

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 S

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 AS 38.40.030(b) is repealed and re-enacted to read: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, except for those employees classified as exempt from the pro-
9 visions of the Federal Fair Labor Standards Act, shall be filled by
10 Alaska residents if they are qualified and available. The commissioner
11 of labor, whose decision is final as to residency, shall determine the
12 resident status of individuals for purposes of this chapter and issue a
13 certificate to persons determined to be residents of the state.

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 AS 38.40.030(d) is repealed and re-enacted to read:

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

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

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

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 AS 38.40.040(b) is repealed and re-enacted to read:

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

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 AS 38.40.060 is repealed and re-enacted to read:

28 Sec. 38.40.060. HEARINGS AND INVESTIGATIONS. (a) The Departments
29 of Labor and Natural Resources shall promulgate appropriate regulations

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

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

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

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

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

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

1 to the superior court. The superior court shall hear these matters de
2 novo.

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

7 (1) increase rent or other forms of compensation received by
8 the state by a factor of no more than 10 but in no event to exceed
9 \$100,000;

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

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

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

17 (c) Notwithstanding (a) of this section, no penalty may be imposed
18 against a lessee because of noncompliance with the provisions of this
19 chapter by a supplier of the lessee's contractor or subcontractor if the
20 lessee has received and retained a certificate from the supplier certi-
21 fying that the supplier is in compliance with the provisions of this
22 chapter. However, no certificate from the supplier is a bar to the
23 imposition of a penalty against a lessee unless the certificate was made
24 (1) upon oath or affirmation, (2) on forms prepared by the commissioner
25 of labor furnished to the lessee before the date of the supplier's non-
26 compliance, and the lessee has furnished a copy of the certificate to
27 the commissioner of labor together with additional information the
28 commissioner may require, and (3) by a supplier who is not himself a
29 contractor or subcontractor of the lessee.

1 (d) The commissioner of labor may, by regulation, designate the
2 intervals within which certificates of suppliers must be furnished under
3 this section in order to constitute a bar against the imposition of
4 penalties.

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

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

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

14 Sec. 38.40.090. DEFINITIONS. In this chapter

15 (1) "resident" means a person who

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

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

22 (C) has established residency for voting purposes
23 in the state;

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

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

28 (2) "qualified" means capable, through education, training,
29 or experience, of performing the duties and satisfying the usual terms

1 and conditions of the employment, if those duties, terms and conditions
2 meet the reasonable standards of the industry as required of other
3 employees performing the same type of work in the industry;

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

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

9 * Sec. 11. This Act takes effect immediately in accordance with AS 01.-
10 10.070(c).