

SENATE BILL NO. 16

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - FIRST SESSION

BY SENATORS BEGICH, Gray-Jackson

Introduced: 1/22/21

Referred: Labor & Commerce, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the authority and procedures of the State Commission for Human**
2 **Rights; requiring an annual report concerning the payment of equal pay for comparable**
3 **work; increasing the minimum wage; relating to and prohibiting wage discrimination**
4 **based on the sex of an employee; and providing for an effective date."**

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

6 * **Section 1.** The uncoded law of the State of Alaska is amended by adding a new section
7 to read:

8 SHORT TITLE. This Act may be known as the Equal Pay and Living Wage Act.

9 * **Sec. 2.** AS 18.80 is amended by adding a new section to read:

10 **Sec. 18.80.062. Powers and duties of executive director.** In addition to the
11 powers and duties delegated by the commission under AS 18.80.060, the executive
12 director shall, upon request, consult and collaborate with the commissioner of
13 administration or the commissioner's designee to prepare the annual report required
14 under AS 23.05.062.

1 * **Sec. 3.** AS 18.80.100 is amended to read:

2 **Sec. 18.80.100. Complaint; withdrawal.** (a) Except as provided in (c) of
 3 this section, a [A] person who is aggrieved by a discriminatory practice prohibited by
 4 this chapter may sign and file with the commission a written, verified complaint
 5 stating the name and address of the person alleged to have engaged in the
 6 discriminatory practice, and the particulars of the discrimination. A complainant may
 7 withdraw the complaint at any time before the service of an accusation under
 8 AS 18.80.120. A withdrawal must be signed by the complainant and be in writing. A
 9 withdrawal does not limit the discretion of the executive director provided in (b) of
 10 this section.

11 (b) Except as provided in (c) of this section, the [THE] executive director
 12 may file a complaint in the manner provided in (a) of this section when a
 13 discriminatory practice comes to the attention of the executive director.

14 * **Sec. 4.** AS 18.80.100 is amended by adding a new subsection to read:

15 (c) The executive director or the director's designee may not file a complaint
 16 under this section alleging wage discrimination prohibited by AS 23.10.700.

17 * **Sec. 5.** AS 18.80.145(a) is amended to read:

18 (a) When an action alleging a violation of this chapter is brought under
 19 AS 22.10.020(i), the plaintiff shall serve a copy of the complaint on the commission.
 20 Upon timely application, the commission may intervene as a party to the action as a
 21 matter of right. If the commission certifies in writing to the court that it is presently
 22 investigating or actively dealing with the act, practice, or policy of the defendant
 23 giving rise to the cause of action, the court shall, at the request of the commission,
 24 defer proceedings for a period of not more than 45 days or an [SUCH] extended
 25 period as the court may allow; except that the court may enter an order or injunction if
 26 necessary to prevent irreparable injury to the plaintiff.

27 * **Sec. 6.** AS 18.80.300 is amended by adding new paragraphs to read:

28 (19) "gender identity or expression" means having or being perceived
 29 as having or expressing a gender, self-image, appearance, or behavior, regardless of
 30 whether that gender, self-image, appearance, or behavior is different from that
 31 traditionally associated with the sex assigned to that person at birth;

1 (20) "sex" means gender, gender identity or expression, and sexual
2 orientation;

3 (21) "sexual orientation" means heterosexuality, homosexuality, and
4 bisexuality.

5 * **Sec. 7.** AS 22.10.020(i) is amended to read:

6 (i) The superior court is the court of original jurisdiction over all causes of
7 action arising under the provisions of AS 18.80 or AS 23.10.700 - 23.10.790. A
8 person who is injured or aggrieved by an act, practice, or policy **that** [WHICH] is
9 prohibited under AS 18.80 or AS 23.10.700 - 23.10.790 may apply to the superior
10 court for relief. The person aggrieved or injured may maintain an action on behalf of
11 that person or on behalf of a class consisting of all persons who are aggrieved or
12 injured by the act, practice, or policy giving rise to the action. In an action brought
13 under this subsection, the court may grant relief as to any act, practice, or policy of the
14 defendant **that** [WHICH] is prohibited by AS 18.80 or AS 23.10.700 - 23.10.790,
15 regardless of whether each act, practice, or policy, with respect to which relief is
16 granted, directly affects the plaintiff, so long as a class or members of a class of which
17 the plaintiff is a member are or may be aggrieved or injured by the act, practice, or
18 policy. The court may enjoin any act, practice, or policy **that** [WHICH] is illegal
19 under AS 18.80 or AS 23.10.700 - 23.10.790 and may order any other relief, including
20 the payment of money, that is appropriate.

