

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 2ND COMMITTEE SUBSTITUTE FOR 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 over-
7 time compensation standards for employees
8 to be known as the "Alaska Wage and Hour
9 Act," exempting certain classes of employees;
10 providing for enforcement; defining viola-
11 tions and prescribing penalties and remedies;
12 repealing Chapter 185, SLA 1955; and pro-
13 viding for an effective date."

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

15 Section 1. DECLARATION OF STATE PUBLIC POLICY: ALASKA WAGE
16 AND HOUR ACT. The public policy of the state declared in this
17 Act, which may be cited as the "Alaska Wage and Hour Act", is (1)
18 to establish minimum wage, and overtime compensation standards
19 for workers at levels consistent with their health, efficiency
20 and general well-being, and (2) to safeguard existing minimum
21 wage and overtime compensation standards which are adequate to
22 maintain the health, efficiency and general well-being of workers
23 against the unfair competition of wage and hour standards which
24 do not provide such adequate standards of living.

25 Sec. 2. EXEMPTIONS: DEFINITIONS. (1) This Act shall not
26 apply to:

27 (a) any individual employed in agriculture which
28 shall include farming in all its branches and, among other
29 things, includes the cultivation and tillage of the soil,

1 dairying, the production, cultivation, growing, and harvesting
2 of any agricultural or horticultural commodities, the raising
3 of livestock, bees, fur-bearing animals, or poultry, and any
4 practices (including any forestry or lumbering operations)
5 performed by a farmer, or on a farm, as an incident to, or
6 in conjunction with, such farming operations, including
7 preparation for market, delivery to storage, or to market,
8 or to carriers for transportation to market;

9 (b) any individual employed in the catching,
10 trapping, cultivating or farming, netting or taking of any
11 kind of fish, shellfish, or other aquatic forms of animal
12 and vegetable life;

13 (c) any individual employed in domestic service
14 (including baby-sitters) in or about a private home;

15 (d) any individual employed by the United States,
16 or by the state, or any political subdivision thereof;

17 (e) any individual engaged in the activities of
18 a non-profit religious, charitable, cemetery or educational
19 organization where the employer-employee relationship does
20 not, in fact, exist, and where services rendered to such
21 organizations are on a voluntary basis;

22 (f) any employee engaged in the delivery of
23 newspapers to the consumer;

24 (g) any individual employed solely as a watchman
25 or caretaker of any premises, property or plant that is not
26 in productive use for a period of four months or more;

27 (h) any individual employed in a bona fide execu-
28 tive, administrative or professional capacity or in the
29 capacity of an outside salesman; or

1 (1) any individual employed in the search for
2 minerals of economic value.

3 (2) Terms as used in this Act shall be defined, where
4 applicable, in the manner that they are defined in the federal
5 Fair Labor Standards Act of 1938, as amended, or regulations
6 adopted pursuant thereto.

7 Sec. 3. OVERTIME HOURS. No employer who employs employees
8 engaged in commerce, or other business, or in the production of
9 goods or materials in Alaska, shall employ any of his employees
10 not acting in a supervisory capacity, either male or female, for
11 a workweek longer than forty hours or for more than eight hours
12 per day, except that should the employer find it necessary to
13 employ any employee in excess of the hours provided for, compensa-
14 tion for such overtime at the rate of one and one-half times the
15 regular rate of pay shall be paid, and this provision shall be
16 deemed to be included in all contracts of employment entered into
17 hereafter; provided that the provisions of this section shall not
18 apply with respect to:

19 (1) any employee exempt under Sec. 13(a), (b) and (c)
20 of the Fair Labor Standards Act of 1938, as amended;

21 (2) any employee employed at a guaranteed salary of
22 more than five hundred fifty (\$550.00) dollars a month in a bona
23 fide executive, administrative, or professional capacity as
24 defined by regulation of the Commissioner;

25 (3) any employee employed in handling, processing,
26 curing, or storing (including cold storage) of any kind of fish,
27 shellfish, or any other aquatic forms of animal or vegetable life,
28 or any by-product thereof;

29 (4) any employee employed in handling, packing, storing,

1 pasteurizing, drying, preparing in their raw or natural state,
2 or canning of agricultural or horticultural commodities for market
3 or in making cheese or butter or other dairy products;

4 (5) any employee of an employer engaged in small mining
5 operations where not more than twelve employees are employed,
6 insofar as an employee is employed not in excess of twelve (12)
7 hours a day or fifty-six (56) hours a week during a period or
8 periods of not more than fourteen (14) workweeks in the aggregate
9 in any calendar year during the mining season, as the season is
10 defined by the Commissioner;

11 (6) any person subject to the provisions of the U. S.
12 Railway Labor Act, 45 U.S.C.A. 151-188, as amended.

