

Original sponsor: Rules Committee by
request of the Governor

Offered: 5/6/76
Referred: Rules

1 IN THE HOUSE

BY THE LABOR AND MANAGEMENT
COMMITTEE

2 CS FOR HOUSE BILL NO. 591 am re-engrossed

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the employment of Alaska residents;
7 and providing for an effective date."

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

9 * Section 1. AS 36.10.125 is amended by adding a new subsection to read:

10 (b) A private person is entitled to bring action in the superior
11 court to enforce the provisions of this chapter if he gives at least 20
12 days notice before filing the action to the commissioner of labor that
13 he intends to bring action under this subsection, the specific violation
14 complained of, and the name of the person accused of the violation. In
15 an action brought under this subsection the court may, in its discre-
16 tion, order denial of state revenue sharing or public school foundation
17 money, forfeiture of office or position, or injunctive or other relief.
18 If the court finds for the plaintiff in an action brought under this
19 subsection, it may award the plaintiff an amount equal to the actual
20 costs and attorney fees he incurred.

21 * Sec. 2. AS 38.40.030(a) is amended to read:

22 (a) In order to create, protect and preserve the right of Alaska
23 residents to employment, the commissioner of natural resources shall
24 incorporate into all oil and gas leases, easements or right-of-way
25 permits for oil or gas pipeline purposes, unitization agreements, or any
26 renegotiation of any of the preceding to which the state is a party,
27 provisions requiring the lessee to comply with applicable laws and regu-
28 lations with regard to the employment [HIRE] of Alaska residents, [.
29 THE COMMISSIONER SHALL INCLUDE] a provision requiring the employment

1 [HIRING] of qualified Alaska residents, a provision prohibiting dis-
2 crimination against Alaska residents and, when in the determination of
3 the commissioner of natural resources it is practicable, a provision re-
4 quiring compliance with the Alaska Plan, all in accordance with the
5 provisions of this chapter.

6 * Sec. 3. AS 38.40.030(b) is repealed and re-enacted to read:

7 (b) All employment falling within the purview of sec. 50 of this
8 chapter shall be filled by Alaska residents if they are qualified and
9 available. The commissioner of labor, whose decision is final as to
10 residency, shall determine the resident status of individuals for
11 purposes of this chapter and issue a certificate to persons determined
12 to be residents of the state.

13 * Sec. 4. AS 38.40.030(d) is repealed and re-enacted to read:

14 (d) The Department of Labor shall adopt regulations necessary to
15 implement the provisions of this chapter.

16 * Sec. 5. AS 38.40.040(a) is amended to read:

17 (a) An employer [PERSONS] obligated to meet resident employment
18 [HIRING] requirements under this chapter shall comply with those report-
19 ing provisions which the commissioner of labor determines are reasonably
20 necessary to carry out the purposes and intent of this chapter.

21 * Sec. 6. AS 38.40.040(b) is repealed and re-enacted to read:

22 (b) The Department of Labor shall prepare a list of certified
23 Alaska residents and, upon request, shall make it available to an
24 employer subject to this chapter, and to any employment or dispatching
25 agency, union, or other similar entity.

26 * Sec. 7. AS 38.40.060 is repealed and re-enacted to read:

27 Sec. 38.40.060. HEARINGS AND INVESTIGATIONS. (a) The Departments
28 of Labor and Natural Resources shall promulgate appropriate regulations
29 to implement the provisions of this chapter. It is the employer's

1 responsibility to initially determine and adjudge the work qualifica-
2 tions of the prospective employee. A qualified Alaska resident who has
3 been rejected for or terminated from employment by an employer subject
4 to this chapter may, within 15 days from the rejection or termination,
5 file a written request for a hearing before the Department of Labor to
6 determine if the employer is in compliance with the provisions of this
7 chapter. The department shall investigate, set a date for and hold a
8 hearing within 30 days after receipt of the request, unless the person
9 applying requests a longer period of time.

10 (b) The Department of Labor may, on its own motion, conduct
11 appropriate investigations and hearings to determine compliance with the
12 provisions of this chapter.

13 (c) The commissioner of labor, acting on a complaint or his own
14 motion, upon finding wilful noncompliance by an employer with the
15 provisions of this chapter, may certify that finding to the Department
16 of Natural Resources.

