

HOUSE BILL NO. 289

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES HARRIS AND SEATON, Chenault, LeDoux

Introduced: 1/15/08

Referred: House Special Committee on Fisheries, Labor and Commerce

A BILL

FOR AN ACT ENTITLED

1 **"An Act exempting employers from paying unemployment tax for crewmembers on**
2 **fishing vessels that respond or prepare to respond to, or that prepare for or engage in an**
3 **emergency or practice drill response to, an oil spill; and providing for an effective date."**

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

5 *** Section 1.** AS 23.20.526(a) is amended to read:

6 (a) In this chapter, unless the context otherwise requires, "employment" does
7 not include

8 (1) domestic service in a private home, except as provided in
9 AS 23.20.525(a)(15);

10 (2) newsboys' services in selling or distributing newspapers on the
11 street or from house to house;

12 (3) service not in the course of the employing unit's trade or business
13 performed in a calendar quarter by an individual, unless the cash remuneration paid
14 for the service is \$50 or more and the service is performed by an individual who is

1 regularly employed by the employing unit to perform the service; an individual is here
 2 considered to be regularly employed to perform service not in the course of an
 3 employing unit's trade or business during a calendar quarter only if the individual
 4 performs the service for some portion of the day on each of some 24 days during the
 5 quarter or during the preceding calendar quarter;

6 (4) service performed by an individual in the employ of the
 7 individual's

8 (A) son, daughter, or spouse;

9 (B) parent or legal guardian if the individual was under the age
 10 of 21 years and a full-time student during eight of the last 12 months and
 11 intends to resume full-time student status within the next four months; and

12 (C) mother or father if the service is performed by a child under
 13 the age of 18;

14 (5) service with respect to which unemployment insurance is payable
 15 under an unemployment insurance program established by an Act of Congress;

16 (6) service performed in the employ of a foreign government including
 17 service as a consular or other officer or employee or a nondiplomatic representative;

18 (7) service performed in the employ of an instrumentality wholly
 19 owned by a foreign government if

20 (A) the service is of a character similar to that performed in
 21 foreign countries by employees of the United States government or its
 22 instrumentalities; and

23 (B) the department finds that the United States Secretary of
 24 State has certified to the United States Secretary of the Treasury that the
 25 foreign government, with respect to whose instrumentality exemption is
 26 claimed, grants an equivalent exemption with respect to similar service
 27 performed in the foreign country by employees of the United States
 28 government and its instrumentalities;

29 (8) service performed by an insurance agent, insurance solicitor, a real
 30 estate broker, a real estate salesperson, or a securities salesman to the extent the person
 31 is compensated by commission, unless the service is required to be covered under the

1 Federal Unemployment Tax Act as amended;

2 (9) notwithstanding AS 23.20.525(a)(11), service performed by an
3 officer or member of the crew of an American vessel on or in connection with the
4 vessel, if the operating office, from which the operations of the vessel operating on
5 navigable waters inside or inside and outside the United States are ordinarily and
6 regularly supervised, managed, directed, and controlled, is outside this state;

7 (10) service performed on or in connection with a vessel not an
8 American vessel by an individual if the individual performed service on and in
9 connection with the vessel when outside the United States;

10 (11) service performed in the employ of the United States government
11 or an instrumentality of the United States exempt under the Constitution of the United
12 States from the contributions imposed by this chapter, except that to the extent that the
13 Congress of the United States permits states to require an instrumentality of the United
14 States to make payments into an unemployment fund under a state employment
15 security law, all of the provisions of this chapter apply to the instrumentalities, and to
16 service performed for the instrumentalities in the same manner, to the same extent, and
17 on the same terms as to all other employers, employing units, individuals, and service;
18 however, if this state is not certified for any year by the Secretary of Labor under 26
19 U.S.C. 3304(c) (Federal Unemployment Tax Act, Internal Revenue Code), the
20 payments required of the instrumentalities with respect to the year shall be refunded
21 by the department from the fund in the same manner and within the same period as is
22 provided in AS 23.20.225 with respect to contributions erroneously collected;

23 (12) service performed in the employ of another state, or political
24 subdivision of another state, or an instrumentality of another state or political
25 subdivision which is wholly owned by another state or its political subdivision, or a
26 service performed in the employ of an instrumentality of another state or its political
27 subdivisions to the extent that the instrumentality is, with respect to the service,
28 exempt under the Constitution of the United States from the tax imposed by 26 U.S.C.
29 3301 (Federal Unemployment Tax Act, Internal Revenue Code);

30 (13) service performed in the employ of an international organization;

31 (14) service covered by an election approved by the agency charged

1 with the administration of any other state or federal employment security law, in
 2 accordance with an arrangement under AS 23.20.090(a) during the effective period of
 3 the election;

