

Introduced: 1/15/73
Referred: Labor and
Management

1 IN THE SENATE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

CS
2 SENATE BILL NO. 46

3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 EIGHTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

9 * Section 1. AS 18.60.010 is repealed and re-enacted to read:

10 ARTICLE 1. PREVENTION OF ACCIDENT AND HEALTH HAZARDS.

11 Sec. 18.60.010. LEGISLATIVE INTENT. (a) The legislature finds
12 that personal injuries and illnesses arising out of work situations
13 impose a substantial burden upon, and are a hindrance to the people
14 of the state in terms of loss of production, wage loss, medical
15 expenses and disability compensation payments.

16 (b) For these reasons it is found and declared necessary to
17 undertake a program to reduce the incidence of work related accidents
18 and health hazards in the state.

19 * Sec. 2. AS 18.60.020 is amended to read:

20 Sec. 18.60.020. REGULATIONS. The Department of Labor shall
21 [MAY] issue the orders, rules and regulations necessary to carry out
22 the purposes of secs. 10 - 100 of this chapter.

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

24 (6) establish and enforce occupational safety and health
25 standards that prescribe requirements for safe and healthful working
26 conditions for all employment, including state and local government
27 employment, and the requirements are to be at least as effective as
28 those requirements promulgated by the U.S. Secretary of Labor under
29 sec. 6 of Public Law 91-596;

1 (7) require an employer to maintain records and submit
2 reports to the department which records and reports are necessary or
3 appropriate for the enforcement of secs. 10 - 100 of this chapter and
4 to maintain records and submit reports to the U.S. Secretary of
5 Labor in the same manner and to the same extent as set forth in
6 federal law and regulations;

7 (8) require an employer to maintain records and submit
8 reports appropriate for use in developing information regarding the
9 causes and prevention of occupational accidents and illnesses;

10 (9) require an employer to make periodic inspections when
11 necessary to carry out the record and reporting requirements of (7)
12 and (8) of this section;

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

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

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

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

25 * Sec. 5. AS 18.60.075(a) is repealed and re-enacted to read:

26 (a) An employer shall do everything necessary to protect the
27 life, health, and safety of employees including:

(1) complying with all occupational safety and health
standards and regulations promulgated by the department.

1 (2) furnishing and prescribing the use of suitable pro-
2 tective equipment, safety devices and safeguards as are prescribed
3 for the work and workplace; and

4 (3) adopting and prescribing control or technological
5 procedures, and monitoring and measuring employee exposure in
6 connection with hazards, as may be necessary for the protection of
7 employees.

8 * Sec. 6. AS 18.60.075 is amended by adding a new section to read:

9 (d) An employee shall comply with occupational safety and
10 health standards and all rules and regulations issued under sections
11 10 - 100 of this chapter that are applicable to his own actions and
12 conduct.

13 * Sec. 7. AS 18.60 is amended by adding new sections to read:

14 Sec. 18.60.077. VARIANCE OF A STANDARD. (a) An employer who
15 is affected by secs. 10 - 100 of this chapter may apply to the
16 commissioner for a variance from a provision of the safety and
17 health standards promulgated by the department. Employees who are
18 affected by an application for variance shall be given notice of the
19 application for variance and an opportunity to participate in the
20 hearing. The commissioner shall issue the variance if he determines
21 on the basis of the hearing record, after opportunity for an
22 inspection where appropriate, that the proponent of the variance has
23 demonstrated by a preponderance of the evidence that the conditions,
24 practices, means, methods, operations, or processes used or pro-
25 posed to be used by an employer will provide employment and places
26 of employment to his employees which are as safe and as healthful as
27 those which would prevail if he complied with the provisions of the
28 safety and health standards promulgated by the department. The
29 variance shall prescribe the conditions the employer must maintain

1 and the practices, means, methods, operations, and processes which
2 he must adopt and utilize to the extent they differ from the
3 standard in question. The variance may be modified or revoked upon
4 application by an employer, by employees or by motion of the
5 commissioner at any time after six months from its issuance.

6 (b) When the commissioner grants a variance, he shall include
7 in this grant a statement of the reasons for the action, and the
8 statement shall be published in a newspaper of statewide circulation
9 and in a newspaper of local circulation in the area where the
10 variance will be implemented.

