

Introduced: 1/21/72  
Referred: Labor & Management

1 IN THE HOUSE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 543

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the establishment and enforcement  
7 of occupational health and safety standards."

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

9 \* Section 1. AS 18.60.010 is amended to read:

10 ARTICLE 1. [ACCIDENT] PREVENTION OF ACCIDENT AND  
11 HEALTH HAZARDS.

12 Sec. 18.60.010. LEGISLATIVE INTENT. (a) The legislature finds  
13 that personal injuries and illnesses caused by preventable accident and  
14 health hazards impose a substantial burden upon, and are a hindrance to  
15 the people of the state in terms of loss of production, wage loss,  
16 medical expenses and disability compensation payments [PREVENTABLE  
17 ACCIDENTS ARE THE LEADING CAUSES OF DEATH IN THE STATE, THAT ACCIDENTS  
18 CAUSE NEARLY ONE-FOURTH OF ALL DEATHS OF THE WHITE RACE IN THE STATE  
19 AND AS MUCH AS 82 PER CENT OF ALL DEATHS IN CERTAIN AGE GROUPS; THAT  
20 THE PROPORTION OF ACCIDENTAL DEATHS TO ALL DEATHS IS THREE TIMES AS  
21 HIGH IN THIS STATE AS IN OTHER PARTS OF THE UNITED STATES WHERE  
22 INTENSIVE ACCIDENT PREVENTION CAMPAIGNS ARE CONDUCTED; AND THAT AN  
23 UNKNOWN BUT PROPORTIONATELY AS GREAT A RATE OF NONFATAL ACCIDENTS IS  
24 SUSTAINED IN THE STATE].

25 \* Sec. 2. AS 18.60.020 is amended to read:

26 Sec. 18.60.020. REGULATIONS. The Department of Labor shall [MAY]  
27 issue the [ORDERS,] rules and regulations necessary to carry out the  
28 purposes of secs. 10 - 100 of this chapter.

29 \* Sec. 3. AS 18.60.030 is amended by adding new paragraphs to read:

1 (6) establish and enforce occupational safety and health  
2 standards that prescribe requirements for safe and healthful working  
3 conditions for all employment, including state and local government  
4 employment and the requirements shall be at least as strict as those  
5 requirements promulgated by the U. S. Secretary of Labor pursuant to  
6 sec. 6 of Public Law 91-596;

7 (7) require the maintenance of records by the employer  
8 necessary or appropriate for the enforcement of this chapter or  
9 appropriate for use in developing information regarding the causes and  
10 prevention of occupational accidents and illnesses;

11 (8) require an employer to make periodic inspections when  
12 necessary to carry out records maintenance required by paragraph (7)  
13 of this section;

14 (9) participate in occupational safety and health programs  
15 if it finds they are necessary to meet the occupational health and  
16 safety needs of the state;

17 (10) execute on behalf of the state agreements or contracts  
18 necessary or desirable to enable the state to participate in  
19 occupational safety and health programs, and to receive and expend  
20 all funds made available for programs by the state.

21 \* Sec. 4. AS 18.60 is amended by adding a new section to read:

22 Sec. 18.60.055. DIVISION OF OCCUPATIONAL HEALTH AND SAFETY.  
23 There is established in the Department of Labor a division of  
24 occupational health and safety to be administered by a director  
25 responsible to the commissioner of labor.

26 \* Sec. 5. AS 18.60.075 is repealed and re-enacted to read:

27 Sec. 18.60.075. DUTIES OF EMPLOYER. An employer shall do every-  
28 thing necessary to protect the life, health, and safety of employees  
29 including:

1 (1) complying with all safety and health standards and  
2 regulations promulgated by the Department of Labor;

3 (2) furnishing and using safety devices and safeguards; and

4 (3) adopting and using methods and processes adequate to  
5 render the employment or place of employment safe.

6 \* Sec. 6. AS 18.60 is amended by adding a new section to read:

7 Sec. 18.60.077. VARIANCE OF A STANDARD. (a) Any affected  
8 employer may apply to the commissioner of labor for a rule or order  
9 for a variance from any provision of the safety and health standards  
10 promulgated by the Department of Labor. Affected employees shall be  
11 given notice of each application for variance and an opportunity to  
12 participate in the hearing. The commissioner of labor or his  
13 designated representative shall issue the rule or order for variance  
14 if he determines on the record, after opportunity for an inspection  
15 where appropriate, that the proponent of the variance has demonstrated  
16 by a preponderance of the evidence that the conditions, practices,  
17 operations, or processes used or proposed to be used by an employer  
18 will provide employment and places of employment to his employees  
19 which are as safe and as healthful as those which would prevail if he  
20 complied with the provisions of the safety regulations. The rule or  
21 order issued shall prescribe the conditions the employer must maintain  
22 and the practices, operations, and processes which he must adopt and  
23 utilize to the extent they differ from the standard in question. The  
24 rule or order may be modified or revoked upon application by an  
25 employer, by employees, or by the commissioner on his own motion, at  
26 any time after six months from its issuance.