21 * **Sec. 8.** AS 23.05.060 is amended to read:

22 **Sec. 23.05.060. Powers of the department.** The department may

- 23 (1) enforce all state labor laws;
- 24 (2) act as mediator and appoint deputy commissioners of conciliation
25 in labor disputes whenever it considers the interest of industrial peace requires [IT];
- 26 (3) make investigations and collect and compile statistical information
27 concerning the conditions of labor generally and on [UPON] all matters relating to the
28 enforcement of this chapter;
- 29 (4) institute court proceedings against an employer of labor without
30 cost to the employee when it is satisfied that the employer has failed to pay an
31 employee an amount due by contract;

(5) issue cease and desist orders and other orders and regulations necessary for the enforcement of state labor laws;

(6) in accordance with AS 37.07 (the Executive Budget Act), receive and spend money derived from agreements with local governments, nongovernmental organizations, or other persons;

(7) consult and collaborate with the executive director of the State Commission for Human Rights to prepare the annual report required under AS 23.05.062.

* **Sec. 9.** AS 23.05 is amended by adding a new section to read:

Sec. 23.05.062. Report on fair pay practices. (a) Not later than January 15 of each year, the commissioner or the commissioner's designee shall prepare a report regarding pay practices in the state by election district and make it available to the public, file it with the executive director of the State Commission for Human Rights, the senate secretary, and the chief clerk of the house of representatives, and notify the legislature that the report is available. The report must include

(1) information about compensation practices in the state, including employer noncompliance with applicable state and federal wage laws, and to what extent employees in one or more election districts of the state are paid

(A) equal pay for work of comparable character, regardless of race, religion, color, national origin, age, physical or mental disability, sex, marital status, change in marital status, pregnancy, or parenthood;

(B) wages that, based on a full-time weekly work schedule and a 12-month work year in that district, are sufficient to pay the reasonable living expenses of a family of four individuals, including two children, who live in that district;

(2) recommended action by the legislature.

(b) In this section,

(1) "gender identity or expression" means having or being perceived as having or expressing a gender, self-image, appearance, or behavior, regardless of whether that gender, self-image, appearance, or behavior is different from that traditionally associated with the sex assigned to that person at birth;

(2) "sex" means gender, gender identity or expression, and sexual orientation;

(3) "sexual orientation" means heterosexuality, homosexuality, and bisexuality.

* **Sec. 10.** AS 23.10.065(a) is amended to read:

(a) Except as otherwise provided for in law, an employer shall pay to each employee a minimum wage, as established herein, for hours worked in a pay period, whether the work is measured by time, piece, commission or otherwise. An employer may not apply tips or gratuities bestowed on [UPON] employees as a credit toward payment of the minimum hourly wage required by this section. Tip credit as defined by the Fair Labor Standards Act of 1938, as amended, does not apply to the minimum wage established by this section. Beginning February 24, 2015, the minimum wage shall be \$8.75 an [PER] hour effective January 1, 2015, \$9.75 an [PER] hour effective January 1, 2016, \$15.00 an hour effective January 1, 2022, and thereafter adjusted annually for inflation. The adjustment shall be calculated each September 30, for the proceeding January-December calendar year, by the Alaska Department of Labor and Workforce Development, using 100 percent of the rate of inflation based on the Consumer Price Index for all urban consumers for the Anchorage metropolitan area, compiled by the Bureau of Labor Statistics, United States Department of Labor; the department shall round the adjusted minimum hourly wage up to the nearest one cent; the adjusted minimum hourly wage shall apply to work performed beginning on January 1 through December 31 of the year for which it is effective.

* **Sec. 11.** AS 23.10 is amended by adding new sections to read:

Article 9. Equal Pay Without Discrimination Based on Sex.

Sec. 23.10.700. Equal pay regardless of sex. (a) An employer may not pay an employee of one sex wages that are less than the wages the employer pays an employee of another sex for work that is substantially similar when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions, unless the employer demonstrates that the wage differential is primarily based on the employer's reliance on a

(1) relevant disparity in the employees' education, training, or

1 experience;

2 (2) seniority system;

3 (3) merit system;

4 (4) system that measures earnings by quantity;

5 (5) system that measures earnings by quality of production; or

6 (6) system that incorporates a geographic wage differential.

7 (b) An employer may not unreasonably rely on a disparity or system under
8 (a)(1) - (6) of this section.

9 **Sec. 23.10.710. Remedies.** (a) An employer is liable to each employee for
10 unpaid wages withheld in violation of AS 23.10.700 and, unless waived under (d) of
11 this section, liquidated damages equal to twice the amount of unpaid wages.

12 (b) An employee may bring an action in the superior court under
13 AS 22.10.020(i) to recover wages and damages under (a) of this section, or an
14 employee may individually consent in writing to representation by the commissioner.
15 The employee or the commissioner shall file the consent in the court in which the
16 action is brought. At the written request of an employee who alleges a violation of
17 AS 23.10.700, the commissioner may take an assignment in trust for the employee of
18 the full amount to which the employee is entitled under that section and may bring a
19 legal action to collect damages under (a) of this section.

20 (c) The commissioner may supervise the payment of damages owed to an
21 employee under this section. Payment in full under an agreement by an employee to
22 settle a claim under this section for unpaid wages or liquidated damages constitutes a
23 waiver of any right as to a claim the employee may have under (a) of this section to
24 unpaid wages or liquidated damages.