11 Sec. 18.60.081. TEMPORARY VARIANCE. (a) An employer who is
12 affected by secs. 10 - 100 of this chapter may apply to the
13 commissioner for a temporary variance from a provision of the safety
14 and health standards promulgated by the department. A temporary
15 variance shall be issued if the employer files an application
16 fulfilling the requirements of (b) of this section and the
17 employer establishes

18 (1) he is unable to comply with a standard by its
19 effective date because of unavailability of the professional or
20 technical personnel or of the materials and equipment needed to come
21 into compliance or because necessary construction or alteration of
22 facilities cannot be completed by the effective date;

23 (2) he is taking all available steps to safeguard his
24 employees against the hazards covered by the standard;

25 (3) he has an effective program for coming into compliance
26 with the standard as quickly as practicable.

27 (b) An application for a temporary variance shall contain

28 (1) a specification of the standard from which the
29 employer seeks a temporary variance;

1 (2) a representation by the employer, supported by
2 representations from qualified persons having firsthand knowledge
3 of the facts represented, that he is unable to comply and a
4 detailed statement of the reasons for such inability;

5 (3) a statement of the steps he has taken and will take,
6 including specific dates, to protect employees against the hazard
7 covered by the standard;

8 (4) a statement of when he expects to be able to comply
9 with the standard and what steps he has taken and what steps he
10 will take, including specific dates, to come into compliance;

11 (5) a certification that he has informed his employees
12 of the application for temporary variance and of their right to
13 request a hearing by giving a copy of the application and a
14 written statement of the right to a hearing to the employees'
15 authorized representative, by posting a statement giving a summary
16 of the application and stating the employees' right to a hearing
17 and specifying where a copy of the application and notice of right
18 to a hearing may be examined at the place or places where
19 notices to employees are normally posted, and by other appropriate
20 means.

21 (c) A temporary variance issued under this section shall
22 prescribe the practices, means, methods, operations and processes
23 which the employer shall adopt and use while the variance is in
24 effect and state in detail the employer's program for coming into
25 compliance with the standard. A temporary variance may be
26 granted only after notice to affected employees and an opportunity
27 for hearing. However, the commissioner may issue one interim
28 order to be effective until a decision is made on the basis of a
29 hearing. A temporary variance may not be in effect for longer

1 than the period needed by the employer to achieve compliance with
2 the standard, or one year, whichever is shorter, except that a
3 temporary variance may be renewed not more than twice if the
4 requirements of (a) and (b) of this section are met and the
5 application for renewal is filed at least 90 days prior to the
6 expiration date of the variance. No interim renewal of an
7 order may remain in effect for longer than 180 days.

8 Sec. 18.60.083. RIGHT OF ENTRY AND INSPECTION. (a) A repre-
9 sentative of the department, upon presenting appropriate cre-
10 dentials to the owner, operator, or agent in charge, is authorized
11 to

12 (1) enter without delay and at reasonable times a
13 factory, plant, establishment, construction site, or other area,
14 work place or environment where work is performed by an employee
15 of an employer; and

16 (2) inspect and investigate during regular working hours
17 and at other reasonable times, and with reasonable limits and in
18 a reasonable manner, a place of employment and all pertinent con-
19 ditions, structures, machines, devices, equipment and materials,
20 and to question privately an employer, owner, operator, agent or
21 employee.

22 (b) In making inspections and investigations under (a) of
23 this section the department may issue subpoenas compelling the
24 attendance of witnesses and the production of papers and records.
25 Witnesses shall be paid the same fees and mileage that are paid
26 witnesses in the courts of the state. If a person fails to
27 grant a right of entry and inspection, the department may seek
28 an order from the superior court compelling the person to sub-
29 mit to entry and inspection. If a person fails to comply with

1 a subpoena or a witness refuses to testify to a matter regarding
2 which he may be lawfully interrogated, a superior court may
3 compel obedience by proceedings for contempt as in the case of
4 disobedience of the requirements of a subpoena issued from the
5 court or a refusal to testify before it.