27 (b) Whenever the commissioner grants an exemption, he shall  
28 include a statement of the reasons for the action, and the statement  
29 shall be published in a newspaper of wide circulation in the state.

1 \* Sec. 7. AS 18.60 is amended by adding a new section to read:

2 Sec. 18.60.081. RIGHT OF ENTRY AND INSPECTION. (a) The  
3 Department of Labor is authorized to

4 (1) enter without delay and at reasonable times any  
5 factory, plant, establishment, construction site, or other area, work  
6 place or environment where work is performed by an employee of an  
7 employer, and

8 (2) inspect and investigate during regular working hours  
9 and at other reasonable times, and within reasonable limits and in a  
10 reasonable manner, a place of employment and all pertinent conditions,  
11 structures, machines, devices, equipment and materials, and to  
12 question privately any employer, owner, operator, agent or employee.

13 (b) In making inspections and investigations under this section  
14 the department may issue subpoenas compelling the attendance of  
15 witnesses and the production of papers and records. Witnesses shall  
16 be paid the same fees and mileage that are paid witnesses in the  
17 courts of the state. If a person fails to comply with a subpoena or a  
18 witness refuses to testify to a matter regarding which he may be  
19 lawfully interrogated, a superior court may, on application by the  
20 department, compel obedience by proceedings for contempt as in the  
21 case of disobedience of the requirements of a subpoena issued from  
22 the court or a refusal to testify before it.

23 \* Sec. 8. AS 18.60 is amended by adding a new section to read:

24 Sec. 18.60.083. PROHIBITION OF ADVANCE NOTICE OF INSPECTION. No  
25 advance notice of a Department of Labor safety or health inspection  
26 shall be given. An employee of the department who, without the  
27 authority of the commissioner of labor or his designee, gives advance  
28 notice of a safety or health inspection, upon conviction, is punishable  
29 by a fine of not more than \$1,000, or by imprisonment for not more than

1 180 days, or by both.

2 \* Sec. 9. AS 18.60 is amended by adding a new section to read:

3 Sec. 18.60.085. EMPLOYER AND EMPLOYEE PARTICIPATION. Subject  
4 to regulations issued by the Department of Labor, a representative of  
5 the employer and an authorized representative of the employees shall be  
6 given an opportunity to accompany the representative of the department  
7 during the physical inspection of any work place. When there is no  
8 authorized employee representative, there shall be consultation with a  
9 reasonable number of employees.

10 \* Sec. 10. AS 18.60 is amended by adding a new section to read:

11 Sec. 18.60.087. EMPLOYEE REQUESTS FOR SPECIAL INSPECTIONS. (a)  
12 An employee or a representative of employees who believes that a  
13 violation of a safety or health standard exists, may request an  
14 inspection by giving notice of the violation to the Department of Labor.  
15 The notice shall be in writing and shall set forth with reasonable  
16 particularity the violation and shall be signed by the employee or  
17 the representative of the employees. If upon receipt of the notice, the  
18 department determines that there are reasonable grounds to believe that  
19 a violation exists, the department shall make a special inspection as  
20 soon as practicable. If the department determines there are no reason-  
21 able grounds to believe that a violation exists, the department shall  
22 notify in writing the employee or the representative of the employees  
23 of that determination.

24 (b) If the department makes a special inspection, a copy of the  
25 employee notice shall be provided the employer at the time of the  
26 inspection. Upon request of the person giving the notice, his name and  
27 the name of employees referred to in the notice shall not appear in the  
28 copy provided the employer or in any record available to the employer.

29 (c) The department shall furnish the notifying person a written

1 explanation of why a citation was not issued after any special  
2 inspection.

3 (d) The department shall, by regulation, establish a review  
4 procedure for any failure to issue a citation after a special  
5 inspection and shall provide the employees requesting a review a  
6 written statement of the final disposition of the case.

7 \* Sec. 11. AS 18.60 is amended by adding a new section to read:

8 Sec. 18.60.089. PROHIBITION AGAINST RETRIBUTION. (a) No  
9 person shall discharge or in any manner discriminate against an employee  
10 because the employee has filed any complaint or instituted or caused to  
11 be instituted any proceeding related to the enforcement of occupational  
12 health and safety standards, or has testified or is about to testify  
13 in any proceeding relating to occupational health and safety or because  
14 an employee has exercised on behalf of himself or others any right  
15 afforded under this chapter.

