 18.80.270 is amended to read:

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

23 * **Sec. 12.** AS 18.80.300 is amended by adding new paragraphs to read:

24 (17) "complainant" means a person who is aggrieved by a
25 discriminatory practice prohibited by this chapter and who has filed a complaint as
26 provided in AS 18.80.100;

27 (18) "pay" means wages; salaries; commissions; amounts an employer
28 contributes to retirement, health, or other fringe benefit plans; and other forms of
29 remuneration paid to an employee for personal services.

30 * **Sec. 13.** AS 44.62.330(a) is amended by adding a new paragraph to read:

31 (45) State Commission for Human Rights, where procedures are not

1 otherwise expressly provided in AS 18.80.

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

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

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

10 **APPLICABILITY.** This Act applies to all complaints filed on or after the effective
11 date of secs. 1 - 13 of this Act.