

1 IN THE HOUSE

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GREUEL AND RADER.

2 HOUSE BILL NO. 101

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIRST LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act to prescribe minimum wage and
7 overtime compensation standards for em-
8 ployees, excepting certain classes of
9 employees; providing for the enforcement of
10 such provisions; defining violations and
11 prescribing penalties and remedies; repeal-
12 ing Ch. 185, SLA 1955; and providing for
13 an effective date."

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

15 Section 1. DECLARATION OF STATE PUBLIC POLICY. It is de-
16 clared to be the policy of this Act (1) to establish minimum wage,
17 and overtime compensation standards for workers at levels consis-
18 tent with their health, efficiency and general well-being, and (2)
19 to safeguard existing minimum wage and overtime compensation stan-
20 dards which are adequate to maintain the health, efficiency and
21 general well-being of workers against the unfair competition of
22 wage and hour standards which do not provide such adequate stan-
23 dards of living.

24 Sec. 2. DEFINITIONS. As used in this Act -

25 (1) "Commissioner" means the Commissioner of Labor or
26 his successor.

27 (2) "Employ" includes suffer or permit to work.

28 (3) "Employer" includes any individual, partnership,
29 association, corporation, business trust, legal representative, or

1 any person or group of persons acting directly or indirectly in
2 the interest of an employer in relation to any employee.

3 (4) "Employer" includes any individual employer by an
4 employer but shall not include---

5 (a) any individual employed in agriculture which
6 shall include farming in all its branches and among other
7 things includes the cultivation and tillage of the soil,
8 dairying, the production, cultivation, growing, and harvest-
9 ing of any agricultural or horticultural commodities, the
10 raising of livestock, bees, fur-bearing animals, or poultry,
11 and any practices (including any forestry or lumbering opera-
12 tions) performed by a farmer or on a farm as an incident to
13 or in conjunction with such farming operations, including
14 preparation for market, delivery to storage or to market or
15 to carriers for transportation to market;

16 (b) any individual employed in a retail or service
17 establishment having less than six employees;

18 (c) any individual employed in the catching, trap-
19 ping, netting or taking of any kind of fish, shellfish, or
20 other aquatic forms of animal or vegetable life;

21 (d) any individual employed in domestic service
22 (including baby-sitters) in or about a private home;

23 (e) any individual employed by the United States,
24 or by the State or any political subdivision thereof;

25 (f) any individual engaged in the activities of an
26 educational, charitable, religious, or non-profit organiza-
27 tion where the employer-employee relationship does not, in
28 fact, exist or where services rendered to such organizations
29 are on a voluntary basis; or

1 (g) any employee engaged in the delivery of news-
2 papers to the consumer.

3 (5) "Occupation" means any occupation, service, trade,
4 business, industry, or branch or group of industries or employ-
5 ment or class of employment in which individuals are gainfully
6 employed.

7 (6) "Wage" means legal tender of the United States, or
8 checks or banks convertible into cash on demand at full face
9 value thereof and may include the reasonable cost, as determined
10 in accordance with Sec. 5 of this Act, of furnishing board or
11 lodging to employees, but shall not include tips or gratuities of
12 any kind.

13 Sec. 3. MINIMUM WAGES. Every employer, except as may be
14 otherwise provided in this Act, shall pay to each of his employees
15 wages at a rate of not less than \$1.50 an hour.

16 Sec. 4. OVERTIME HOURS.

17 (1) No employer shall, except as hereinafter provided
18 in this section employ any employees, after the effective date of
19 this section, in excess of eight (8) hours a day or forty (40)
20 hours a week, unless such employee receives compensation for em-
21 ployment in excess of such daily or weekly hours, whichever is
22 greater, at a rate not less than one and one-half times the reg-
23 ular rate at which he is employed. For the purposes of this
24 section, a day means (i) any period of twenty-four (24) consec-
25 utive hours established as the workday for the employees concerned,
26 provided such workday is not designated to evade the purposes of
27 this Act, (ii) each successive twenty-four (24) hour period con-
28 stituting a day, or (iii) when there is no other workday estab-
29 lished for the employees concerned, the calendar day.