25 (d) In a settlement for unpaid wages under this section that is not supervised
26 by the department or the court, an employee is entitled to liquidated damages under (a)
27 of this section unless the employee and the employer enter into a written settlement
28 agreement in which the employee expressly waives the right to receive liquidated
29 damages. A private written settlement agreement under this subsection is not valid
30 unless submitted to the commissioner for review. The commissioner shall review the
31 agreement and approve it if it is fair to the parties. The commissioner shall approve or

1 deny an agreement within 30 days after receipt. A waiver of liquidated damages may
2 not be a condition of employment.

3 **Sec. 23.10.715. Double recovery of damages not permitted.** An employee
4 who recovers unpaid wages from an employer as the result of a complaint or
5 agreement under AS 23.10.700 and recovers unpaid wages from the employer under
6 29 U.S.C. 206(d) as a result of the same conduct by the employer shall return to the
7 employer the unpaid wages recovered under AS 23.10.710 or the unpaid wages
8 recovered under federal law, whichever is less.

9 **Sec. 23.10.720. Disclosure of wages; discussion of wages.** An employer may
10 not prohibit an employee from disclosing the employee's wages, discussing the wages
11 of others, inquiring about another employee's wages, or helping or encouraging
12 another employee to exercise a right under this section. Nothing in this section creates
13 an obligation for a person to disclose information about their own wages or the wages
14 of another.

15 **Sec. 23.10.725. Employer shall maintain records.** An employer shall make a
16 record of the wage rates and of wages paid to each employee from the date of the
17 employee's hire and maintain that record for at least three years after the employee's
18 last day of employment.

19 **Sec. 23.10.730. Posting summary required.** An employer subject to
20 AS 23.10.700 - 23.10.790 shall keep a summary or abstract of AS 23.10.700 -
21 23.10.790, approved by the commissioner, posted in a conspicuous location at the
22 place where an employee is employed. Upon request by an employer, the
23 commissioner shall provide a copy of the summary without charge.

24 **Sec. 23.10.735. Retaliation prohibited.** An employer may not discharge,
25 discipline, threaten, discriminate against, or penalize an employee for exercising a
26 right under AS 23.10.700 - 23.10.790 or participating in or benefitting from a
27 complaint, claim, trial, agreement, or investigation resulting from an alleged violation
28 of AS 23.10.700 - 23.10.790.

29 **Sec. 23.10.740. Damages for retaliation.** An employee who has been
30 discharged, disciplined, threatened, discriminated against, or penalized in violation of
31 AS 23.10.735 may file a civil claim against the employer for damages, including

1 reinstatement and lost wages.

2 **Sec. 23.10.745. Accepting lesser wages not a bar to action.** An employee's
3 agreement to work for wages less than the wages required by AS 23.10.700 does not
4 bar an action under AS 23.10.700 - 23.10.790.

5 **Sec. 23.10.750. Statute of limitations.** An action under AS 23.10.700 -
6 23.10.790 may be filed not later than three years after the injury to the aggrieved
7 employee last occurs.

8 **Sec. 23.10.755. Regulations.** The commissioner shall adopt regulations under
9 AS 44.62 (Administrative Procedure Act) to implement and interpret AS 23.10.700 -
10 23.10.790.

11 **Sec. 23.10.790. Definitions.** In AS 23.10.700 - 23.10.790,

12 (1) "employee" means a person in the service of an employer;

13 (2) "employer" means the state, the University of Alaska, the Alaska
14 Railroad Corporation, a political subdivision of the state, and a person who employs
15 one or more other persons;

16 (3) "gender identity or expression" means having or being perceived as
17 having or expressing a gender, self-image, appearance, or behavior, regardless of
18 whether that gender, self-image, appearance, or behavior is different from that
19 traditionally associated with the sex assigned to that person at birth;

20 (4) "sex" means gender, gender identity or expression, and sexual
21 orientation;

22 (5) "sexual orientation" means heterosexuality, homosexuality, and
23 bisexuality.

24 * **Sec. 12.** AS 18.80.220(a)(5) is repealed.

25 * **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 **APPLICABILITY.** (a) The increase in the minimum wage to \$15.00 an hour in
28 AS 23.10.065(a), as amended by sec. 10 of this Act, applies to wages for services performed
29 on or after January 1, 2022.

30 (b) AS 18.80.100, as amended by sec. 3 of this Act, AS 18.80.100(c), enacted by sec.
31 4 of this Act, AS 18.80.300(19) - (21), enacted by sec. 6 of this Act, AS 22.10.020(i), as

1 amended by sec. 7 of this Act, AS 23.10.700 - 23.10.790, enacted by sec. 11 of this Act, and
2 the repeal of AS 18.80.220(a)(5) in sec. 12 of this Act apply to wages for services performed
3 on or after the effective date of this Act.

4 * **Sec. 14.** This Act takes effect July 1, 2021.