6 Sec. 18.60.085. PROHIBITION OF UNAUTHORIZED NOTICE OF
7 INSPECTION. No unauthorized notice of a department safety or
8 health inspection may be given. A person who gives unauthorized
9 notice of a safety or health inspection, upon conviction, shall
10 be punished by a fine of not more than \$1,000 or by imprisonment
11 for not more than 180 days, or by both.

12 Sec. 18.60.087. EMPLOYER AND EMPLOYEE PARTICIPATION. A
13 representative of the employer and an authorized representative
14 of the employees shall be given an opportunity to accompany the
15 representative of the department during the physical inspection
16 of a work place for the purpose of aiding the inspection. When
17 there is no authorized employee representative, there shall be
18 consultation with a reasonable number of employees concerning
19 matters of health and safety in the work place.

20 Sec. 18.60.088. EMPLOYEE REQUESTS FOR SPECIAL INSPECTION.
21 (a) An employee or a representative of employees who believes
22 that a violation of a safety or health standard exists that
23 threatens physical harm or that an imminent danger exists, may
24 request an inspection by giving notice of the violation or
25 danger to the department. The notice shall be in writing and
26 set out with reasonable particularity the grounds for the
27 notice and be signed by the employee or the representative of
28 the employees. If upon receipt of the notice, the department
29 determines that there are reasonable grounds to believe that

1 a violation or danger exists, the department shall make a
2 special inspection as soon as practicable. If the department
3 determines there are no reasonable grounds to believe that
4 a violation exists, the department shall notify in writing
5 the employee or the representative of the employees of that
6 determination.

7 (b) If the department makes a special inspection, a copy
8 of the employee notice shall be provided the employer no later
9 than at the time of the inspection. Upon request of the person
10 giving the notice, his name and the name of employees referred
11 to in the notice may not appear in the copy provided the em-
12 ployer or in any record available to the employer.

13 (c) The department shall furnish the notifying person a
14 written explanation of why a citation was not issued after a
15 special inspection.

16 (d) The department shall, by regulation, establish a re-
17 view procedure for a failure to issue a citation after a special
18 inspection and shall provide the employees requesting a review
19 a written statement of the final disposition of the case.

20 Sec. 18.60.089. PROHIBITION AGAINST RETRIBUTION. (a) No
21 person may discharge or discriminate against an employee because
22 the employee has filed a complaint or instituted or caused to
23 be instituted a proceeding related to the enforcement of
24 occupational health and safety standards, or has testified or
25 is expected to testify in a proceeding relating to occupational
26 health and safety or because an employee has exercised on be-
27 half of himself or others any right afforded under secs. 10 -
28 100 of this chapter.

29 (b) An employee who believes he has been discharged or

1 discriminated against by a person in violation of this section
2 may, within 30 days after the violation occurs, file a complaint
3 with the commissioner alleging the discrimination. Upon re-
4 ceipt of the complaint, the commissioner shall investigate the
5 matter as he considers appropriate. If upon investigation, the
6 commissioner determines that this section has been violated,
7 the commissioner shall request the attorney general to bring
8 an action in the superior court against the violator. The
9 superior court has jurisdiction to restrain violations of (a)
10 of this section and to order all appropriate relief including
11 rehiring or reinstatement of the employee to his former position
12 with back pay.

13 (c) Within 90 days of the receipt of a complaint filed
14 under this section, the commissioner shall notify the complainant
15 of his determination under (b) of this section.

16 Sec. 18.60.091. CITATIONS. (a) If upon inspection or
17 investigation, the department believes that an employer has
18 violated a provision of secs. 10 - 100 of this chapter, the
19 department shall with reasonable promptness issue a citation
20 to the employer. Each citation shall be in writing and shall
21 describe with particularity the nature of the violation and
22 shall fix a reasonable time for abatement of the violation.
23 The department may prescribe procedures for the issuance of a
24 notice instead of citation with respect to minor violations
25 which have no direct or immediate relationship to safety or
26 health.

27 (b) Upon receipt by the employer, each citation issued
28 under this section, or a copy or copies of the citation, shall
29 be immediately and prominently posted, at or near each place

1 the violation referred to in the citation occurred.

2 (c) No citation may be issued for a particular violation
3 under this section after the expiration of 180 days following
4 the discovery of the violation.