17 (d) Hearings and investigations conducted under this section are
18 not subject to the Administrative Procedure Act (AS 44.62), but are
19 subject to judicial review under sec. 70(a) of this chapter if appealed
20 within 30 days.

21 * Sec. 8. AS 38.40.070 is repealed and re-enacted to read:

22 Sec. 38.40.070. PENALTIES. (a) Upon finding that a qualified
23 Alaska resident has been rejected for or terminated from employment, in
24 violation of this chapter, the Department of Labor may require the
25 employer to pay the qualified Alaska resident triple the wages he lost,
26 or any damages or expenses actually incurred as a result of the wrongful
27 action if they exceed the triple wages assessed. The imposition or
28 withholding of any payment or penalty under this section may be appealed
29 to the superior court. The superior court shall hear these matters de

1 novo.

2 (b) The Department of Natural Resources, upon receipt of a cer-
3 tification of wilful noncompliance of an employer by the commissioner of
4 labor and after appropriate investigations and hearings, may impose the
5 following penalties:

6 (1) increase rent or other forms of compensation received by
7 the state by a factor of no more than 10 but in no event to exceed
8 \$100,000;

9 (2) require that all or any portion of project operations be
10 halted;

11 (3) stop payment on any or all existing contracts between
12 that person and the state; or

13 (4) remove, for an appropriate period of time, the eligi-
14 bility of the person to contract with the state or any of its political
15 subdivisions.

16 (c) Notwithstanding (a) of this section, no penalty may be imposed
17 against a lessee because of noncompliance with the provisions of this
18 chapter by a supplier of the lessee's contractor or subcontractor if the
19 lessee has received and retained a certificate from the supplier certi-
20 fying that the supplier is in compliance with the provisions of this
21 chapter. However, no certificate from the supplier is a bar to the
22 imposition of a penalty against a lessee unless the certificate was made

23 (1) upon oath or affirmation, (2) on forms prepared by the commissioner
24 of labor furnished to the lessee before the date of the supplier's non-
25 compliance, and the lessee has furnished a copy of the certificate to
26 the commissioner of labor together with additional information the
27 commissioner may require, and (3) by a supplier who is not himself a
28 contractor or subcontractor of the lessee.

29 (d) The commissioner of labor may, by regulation, designate the

1 intervals within which certificates of suppliers must be furnished under
2 this section in order to constitute a bar against the imposition of
3 penalties.

* Sec. 9. AS 38.40.080 is amended to read:

4 Sec. 38.40.080. INJUNCTIVE RELIEF. The Department of Labor or the
5 Department of Natural Resources, in addition to the imposition of any
6 penalties under sec. 70 of this chapter, may seek injunctive relief
7 against an employer [A PERSON] not in compliance with the provisions of
8 this chapter. Either department [; THE DEPARTMENT OF NATURAL RESOURCES]
9 may seek injunctive relief to enforce penalties which it has imposed
10 under sec. 70 of this chapter.

* Sec. 10. AS 38.40.090 is repealed and re-enacted to read:

12 Sec. 38.40.090. DEFINITIONS. In this chapter

13 (1) "resident" means a person who

14 (A) except for brief intervals, military service,
15 attendance at an educational or training institution, or for
16 absences for good cause, is physically present in the state for a
17 period of one year immediately before the time his status is
18 determined;

19 (B) maintains a place of residence in the state;

20 (C) has established residency for voting purposes
21 in the state;

22 (D) has not, within the period of required residency,
23 claimed residency in another state; and

24 (E) shows by all attending circumstances that his
25 intent is to make Alaska his permanent residence;

26 (2) "qualified" means capable, through education, training,
27 or experience, of performing the duties and satisfying the usual terms
28 and conditions of the employment, if those duties, terms and conditions
29

1 meet the reasonable standards of the industry as required of other
2 employees performing the same type of work in the industry;

3 (3) "wilful noncompliance" means intentionally, knowingly,
4 or purposely, without justifiable excuse, not giving preference to
5 qualified Alaska residents in employment covered by this chapter;

6 (4) "noncompliance" means not giving preference to qualified
7 Alaska residents in employment covered by this chapter.

8 * Sec. 11. This Act takes effect immediately in accordance with AS 01.-
9 10.070(c).