4 (15) service performed by an individual in agricultural labor, except as
 5 provided in AS 23.20.525(a)(16); the term "agricultural labor" means remunerated
 6 service

7 (A) on a farm, in the employ of any person in connection with
 8 cultivating the soil, or in connection with raising or harvesting any agricultural
 9 or horticultural commodity, including the raising, shearing, feeding, caring for,
 10 training, and management of livestock, bees, poultry, and fur-bearing animals
 11 and wildlife;

12 (B) in the employ of the owner or tenant or other operator of a
 13 farm, in connection with the operation, management, conservation,
 14 improvement, or maintenance of the farm and its tools and equipment, or in
 15 salvaging timber or clearing land of brush and other debris left by a hurricane,
 16 if the major part of the service is performed on a farm;

17 (C) in connection with the production or harvesting of any
 18 commodity defined as an agricultural commodity in 12 U.S.C. 1141j (Sec.
 19 15(g), Agricultural Marketing Act), as amended, or in connection with the
 20 operation or maintenance of ditches, canals, reservoirs, or waterways, not
 21 owned or operated for profit, used exclusively for supplying and storing water
 22 for farming purposes;

23 (D) in the employ of the operator of a farm in handling,
 24 planting, drying, packing, packaging, processing, freezing, grading, storing, or
 25 delivering to storage or to market or to a carrier for transportation to market, in
 26 its unmanufactured state, any agricultural or horticultural commodity; but only
 27 if the operator produced more than one-half of the commodity with respect to
 28 which the service is performed except as stated in (b) of this section;

29 (E) in the employ of a group of operators of farms, or a
 30 cooperative organization of which the operators are members, in the
 31 performance of service described in (D) of this paragraph, but only if the

1 operators produced more than one-half of the commodity with respect to which
2 the service is performed;

3 (F) on a farm operated for profit if the service is not in the
4 course of the employer's trade or business;

5 (16) service performed as a student nurse in the employ of a hospital or
6 a nurses' training school by an individual who is enrolled and is regularly attending
7 classes in a nurses' training school chartered or approved in accordance with the laws
8 of this state, and service performed as an intern in the employ of a hospital by an
9 individual who has completed a four-year course in a medical school chartered or
10 approved in accordance with the laws of this state, unless the service is required to be
11 covered under the Federal Unemployment Tax Act;

12 (17) service performed by an individual on a boat engaged in catching
13 fish or other forms of aquatic animal life under an arrangement with the owner or
14 operator of that boat under which

15 (A) that individual does not receive any cash remuneration
16 except

17 (i) as provided in (B) of this paragraph; or

18 (ii) for remuneration for service performed while the
19 boat responds or prepares to respond to, or prepares for or
20 engages in an emergency or practice drill response to, an oil spill;

21 (B) that individual receives a share of the boat's, or the boats' in
22 the case of a fishing operation involving more than one boat, catch of fish or
23 other forms of aquatic animal life or a share of the proceeds from the sale of
24 that catch; and

25 (C) the amount of that individual's share depends on the
26 amount of the boat's, or the boats' in the case of a fishing operation involving
27 more than one boat, catch of fish or other forms of aquatic animal life; but only
28 if the operating crew of that boat, or each boat from which the individual
29 receives a share in the case of a fishing operation involving more than one
30 boat, is normally made up of fewer than 10 individuals;

31 (18) service performed as a prospective or impaneled juror in a court;

1 (19) service performed for a corporation by an employee of the
2 corporation if

3 (A) the corporation is incorporated under AS 10.06;

4 (B) the corporation is not a government corporation; and

5 (C) the employee is an executive officer of the corporation;

6 (20) service performed by an individual who drives a taxicab whose
7 compensation and written contractual arrangements are as described in
8 AS 23.10.055(a)(13);

9 (21) service of an individual who

10 (A) directly sells or solicits the sale of consumer products, for
11 resale or otherwise, personally to a prospective consumer in the home or
12 otherwise than in a permanent retail establishment; a sale or solicitation by
13 telephone, mail, other telecommunications method, or other nonpersonal
14 method does not satisfy the requirement of this subparagraph;

15 (B) is compensated solely by

16 (i) commissions on sales or other remuneration directly
17 related to sales or sales performance; or

18 (ii) a profit represented by the difference between the
19 wholesale cost of the product to the seller and the final sale price to the
20 consumer; and

21 (C) performs under a written contract with the person for whom
22 the service is performed that provides, notwithstanding AS 23.20.395(a), that
23 the individual is not an employee for purposes of this chapter or for federal or
24 state tax purposes;

25 **(22) service performed by a crewmember on a fishing vessel,**
26 **registered in the state under AS 16.05.475, for services performed while the vessel**
27 **responds or prepares to respond to, or prepares for or engages in an emergency**
28 **or practice drill response to, an oil spill.**

29 * **Sec. 2.** This Act takes effect immediately under AS 01.10.070(c).