5 Sec. 18.60.093. ENFORCEMENT PROCEDURES. (a) If after an
6 inspection or investigation the department issues a citation,
7 the commissioner shall, at a reasonable time after the termi-
8 nation of the inspection or investigation, notify the employer
9 by certified mail of the penalty proposed to be assessed and
10 that the employer has 15 working days within which to notify
11 the Alaska Workmen's Compensation Board that he wishes to con-
12 test the citation or oppose assessment of penalty. If, within
13 15 working days from the receipt of the notice issued by the
14 commissioner, the employer fails to notify the Alaska Workmen's
15 Compensation Board that he intends to contest the citation, or
16 proposed assessment of penalty, the citation and the assessment,
17 as proposed, shall be considered final and not subject to re-
18 view by any court.

19 (b) If the commissioner has reason to believe that an
20 employer has failed to correct a violation for which a citation
21 has been issued the commissioner shall notify the employer by
22 certified mail of the failure and of the penalty proposed to
23 be assessed because of the failure, and that the employer has
24 15 working days within which to notify the Alaska Workmen's
25 Compensation Board that he wishes to contest the commissioner's
26 notification of the proposed assessment of penalty. If within
27 15 working days from the receipt of the notification issued by
28 the commissioner, the employer fails to notify the Alaska
29 Workmen's Compensation Board that he intends to contest the

1 notification or proposed assessment of penalty, the notifi-
2 cation and assessment as proposed shall be considered a final
3 order and not subject to review by any court.

4 (c) If an employer notifies the Alaska Workmen's Com-
5 pensation Board that he intends to contest the citation or
6 notification issued under (a) or (b) of this section, the
7 Alaska Workmen's Compensation Board shall afford an oppor-
8 tunity for a hearing and thereafter issue an order, based on
9 findings of fact, affirming, modifying, or vacating the
10 original citation or proposed penalty, or directing other
11 appropriate relief, and the order is final 30 days after its
12 issuance.

13 (d) The Alaska Workmen's Compensation Board shall notify
14 the authorized representative of the affected employees that
15 an employer is contesting a citation or notification issued
16 under (a) or (b) of this section and afford the representative
17 an opportunity to participate in the hearing on the matter.
18 When there is no authorized employee representative, the Alaska
19 Workmen's Compensation Board shall notify a reasonable number
20 of the affected employees of the contest and afford them an
21 opportunity to participate in the hearing on the matter.

22 (e) An employer, an affected employee or a representative
23 of affected employees has 15 working days from the receipt of
24 a citation within which to notify the Alaska Workmen's Com-
25 pensation Board that the period of time fixed in the citation
26 for the abatement of a violation is unreasonable. The Alaska
27 Workmen's Compensation Board shall afford an opportunity for
28 a hearing and thereafter issue an order, based on findings of
29 fact, affirming or modifying the original period for abatement,

1 and the order is final 30 days after its issuance. If the
2 contest is initiated by the employer, the Alaska Workmen's
3 Compensation Board shall notify the employees in the same
4 manner as provided by (d) of this section. If the contest
5 is initiated by the employees, the Alaska Workmen's Com-
6 pensation Board shall notify the employer and afford the
7 employer an opportunity to participate in the hearing on the
8 matter.

9 Sec. 18.60.095. PENALTIES. (a) An employer who wilfully
10 or repeatedly violates a provision of secs. 10 - 100 of this
11 chapter or a standard, rule or regulation promulgated under
12 secs. 10 - 100 of this chapter shall be assessed by the
13 commissioner a civil penalty of not more than \$10,000 for each
14 violation.

15 (b) An employer who receives a citation for a serious
16 violation of a provision of secs. 10 - 100 of this chapter or
17 of a standard, rule or regulation promulgated under secs. 10 -
18 100 of this chapter shall be assessed by the commissioner a
19 civil penalty of up to \$1,000 for each violation. For pur-
20 poses of this subsection, a serious violation is considered to
21 exist if the violation creates in the place of employment a
22 substantial probability of death or serious physical harm.
23 However, a serious violation is not considered to exist if
24 the employer did not, and could not with the exercise of
25 reasonable diligence, know of the presence of the violation.