16 (b) Any employee who believes he has been discharged or otherwise  
17 discriminated against by any person in violation of this section may,  
18 within 30 days after such violation occurs, file a complaint with the  
19 commissioner alleging the discrimination. Upon receipt of the  
20 complaint, the commissioner shall investigate the matter as he considers  
21 appropriate. If upon investigation, the commissioner determines that  
22 this section has been violated, he shall request the attorney general  
23 to bring an action in superior court against the violator. The superior  
24 court shall have jurisdiction to restrain violations of (a) of this  
25 section and to order all appropriate relief including rehiring or  
26 reinstatement of the employee to his former position with back pay.

27 (c) Within 90 days of the receipt of a complaint filed under this  
28 section, the commissioner shall notify the complainant of his deter-  
29 mination under (b) of this section.

1 \* Sec. 12. AS 18.60 is amended by adding a new section to read:

2       Sec. 18.60.091. CITATIONS. (a) If upon inspection or investi-  
3 gation, the Department of Labor believes that an employer has violated  
4 a provision of secs. 10 - 100 of this chapter, the department shall  
5 with reasonable promptness issue a citation to the employer. Each  
6 citation shall be in writing and shall describe with particularity  
7 the nature of the violation. The department may prescribe procedures  
8 for the issuance of a notice instead of citation with respect to minor  
9 violations which have no direct or immediate relationship to safety  
10 or health.

11       (b) Each citation issued under this section, or a copy or copies  
12 of the citation, shall be prominently posted, as prescribed in  
13 regulations issued by the department, at or near each place the  
14 violation referred to in the citation occurred.

15 \* Sec. 13. AS 18.60 is amended by adding a new section to read:

16       Sec. 18.60.093. ENFORCEMENT PROCEDURES. (a) If after an  
17 inspection or investigation, the Department of Labor issues a citation  
18 the commissioner of labor shall, at a reasonable time after the termi-  
19 nation of the inspection or investigation, notify the employer by  
20 certified mail of the penalty, if any, proposed to be assessed and  
21 that the employer has 15 working days within which to notify the  
22 commissioner that he wishes to contest the citation or oppose assessment  
23 of penalty. If, within 15 working days from the receipt of the notice  
24 issued by the commissioner, the employer fails to notify the  
25 commissioner that he intends to contest the citation or proposed  
26 assessment of penalty, the citation and the assessment, as proposed,  
27 shall be considered final and not subject to review by any court.

28       (b). If the commissioner has reason to believe that an employer  
29 has failed to correct a violation for which a citation has been issued,

1 the commissioner shall notify the employer by certified mail of the  
2 failure and of the penalty proposed to be assessed because of the  
3 failure, and that the employer has 15 working days within which to  
4 notify the commissioner that he wishes to contest the commissioner's  
5 notification or the proposed assessment of penalty. If within 15  
6 working days from the receipt of the notification issued by the commis-  
7 sioner, the employer fails to notify the commissioner that he intends  
8 to contest the notification or proposed assessment of penalty, the  
9 notification and assessment as proposed shall be considered a final  
10 order and not subject to review by any court.

11 (c) If an employer notifies the commissioner that he intends to  
12 contest the citation or notification issued under (a) or (b) of this  
13 section, the commissioner shall afford an opportunity for a hearing  
14 and thereafter issue an order, based on findings of fact, affirming,  
15 modifying, or vacating the original citation or proposed penalty, or  
16 directing other appropriate relief, and the order is final 30 days  
17 after its issuance.

18 \* Sec. 14. AS 18.60 is amended by adding a new section to read:

19 Sec. 18.60.095. PENALTIES. (a) The commissioner of labor is  
20 authorized to assess a penalty of not more than \$1,000 against an  
21 employer for each serious violation of an occupational safety or  
22 health standard promulgated pursuant to secs. 10 - 100 of this chapter.

23 (b) A serious violation of an occupational safety or health  
24 standard shall be considered to exist in a place of employment if  
25 there is substantial probability that death or serious physical harm  
26 could result from the condition which exists, or from one or more  
27 practices, operations, or processes which have been adopted or are in  
28 use, in the place of employment unless the employer did not, and could  
29 not with the exercise of reasonable diligence, know of the presence of

1 the violation.