1 (2) The provisions of subsection (1) shall not apply
2 with respect to:

3 (a) any employee employed at a guaranteed salary
4 of not less than five hundred (\$500.00) dollars a month in
5 a bona fide executive, administrative, or professional capa-
6 city as defined by the Commissioner, after investigation and
7 due notice of public hearing;

8 (b) any employee employed in handling, processing,
9 canning, curing, or storing (including cold storage) of any
10 kind of fish, shellfish, or any other aquatic forms of ani-
11 mal or vegetable life, or any by-product thereof;

12 (c) any employee with respect to whom the Inter-
13 state Commerce Commission has power to establish qualifica-
14 tions and maximum hours of service pursuant to the provi-
15 sions of Sec. 204 of the Motor Carrier Act, 1935;

16 (d) any employee of an employer subject to the
17 provisions of Part I of the Interstate Commerce Act;

18 (e) any employee of a carrier by air subject to
19 the provisions of Title II of the Railway Labor Act;

20 (f) any employee employed in handling, packing,
21 storing, ginning, compressing, pasteurizing, drying, prepar-
22 ing in their raw or natural state, or canning of agricul-
23 tural or horticultural commodities for market, or in making
24 cheese or butter or other dairy products;

25 (g) any employee of a street, suburban, or inter-
26 urban electric railway, bus carrier, not included in other
27 exemptions contained in this section;

28 (h) any employee of an employer engaged in the
29 business of operating taxicabs;

1 (i) any employee of an employer engaged in the
2 business of transportation by water;

3 (j) any employee employed in planting or tending
4 trees, cruising, surveying, or felling timber, or in pre-
5 paring or transporting logs or other forestry products to the
6 mill, processing plant, railroad, or other transportation
7 terminal, if the number of employees employed by his em-
8 ployer in such forestry or lumbering operations does not
9 exceed twelve (12); or

10 (k) any employee of an employer engaged in gold
11 placer mining, insofar as such employee is employed not in
12 excess of twelve (12) hours a day or fifty-six (56) hours
13 a week during a period or periods of not more than fourteen
14 (14) workweeks in the aggregate in any calendar year during
15 the gold placer mining season, as such season is defined by
16 the Commissioner.

17 Sec. 5. HANDICAPPED WORKERS: APPRENTICES: LEARNERS. To
18 the extent necessary in order to prevent curtailment of oppor-
19 tunities of employment, the Commissioner may by regulations, after
20 public hearing, provide for the employment at wages lower than
21 the minimum wage presented in this Act:

22 (1) of individuals whose earning capacity is impaired
23 by physical or mental deficiency or injury, at such wages and
24 subject to such restrictions and for such period of time as shall
25 be fixed by the Commissioner; and

26 (2) of apprentices at such wages as are approved by
27 the Commissioner; or

28 (3) of learners at such wages and subject to such
29 restrictions and for such periods of time as shall be fixed by the

1 Commissioner.

2 No individual shall be employed at wages fixed pursuant to
3 this section except under special license issued under applicable
4 regulations of the Commissioner.

5 Sec. 5. ADMINISTRATIVE AGENCY: POWERS: DUTIES.

6 (1) There shall be in the Department of Labor a divi-
7 sion known as the "Wage and Hour Division", which division shall
8 be in charge of a Director, responsible to the Commissioner, whose
9 function it shall be to administer this Act. The Commissioner
10 shall have the authority to appoint the Director and such assist-
11 ants and other employees as may be necessary for the proper en-
12 forcement of this Act and to fix their compensation, subject to
13 the provision of law applicable to the appointment and compensa-
14 tion of employees of the State. The Director may delegate to the
15 duly authorized representative his powers, functions and duties
16 under this Act.

17 (2) The Director, or his authorized representative,
18 shall have full power and authority; and it shall be his duty:

19 (a) To investigate and ascertain the wages and re-
20 lated conditions and standards of employment of any employee
21 in the State.

22 (b) To enter the place of business or employment
23 of any employer for the purpose of inspecting any records
24 that in any way relate to the question of wages paid or hours
25 worked or for any other purpose necessary to the administra-
26 tion or enforcement of this Act;

27 (c) To require from any employer full and correct
28 statements in writing when the Director or his authorized
29 representative deems necessary, of hours worked by and the

1 wages paid to all persons in his employ, such statements at
2 the discretion of the Commissioner or his authorized repre-
3 sentatives to be under oath;

4 (d) To question any employee in his place of em-
5 ployment during work hours with respect to the wages paid
6 and the hours worked by such employees; and

7 (e) To carry out the provisions of this Act.

8 (3) The Director shall have the power to issue, amend
9 or rescind such administrative regulations, not inconsistent with
10 the purposes and provisions of this Act as may be necessary for
11 the efficient administration of any provision of this Act. Such
12 regulations, without limiting the generality of the foregoing, may
13 define terms used in this Act, may include such terms and condi-
14 tions, including the restriction or prohibition of industrial
15 homework or of such other acts or practices, as the Director finds
16 necessary or appropriate to carry out the purposes of the Act, or
17 to prevent the circumvention or evasion thereof, and may permit
18 deductions by an employer from the minimum wage applicable under
19 this Act to his employees for the reasonable cost, as determined
20 by the Director on an occupation basis, of furnishing board or
21 lodging if such board or lodging is customarily furnished by the
22 employer and used by the employee.