26 (c) An employer who receives a citation for a violation
27 of a provision of secs. 10 - 100 of this chapter or of a
28 standard, rule or regulation promulgated under secs. 10 - 100
29 of this chapter, and the violation is specifically determined

1 not to be of a serious nature, may be assessed by the
2 commissioner a civil penalty of up to \$1,000 for each
3 violation.

4 (d) An employer who fails to correct a violation for
5 which a citation has been issued shall be assessed by the
6 commissioner a civil penalty of not more than \$1,000 for each
7 day during which the failure to correct the violation
8 continues.

9 (e) An employer who wilfully violates a provision of secs.
10 10 - 100 of this chapter or a standard, rule or regulation
11 promulgated under secs. 10 - 100 of this chapter and the
12 violation causes death to an employee, shall, upon conviction,
13 be punished by a fine of not more than \$10,000, or by im-
14 prisonment for not more than six months, or by both. However,
15 if the conviction is for a violation committed after a first
16 conviction of the employer for a violation causing death,
17 punishment shall be a fine of not more than \$20,000 or by
18 imprisonment of not more than one year, or by both.

19 (f) A person who knowingly makes a false statement,
20 representation, or certification in an application, record,
21 report, plan or other document filed or required to be main-
22 tained under secs. 10 - 100 of this chapter shall, upon
23 conviction, be punished by a fine of not more than \$10,000,
24 or by imprisonment for not more than six months, or by both.

25 (g) An employer who violates the posting requirements of
26 this chapter shall be assessed by the commissioner a civil
27 penalty of up to \$1,000 for each violation.

28 (h) In assessing a civil penalty, the commissioner shall
29 give due consideration to the size of the business of the

1 employer being charged, the gravity of the violation, the good
2 faith of the employer, and the history of previous violations.

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

14 (b) Whenever and as soon as a representative of the de-
15 partment concludes that conditions or practices described in
16 (a) of this section exist in any place of employment, he shall
17 inform the affected employees and employer of the danger and
18 that he is recommending to the commissioner the issuance of
19 a restraining order.

20 (c) The attorney general shall, when instructed by the
21 commissioner, seek an injunction in superior court to enforce
22 a restraining order issued by the commissioner under this
23 section.

24 Sec. 18.60.097. JUDICIAL REVIEW. (a) A person adversely
25 affected by an order of the Alaska Workmen's Compensation Board
26 issued under sec. 93(c) or 93(e) of this chapter or of the
27 commissioner under sec. 96 of this chapter may obtain a review
28 of the order in superior court. The adversely affected person
29 must request judicial review within 30 days from the date of

1 the issuance of the order by the Alaska Workmen's Compensation
2 Board. After 30 days from the date of the issuance of the
3 order by the Alaska Workmen's Compensation Board, the order
4 becomes final and is not subject to review by any court.

5 (b) An employer seeking judicial review of an order
6 of the Alaska Workmen's Compensation Board must inform his
7 affected employees of the fact that he is seeking judicial
8 review.

9 (c) The court shall review an order of the Alaska
10 Workmen's Compensation Board on a substantial evidence basis.

11 Sec. 18.60.098. CONFIDENTIALITY OF TRADE SECRETS. In-
12 formation obtained by the department in connection with an
13 inspection or proceeding related to enforcement of occupational
14 health and safety standards which contains or which might re-
15 veal a trade secret referred to in 18 U.S.C. sec. 1905 is
16 confidential. However, the information may be disclosed to
17 other officers or employees concerned with carrying out
18 occupational health and safety enforcement activities. In
19 a proceeding, the commissioner or the court as may be appli-
20 cable shall issue orders as may be appropriate to protect
21 the confidentiality of trade secrets.

22 * Sec. 8. AS 18.60.105 is repealed and re-enacted to read:

23 Sec. 18.60.105. DEFINITIONS. In secs. 10 - 100 of this
24 chapter

- 25 (1) "commissioner" means the commissioner of labor;
26 (2) "department" means the Department of Labor;
27 (3) "employee" means a person who works for an
28 employer;
29 (4) "employer" means a person, including the state

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and political subdivisions of the state, who has one or more employees.

* Sec. 9. AS 18.60.050 and AS 18.60.090 are repealed.