

HOUSE CS FOR SENATE BILL NO. 132(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/3/06
Referred: Rules

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

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; providing for
3 attorney fees and costs in cases involving human rights violations; making conforming
4 amendments; and amending Rule 82, Alaska Rules of Civil Procedure."

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

6 * **Section 1.** AS 18.80.100 is amended to read:

7 **Sec. 18.80.100. Complaint; time limitations.** A person who is aggrieved by
8 **a** [ANY] discriminatory **practice** [CONDUCT] prohibited by this chapter may sign
9 and file with the commission a written, verified complaint stating the name and
10 address of the person alleged to have engaged in **the** discriminatory **practice**
11 [CONDUCT], and the particulars of the discrimination. **A complainant may**
12 **withdraw the complaint at any time before the service of an accusation under**
13 **AS 18.80.120. A withdrawal must be signed by the complainant and be in**
14 **writing. A withdrawal does not limit the discretion of the executive director**

1 **provided in (b) of this section** [THE EXECUTIVE DIRECTOR MAY FILE A
 2 COMPLAINT IN LIKE MANNER WHEN AN ALLEGED DISCRIMINATION
 3 COMES TO THE ATTENTION OF THE DIRECTOR].

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

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

8 (c) A complaint may be filed not later than one year after the alleged
 9 discriminatory practice occurred or, for a continuing discriminatory practice, not later
 10 than one year after the alleged discriminatory practice stopped.

11 * **Sec. 3.** AS 18.80.110 is amended to read:

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

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

25 **Sec. 18.80.112. Dismissal of complaint without prejudice.** (a) If an
 26 investigation of a complaint under AS 18.80.110 fails to discover substantial evidence
 27 of an unlawful discriminatory practice under this chapter, the executive director shall
 28 issue an order dismissing the complaint without prejudice.

29 (b) At any time before the issuance of an accusation under AS 18.80.120, the
 30 executive director may dismiss without prejudice a complaint if the executive director
 31 determines that

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

3 (2) the complainant is unavailable or unwilling to participate in a
4 hearing;

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

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

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

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

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

12 (c) The commission, in its discretion, may, but is not required to, review the
13 executive director's order of dismissal under (a) or (b) of this section and may affirm
14 the order, remand the complaint for further investigation, or, if the commission
15 concludes that substantial evidence supports the complaint of an unlawful
16 discriminatory practice, refer the complaint for conference, conciliation, and
17 persuasion as provided in AS 18.80.110, or for hearing.

18 (d) Dismissal under this section does not prevent a complainant from

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

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

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

23 **Sec. 18.80.120. Hearing.** (a) If no agreement is reached under AS 18.80.110
24 and the executive director determines to refer the complaint for hearing, the executive
25 director shall issue an accusation based on the investigator's determination of
26 substantial evidence and serve the person charged in the accusation and the
27 complainant with notice of the referral and a copy of the accusation. The executive
28 director's decision to refer the complaint to hearing is not reviewable by the
29 commission under this chapter. The location of the hearing is the commission office
30 unless the commission designates another location. The executive director, or the
31 executive director's designee, shall present the case in support of the accusation before

1 the commission. The person charged in the accusation may file a written answer and
2 may appear at the hearing, with or without counsel, and submit evidence.

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

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

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

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

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

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

1 involving **a discriminatory practice** [DISCRIMINATION] in

2 (1) employment, the commission may order any appropriate relief,
 3 including **one or more of the following: training of an employer, labor**
 4 **organization, or employment agency, and its employees concerning**
 5 **discriminatory practices; an accommodation for a person with a disability;**
 6 **removal of or changes to a personnel record; posting of signs; back pay;** [BUT
 7 NOT LIMITED TO,] the hiring, reinstatement, or upgrading of an employee with or
 8 without back pay; **the payment of front pay for a period of not more than one year**
 9 **if hiring, reinstatement, or upgrading of an employee is inappropriate because a**
 10 **vacancy does not exist, the employer's discriminatory practice rendered the**
 11 **employee incapable of returning to work, or the relationship between the**
 12 **employer and employee has so deteriorated as to make working conditions**
 13 **intolerable;** [,] restoration to membership in a labor organization; [, OR] admission
 14 to or participation in an apprenticeship training program, on-the-job training program,
 15 or other retraining program; **or restoration of seniority; however, an order for back**
 16 **pay or front pay must be reduced by the amount the employee could have earned**
 17 **or could earn by making reasonably diligent efforts to obtain similar**
 18 **employment;**

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

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

31 (c) If the commission finds that a person **charged in an accusation**

1 [AGAINST WHOM A COMPLAINT WAS FILED] has not engaged in the
 2 discriminatory **practice** [CONDUCT] alleged in the **accusation** [COMPLAINT], it
 3 shall issue and cause to be served on the complainant an order dismissing the
 4 complaint.

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

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

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

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

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

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

17 * **Sec. 11.** AS 18.30 is amended by adding a new section to article 2 to read:

18 **Sec. 18.80.147. Attorney fees and costs.** (a) In an action brought by a person
 19 under AS 22.10.020(i), a prevailing plaintiff shall be awarded costs as provided by
 20 court rule and full reasonable attorney fees at the prevailing reasonable rate.

21 (b) Unless the action is found to be frivolous, in an action brought by a person
 22 under AS 22.10.020(i), a prevailing defendant shall be awarded attorney fees and costs
 23 as provided by court rule. If the action is found to be frivolous, the attorney fees to be
 24 awarded to the defendant shall be full reasonable attorney fees at the prevailing
 25 reasonable rate.

26 (c) In this section, "frivolous" means

27 (1) not reasonably based on evidence or on existing law or a
 28 reasonable extension, modification, or reversal of existing law; or

29 (2) brought to harass the defendant or to cause unnecessary delay or
 30 needless expense.

31 * **Sec. 12.** AS 18.80.270 is amended to read:

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

9 * **Sec. 13.** AS 18.80.300 is amended by adding new paragraphs to read:

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

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

16 * **Sec. 14.** AS 44.62.330(a) is amended by adding a new paragraph to read:

17 (46) State Commission for Human Rights, where procedures are not
18 otherwise expressly provided in AS 18.80.

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

21 INDIRECT COURT RULE AMENDMENT. The provisions of AS 18.80.147,
22 enacted by sec. 11 of this Act, have the effect of changing Rule 82, Alaska Rules of Civil
23 Procedure, by requiring the award of full reasonable attorney fees in certain cases.

24 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
25 read:

26 APPLICABILITY. This Act applies to all complaints filed on or after the effective
27 date of secs. 1 - 15 of this Act.

28 * **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 TRANSITION: REGULATIONS. The State Commission for Human Rights may
31 proceed to adopt regulations necessary to implement the changes made by this Act. The

- 1 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the
- 2 effective date of the statutory change.