

HOUSE CS FOR SENATE BILL NO. 132(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 4/21/06

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; 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 a new subsection 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 * **Sec. 3.** AS 18.80.110 is amended to read:

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

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

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

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

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

30 (2) the complainant is unavailable or unwilling to participate in a
31 hearing;

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

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

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

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

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

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

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

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

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

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

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

30 (b) The commission shall request the chief administrative law judge to
31 appoint, under AS 44.64.020, an administrative law judge employed or retained by the

1 office of administrative hearings to preside over a hearing conducted under this
 2 section. AS 44.64.040 - 44.64.055, 44.64.070 - 44.64.200, and the procedures in
 3 AS 44.62.330 - 44.62.630 (Administrative Procedure Act) apply to the hearing except
 4 as otherwise provided in this chapter.

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

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

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

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

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

29 (1) employment, the commission may order any appropriate relief,
 30 including **one or more of the following: training of an employer, labor**
 31 **organization, or employment agency, and its employees concerning**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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