23 Regulations or orders of the Director relating to industrial
24 home work, special rates and conditions of employment provided for
25 pursuant to Sec. 5, or deductions from wages permitted under this
26 subsection shall be issued only after notice to interested persons
27 and a public hearing by the Director at which such persons may be
28 heard.

29 (4) Regulations or orders issued pursuant to this sec-

1 tion shall take effect upon publication in such newspapers and by
2 such other means as the Director deems reasonably calculated to
3 give to interested persons general notice of such issuance.

4 (5) The Director, or his authorized representative,
5 shall have the power to administer oaths, to take or cause to be
6 taken the depositions of witnesses, and to require by subpoena the
7 attendance and testimony of witnesses and the production of all
8 books, records, and other information relative to any matter
9 under investigation. Such subpoena shall be signed and issued by
10 the Commissioner or his authorized representative, and shall be
11 served and have the same effect as if issued out of the District
12 Court or its successor.

13 (6) The Director shall have the power to certify to
14 official acts.

15 Sec. 7. KEEPING OF RECORDS. Every employer shall keep for
16 a period of not less than three (3) years in or about the pre-
17 mises wherein any employee is employed a record of the name, ad-
18 dress, and occupation of each of his employees, the rate of pay
19 and the amount paid each pay period to each such employee, the
20 hours worked each day and each workweek by each such employee, and
21 such other information as the Commissioner may by regulation or
22 order prescribe. The Commissioner or his authorized representa-
23 tive may copy such records at any reasonable time. Every em-
24 ployer shall furnish to the Commissioner or his authorized rep-
25 resentative on demand a sworn statement of such records, and if
26 the Commissioner shall so require, upon forms prescribed or ap-
27 proved by him.

28 Sec. 8. POSTING OF SUMMARY OF THE ACT. Every employer sub-
29 ject to this Act shall keep a summary of this Act, approved by

1 the Commissioner, posted in a conspicuous place in or about the
2 premises wherein any person subject thereto is employed. Em-
3 ployers shall be furnished copies of such summaries by the State
4 on request without charge.

5 Sec. 9. ENFORCEMENT.

6 (1) PROHIBITED ACTS. Any employer who hinders or
7 delays the Commissioner or his authorized representative in the
8 performance of his duties in the enforcement of this Act, or who
9 refuses to admit the Commissioner or his authorized representa-
10 tive to any place of employment, or who fails to keep or falsifies
11 any record required under the provisions of this Act, or who re-
12 fuses to make such record accessible, or to furnish a sworn state-
13 ment thereof, or to give information required for the proper en-
14 forcement of this Act, upon demand, to the Commissioner or his
15 authorized representative, or who fails to post an abstract of
16 this law as required by Section 8 of this Act or who discharges
17 or in any other manner discriminates against any employee because
18 such employee has made any complaint to his employer, the Com-
19 missioner, or any other person, or has instituted or caused to be
20 instituted any proceeding under or related to this Act, or has
21 testified or is about to testify in any such proceeding, shall be
22 deemed to have violated this Act.

23 (2) PENALTIES. Any employer who willfully violates any
24 provision of this Act, or of any regulation or order of the Com-
25 missioner issued under the authority of this Act, shall, upon
26 conviction thereof, be punished by a fine of not less than one
27 hundred (\$100.00) dollars nor more than two thousand (\$2,000.00)
28 dollars, or by imprisonment for not less than ten nor more than
29 ninety days, or by both such fine and imprisonment. Each day any

1 such violation occurs shall constitute a separate offense.

2 (3) EMPLOYEES' REMEDIES.

3 (a) Any employer who violates any provision of
4 Sec. 3 or 4 of this Act shall be liable to the employee or
5 employees affected in the amount of their unpaid minimum
6 wages, or unpaid overtime compensation, as the case may be,
7 and in an additional equal amount as liquidated damages.

8 (b) Action to recover such liability may be
9 maintained in any court of competent jurisdiction by any one
10 or more employees for and in behalf of himself or themselves
11 and other employees similarly situated, or such employee or
12 employees may designate an agent or representative to main-
13 tain such action for and in behalf of all employees simi-
14 larly situated. At the request of any person paid less than
15 the amount to which he is entitled under the provision of the
16 Act the Commissioner shall take an assignment in trust for
17 the assigning employee of the full amount to which he is en-
18 titled under this subsection and may, with or without such
19 assignment, bring any legal action necessary to collect such
20 claim.

21 The Court in any action brought under this subsection
22 shall, in addition to any judgment awarded to the plaintiff
23 or plaintiffs, allow costs of the action and reasonable
24 attorney's fees to be paid by the defendant. Such attorney's
25 fees in the case of actions brought under this subsection by
26 the Commissioner shall be remitted by the Commissioner to
27 the Treasurer of the State. The Commissioner shall not be
28 required to pay the filing fee, or other costs, in connection
29 with such action. The Commissioner in case of suit shall

1 have power to join various claimants against the same em-
2 ployer in one cause of action.