2 (c) The commissioner is authorized to assess against an employer  
3 who fails to correct a violation of a health and safety standard for  
4 which a citation has been issued pursuant to sec. 91 of this chapter  
5 a penalty of not more than \$1,000 for each day during which the failure  
6 or violation continues.

7 (d) The commissioner is authorized to assess a penalty of not  
8 more than \$1,000 for each violation against an employer who violates  
9 any of the posting requirements of sec. 91 of this chapter.

10 (e) The commissioner is authorized to assess against an employer  
11 who repeatedly violates occupational safety and health standards a  
12 penalty of not more than \$10,000.

13 (f) An employer who wilfully violates an occupational safety  
14 and health standard promulgated pursuant to secs. 10 - 100 of this  
15 chapter, and that violation causes death to an employee, shall, upon  
16 conviction, be punished by a fine of not more than \$10,000 or by  
17 imprisonment for not more than six months, or by both; except that if  
18 the conviction is for a violation committed after a first conviction  
19 of the employer for a violation causing death, punishment shall be a  
20 fine of not more than \$20,000 or by imprisonment of not more than one  
21 year, or by both.

22 (g) Whoever knowingly makes any false statement, representation,  
23 or certification in any application, record, report, plan or other  
24 document file required to be maintained pursuant to regulations  
25 promulgated under secs. 10 - 100 of this chapter shall, upon conviction,  
26 be punished by a fine of not more than \$10,000 or by imprisonment for  
27 not more than six months, or by both.

28 (h). Any employer who violates any of the posting requirements, as  
29 prescribed under the provisions of sec. 91(b) of this chapter, shall

1 be assessed a penalty of up to \$1,000 for each violation by the  
2 commissioner.

3 (i) The commissioner is authorized to assess a penalty of not  
4 more than \$200 for each violation of a provision of secs. 10 - 100  
5 of this chapter if the violation is not covered by the penalties  
6 provided in (a) to (h) of this section.

7 (j) Penalties collected under this chapter shall be deposited in  
8 the general fund.

9 \* Sec. 15. AS 18.60 is amended by adding a new section to read:

10 Sec. 18.60.096. IMMINENT DANGERS. (a) The commissioner of labor  
11 may issue orders restraining any conditions or practices in any place  
12 of employment that constitute a danger which could reasonably be  
13 expected to immediately cause death or serious physical harm. The  
14 terms of an order issued under this section may require steps to be  
15 taken as necessary to avoid, correct, or remove the imminent danger  
16 and may prohibit the employment or presence of any individual in  
17 locations or under conditions where imminent danger exists. The terms  
18 of the order may allow the presence of individuals necessary to avoid,  
19 correct, or remove the imminent danger.

20 (b) The attorney general shall, when instructed by the  
21 commissioner, take immediate action to enforce a restraining order  
22 issued by the commissioner under this section.

23 (c) Whenever and as soon as an inspector concludes that conditions  
24 or practices described in (a) of this section exist in a place of  
25 employment, he shall inform the affected employees and employers of the  
26 danger and inform them that he is recommending to the department that  
27 the commissioner issue a restraining order.

28 \* Sec. 16. AS 18.60 is amended by adding a new section to read:

29 Sec. 18.60.097. JUDICIAL REVIEW. (a) A person adversely

1 affected by an order of the commissioner of labor issued under sec.  
2 93(c) or sec. 96(a) of this chapter may obtain a review of the order in  
3 superior court by filing in the court within 60 days following the  
4 issuance of the order a written petition requesting that the order be  
5 modified or set aside. Upon the filing of the petition, the court has  
6 jurisdiction of the matter.

7 (b) The court shall determine the question de novo. Upon  
8 conviction, the court may impose monetary penalties on an employer not  
9 in excess of the monetary penalties authorized for a similar violation  
10 in sec. 95 of this chapter.

11 \* Sec. 17. AS 18.60 is amended by adding a new section to read:

12 Sec. 18.60.098. CONFIDENTIALITY OF TRADE SECRETS. All information  
13 obtained by the Department of Labor in connection with any inspection  
14 or proceeding related to enforcement of occupational health and safety  
15 standards which contains or which might reveal a trade secret referred  
16 to in 18 U.S.C. sec. 1905 is confidential, except that the information  
17 may be disclosed to other officers or employees concerned with carrying  
18 out occupational health and safety enforcement activities. In any  
19 proceeding, the commissioner of labor or the court as may be applicable  
20 shall issue orders as may be appropriate to protect the confidentiality  
21 of trade secrets.

22 \* Sec. 18. AS 18.60.105, AS 18.60.050, AS 18.60.090 and AS 18.60.580 -  
23 AS 18.60.660 are repealed.  
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