13 Sec. 4. 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. 5. HANDICAPPED WORKERS: APPRENTICES: LEARNERS. To the
17 extent necessary in order to prevent curtailment of opportunities
18 of employment, the Commissioner may by regulations or by orders,
19 provide, by issuance of special certificates, for the employment
20 at wages lower than the minimum wage presented in this Act:

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

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

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

1 No individual shall be employed at wages fixed pursuant to
2 this section except under special certificate issued under appli-
3 cable regulations of the Commissioner.

4 Sec. 6. ADMINISTRATIVE AGENCY: POWERS: DUTIES: ADMINISTRATIVE
5 PROCEDURES ACT.

6 (1) There shall be in the Department of Labor a
7 division known as the "Wage and Hour Division", which division
8 shall be in charge of a Director, responsible to the Commissioner,
9 whose function it shall be to administer this Act. The Commis-
10 sioner shall have the authority to appoint the Director and such
11 assistants and other employees as may be necessary for the proper
12 enforcement of this Act, and to fix their compensation, subject
13 to the provision of law applicable to the appointment and compen-
14 sation 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
20 related conditions and standards of employment of any
21 employee in the state.

22 (b) to enter the place of business or employment
23 of any employer at reasonable times for the purpose of
24 inspecting any payroll records that relate to the question
25 of wages paid or hours worked;

26 (c) to require and subpena from any employer full
27 and correct statements in writing, when the Director or his
28 authorized representative deems necessary, of hours worked
29 by and the wages paid to all persons in his employ, such

1 statements at the discretion of the Commissioner or his
2 authorized representatives to be under oath;

3 (d) to question any employee in his place of
4 employment during work hours with respect to the wages paid
5 and the hours worked by such employees; and

6 (e) to compel the attendance of witnesses and the
7 production of books, papers and documents by subpena when
8 necessary for the purpose of any hearing or investigation
9 provided for in this Act.

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

25 (4) All regulations adopted or hearings conducted,
26 pursuant to this Act shall be adopted or conducted and be subject
27 to judicial review, in accord with the Administrative Procedures
28 Act which shall apply to all procedures hereunder.

29 (5) The Commissioner may adopt such regulations and

1 interpretations as are made or issued by the Administrator of
2 the Wage and Hour Division of the Federal Department of Labor
3 which are not inconsistent with this Act.

4 Sec. 7. KEEPING OF RECORDS. Every employer shall keep for
5 a period of not less than three (3) years in or about the premises
6 wherein any employee is employed a record of the name, address,
7 and occupation of each of his employees, the rate of pay and the
8 amount paid each pay period to each such employee, the hours
9 worked each day and each workweek by each such employee, and such
10 other information as the Commissioner may by regulation or order
11 prescribe. The Commissioner or his authorized representative
12 may copy such records at any reasonable time. Every employer
13 shall furnish to the Commissioner or his authorized representative
14 on demand a sworn statement of such records, and if the Commis-
15 sioner shall so require, upon forms prescribed or approved by him.

16 Sec. 8. POSTING OF SUMMARY OF THE ACT. Every employer
17 subject to this Act shall keep a summary or abstract of this Act,
18 approved by the Commissioner, posted in a conspicuous place in
19 or about the premises wherein any person subject thereto is
20 employed. Employers shall be furnished copies of such summary
21 by the state on request without charge.

22 Sec. 9. ENFORCEMENT.

23 (1) PROHIBITED ACTS. Any employer who hinders or
24 delays the Commissioner or his authorized representative in the
25 performance of his duties in the enforcement of this Act, or who
26 refuses to admit the Commissioner or his authorized representative
27 to any place of employment, or who fails to keep or falsifies any
28 record required under the provisions of this Act, or who refuses
29 to make such record accessible, or to furnish a sworn statement

1 thereof, or to give information required for the proper enforcement
2 of this Act, upon demand, to the Commissioner or his authorized
3 representative, or who fails to post an abstract of this law
4 as required by Section 8 of this Act, or who discharges or in
5 any other manner discriminates against any employee because such
6 employee has filed any complaint, or has instituted or caused
7 to be instituted any proceeding under or related to this Act, or
8 has testified or is about to testify in any such proceeding,
9 shall be deemed to have violated this Act.