3 (4) INJUNCTION PROCEEDINGS. Whenever it shall appear
4 to the Commissioner that any employer is engaged in any act or
5 practice which constitutes or will constitute a violation of any
6 provision of this Act, or of any provision of any regulation
7 thereunder, he may in his discretion bring an action in the Dis-
8 trict Court or its successor, to enjoin such act or practice and
9 to enforce compliance with this Act or with such regulation, and
10 upon a proper showing a permanent or temporary injunction, or
11 decree or restraining order shall be granted without bond.

12 (5) SUBPOENA ENFORCEMENT. In cases of failure of any
13 person to comply with any subpoena lawfully issued under Sec. 6
14 of this Act or on the refusal of any witness to produce evidence
15 or to testify to any matter regarding which he may be lawfully
16 interrogated, it shall be the duty of any District Court or its
17 successor, or the judge thereof, upon application of the Commis-
18 sioner or his authorized representative, to compel obedience by
19 proceedings for contempt, as in the case of disobedience of the
20 requirements of a subpoena issued by such court or a refusal to
21 testify therein.

22 No person shall be excused from attending and testifying or
23 from producing books, papers, correspondence, memoranda, contracts,
24 agreements, or other records and documents before the Commissioner
25 or his authorized representative, or in obedience to the subpoena
26 of the Commissioner or his authorized representative, or in any
27 cause or proceeding instituted under this Act, on the ground
28 that the testimony or evidence, documentary or otherwise, required
29 of him may tend to incriminate him or subject him to a penalty or

1 or forfeiture, but no individual shall be prosecuted or be sub-
2 ject to any penalty or forfeiture for or on account of any trans-
3 action, matter of thing concerning which he is compelled to tes-
4 tify or produce evidence, documentary or otherwise, after having
5 claimed his privilege against self-incrimination, except that
6 such individual so testifying shall not be exempt from prosecution
7 and punishment for perjury committed in so testifying.

8 Sec. 10. RELATION TO OTHER LAWS. Any standards relating to
9 minimum wage, maximum hour, overtime compensation or other work-
10 ing conditions in effect at the date of the passage of this Act by
11 or under any other law of this state or municipal ordinance, which
12 are more favorable to employees than those applicable to such em-
13 ployees under this Act or regulations or orders issued hereunder,
14 shall not be deemed to be amended, rescinded or otherwise affected
15 by this Act but shall continue in full force and effect and may be
16 enforced as provided by law unless and until they are specifically
17 superseded by standards more favorable to such employees by opera-
18 tion of, or in accordance with regulations or order issued under
19 this Act. No provision of this Act shall justify any employer in
20 reducing a wage paid by him which is in excess of the applicable
21 minimum wage under this Act, or justify any employer in increas-
22 ing hours of employment maintained by him which are shorter than
23 the maximum hours applicable under this Act.

24 Sec. 11. RIGHT OF COLLECTIVE BARGAINING PROTECTED. Nothing
25 in this Act shall be deemed to interfere with, impede, or in any
26 way diminish the right of employees to bargain collectively
27 through representatives of their own choosing in order to estab-
28 lish wages or conditions of work in excess of the applicable
29 minimum under this Act, or to establish hours of work shorter than

1 the applicable maximum under this Act.

2 Sec. 12. STATUTE OF LIMITATIONS. Any action to enforce any
3 cause of action for unpaid minimum wages, unpaid overtime com-
4 pensation, or liquidated damages under this Act, if the cause of
5 action accrues after the date of enactment of this Act, must be
6 commenced within two years after the cause of action accrued, and
7 every such action shall be forever barred unless commenced within
8 two years after the cause of action accrued.

9 Sec. 13. DETERMINATION OF COMMENCEMENT OF ACTIONS. In deter-
10 mining when an action is commenced for the purposes of Sec. 6, an
11 action commenced after the date of the enactment of this Act shall
12 be considered to be commenced on the date when the complaint is
13 filed; except that in the case of a collective or class action
14 instituted under Sec. 9 of this Act, it shall be considered to be
15 commenced in the case of any individual claimant on the date when
16 the complaint is filed if he is specifically named as a party
17 plaintiff in the complaint, or if his name did not so appear, on
18 the subsequent date on which his name is added as a party plain-
19 tiff in such action.

20 Sec. 14. REPEAL. Ch. 185, SLA 1955, is hereby repealed.

21 Sec. 15. EFFECTIVE DATE. This Act shall take effect imme-
22 diately upon its passage and approval or upon its becoming law
23 without such approval.

24 Sec. 16. SHORT TITLE. This Act may be cited as the "Alaska
25 Wage and Hour Act".
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