

HOUSE CS FOR SENATE BILL NO. 132(FIN) am H
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Amended: 5/1/06

Offered: 4/21/06

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 has notified in writing the commission of the intent to initiate an action or proceeding
5 in another forum based on the same facts;

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

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

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

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

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

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

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

19 * **Sec. 5.** AS 18.80.120 is repealed and reenacted to read:

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

31 (b) The commission shall request the chief administrative law judge to

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

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

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

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

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

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

30 (1) employment, the commission may order any appropriate relief,
 31 including **one or more of the following: training of an employer, labor**

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

16 (2) housing, the commission may order the sale, lease, or rental of the
 17 housing accommodation to the aggrieved person if it is still available, or the sale,
 18 lease, or rental of a like accommodation owned by the person charged in the
 19 accusation [AGAINST WHOM THE COMPLAINT WAS FILED] if one is still
 20 available, or the sale, lease, or rental of the next vacancy in a like accommodation,
 21 owned by the person charged in the accusation [AGAINST WHOM THE
 22 COMPLAINT WAS FILED]; the commission may award actual damages, which shall
 23 include [, BUT NOT BE LIMITED TO,] the expenses incurred by the complainant for
 24 obtaining alternative housing or space; for storage of goods and effects; and for
 25 moving and [FOR] other costs actually incurred as a result of the unlawful practice or
 26 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 (46) 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 APPLICABILITY. This Act applies to all complaints filed on or after the effective
5 date of secs. 1 - 13 of this Act.

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

8 REPORT. (a) The State Commission for Human Rights shall prepare a report of
9 inquiries made to the commission after 180 days, but before one year, after the alleged
10 discriminatory practice under AS 18.80 occurred or, for a continuing discriminatory practice,
11 after 180 days, but before one year, after the alleged discriminatory practice stopped.

12 (b) The report required in (a) of this section

13 (1) shall be included with the annual report provided in 2007 and 2008 under
14 AS 18.80.150; and

15 (2) shall

16 (A) contain information for the period from the effective date of this
17 section through December 31, 2007;

18 (B) provide statistical data on the following:

19 (i) the type of the discriminatory practice;

20 (ii) the basis of the inquiry;

21 (iii) action taken on the inquiry.

22 (c) In this section, "commission" means the State Commission for Human Rights
23 created in AS 18.80.010.

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

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