10 (2) PENALTIES. Any employer who wilfully violates
11 any provision of this Act, or of any regulation or order of the
12 Commissioner issued under the authority of this Act, shall, upon
13 conviction thereof, be punished by a fine of not less than one
14 hundred (\$100.00) dollars nor more than two thousand (\$2,000.00)
15 dollars, or by imprisonment for not less than ten nor more than
16 ninety days, or by both such fine and imprisonment. Each day any
17 such violation occurs shall constitute a separate offense.

18 (3) EMPLOYEES' REMEDIES.

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

24 (b) Action to recover such liability may be
25 maintained in any court of competent jurisdiction by any one
26 or more employees for and in behalf of himself or themselves
27 and other employees similarly situated, or such employee or
28 employees may individually designate in writing an agent or
29 representative to maintain such action for them and such

1 consent shall be filed in the court in which such action is
2 brought. At the request of any person paid less than the
3 amount to which he is entitled under the provision of the
4 Act the Commissioner shall take an assignment in trust for
5 the employee of the full amount to which he is entitled under
6 this subsection and may bring any legal action necessary to
7 collect such claim.

8 The court in any action brought under this subsection
9 shall, in addition to any judgment awarded to the plaintiff
10 or plaintiffs, allow costs of the action and reasonable
11 attorney's fees to be paid by the defendant. Such attorney's
12 fees in the case of actions brought under this subsection
13 by the Commissioner shall be remitted by the Commissioner
14 to the Department of Revenue. The Commissioner shall not
15 be required to pay the filing fee, or other costs, in
16 connection with such action. The Commissioner in case of
17 suit shall have power to join various claimants against the
18 same employer in one cause of action.

19 (4) INJUNCTION PROCEEDINGS. Whenever it shall appear
20 to the Commissioner that any employer is engaged in any act or
21 practice which constitutes or will constitute a violation of any
22 provision of this Act, or of any provision of any regulation
23 thereunder, he may in his discretion bring an action in the
24 District Court or its successor, to enjoin such act or practice
25 and to enforce compliance with this Act or with such regulation,
26 and upon a proper showing a permanent or temporary injunction,
27 decree, or restraining order shall be granted without bond.

28 (5) SUBPENA ENFORCEMENT. In cases of failure of any
29 person to comply with any subpoena lawfully issued under Sec. 6

1 of this Act, or on the refusal of any witness to produce evidence
2 or to testify to any matter regarding which he may be lawfully
3 interrogated, it shall be the duty of any District Court, or its
4 successor, or the judge thereof, upon application of the Commis-
5 sioner, or his authorized representative, to compel obedience
6 by proceedings for contempt, as in the case of disobedience of
7 the requirements of a subpoena issued by such court or a refusal
8 to testify therein.

9 Sec. 10. RIGHT OF COLLECTIVE BARGAINING PROTECTED. Nothing
10 in this Act shall be deemed to interfere with, impede, or in any
11 way diminish the right of employees to bargain collectively
12 through representatives of their own choosing in order to establish
13 wages or conditions of work in excess of the applicable minimum
14 under this Act, or to establish hours of work shorter than the
15 applicable maximum under this Act.

16 Sec. 11. STATUTE OF LIMITATIONS. Any action to enforce
17 any cause of action for unpaid minimum wages, unpaid overtime
18 compensation, or liquidated damages under this Act must be commenced
19 within two years after the cause of action accrued, and every
20 such action shall be forever barred unless commenced within two
21 years after it accrued.

22 Sec. 12. DETERMINATION OF COMMENCEMENT OF ACTIONS. In
23 determining when an action is commenced for the purposes of Sec.
24 11, it shall be considered to be commenced on the date when the
25 complaint is filed; in the case of a collective or class action
26 instituted under Sec. 9(c) of this Act, it shall be considered
27 to be commenced as to any individual claimant on the date when
28 the complaint is filed, if he is specifically named as a party
29 plaintiff, or if his name does so appear, on the subsequent date

1 on which his name is added as a party plaintiff.

2 Sec. 13. EFFECTIVE DATE. This Act shall take effect
3 immediately upon its passage and approval or upon its becoming
4 law without such approval.

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