

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2

HOUSE BILL NO. 384

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to unemployment insurance; and
7 providing for an effective date."

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

9 * Section 1. AS 16.10.290(a) is amended to read:

10 (a) A person applying for a license as a fish processor or
11 primary fish buyer shall file with the commissioner of labor a surety
12 bond running to the State of Alaska conditioned upon the promise to
13 pay, in the following order of priority, (1) all persons furnishing
14 labor to a fish processor or primary fish buyer, including contractual
15 employee benefits; [AND] (2) independent registered commercial fisher-
16 men for the price of the raw fishery resource purchased from them; and
17 (3) unemployment insurance contributions. The surety or sureties must
18 [SHALL] be satisfactory, in the determination of the commissioner.

19 * Sec. 2. AS 23.20.195(a) is amended to read:

20 (a) If the contributions are unpaid after 30 days from the date
21 of mailing or personal delivery of a written demand for payment, the
22 department may [SHALL] assess and collect in the same manner as con-
23 tributions a penalty equal to 10 percent of the contributions due. In
24 no event may the penalty be less than \$10 [\$1].

25 * Sec. 3. AS 23.20.205(c) is amended to read:

26 (c) If the amount assessed is not paid, or an appeal with the
27 required security is not filed as required in AS 23.20.220, within 30
28 days after [PERSONAL] service or mailing of the notice, the department
29 may[, SUBJECT TO AS 23.20.220,] collect the amount stated in the

1 assessment by the distraint, seizure and sale of the property, goods,
2 chattels and effects of the delinquent employer. Goods and property
3 exempt from execution under the laws of this state are exempt from
4 distraint and sale under this section.

5 * Sec. 4. AS 23.20.220(a) is amended to read:

6 Sec. 23.20.220. APPEAL OF ASSESSMENT [PETITION FOR HEARING AND
7 SUMMARY JUDGMENT]. (a) When a notice of assessment is delivered or
8 mailed to a delinquent employer, the employer may within 30 days file
9 an appeal [A PETITION] in writing, with the department, stating that
10 the assessment is unjust or incorrect and requesting a hearing on it.
11 The period for filing an appeal may be extended for a reasonable
12 period if the employer shows that the appeal was delayed as a result
13 of circumstances beyond the employer's control. The appeal [PETITION]
14 shall set out the reasons the assessment is objected to and the amount
15 of contributions which the employer admits is due, and must be
16 accompanied by a bond or deposit of other security in the amount of
17 the assessment to insure collection. The department may waive the
18 security requirement if the employer submits proof of solvency or
19 reasonable assurance, as prescribed by regulations, that the
20 contributions, interest and penalties due are not in jeopardy. If the
21 employer fails to provide the required security, the collection under
22 AS 23.20.205(c) is not stayed and [IF NO PETITION IS FILED WITHIN THE
23 TIME PRESCRIBED, OR IF THE EMPLOYER FAILS TO PROVIDE THE REQUIRED
24 SECURITY,] the assessment is prima facie correct. The procedures in
25 AS 23.20.415 apply to an appeal under this subsection. [HOWEVER, THE
26 DEPARTMENT MAY ENTERTAIN A SUBSEQUENT APPLICATION FOR REFUND, AND, IF
27 DENIED A REFUND, A HEARING ON THE APPLICATION IN ACCORDANCE WITH
28 AS 23.20.225.]

29 * Sec. 5. AS 23.20.277(b) is amended to read:

1 (b) At the end of each calendar quarter, or at the end of any
2 other period as determined by the department, the department shall
3 bill each government entity, nonprofit organization, or group of
4 nonprofit organizations, that [WHICH] has elected to make payments in
5 place of contributions for benefits paid during the quarter or other
6 prescribed period that is attributable to service in the employ of the
7 government entity or nonprofit organization. In the case of nonprofit
8 organizations, the amount billed is an amount equal to the full amount
9 of regular benefits plus [ONE-HALF OF] the state share [AMOUNT] of
10 extended benefits and in the case of a government entity the amount
11 billed is [WHICH HAS ELECTED TO MAKE PAYMENTS UNDER THIS SECTION] an
12 amount equal to the full amount of the regular benefits plus the full
13 amount of the extended benefits paid [DURING THE QUARTER OR OTHER
14 PRESCRIBED PERIOD THAT IS ATTRIBUTABLE TO SERVICE IN THE EMPLOY OF THE
15 NONPROFIT ORGANIZATION].

16 * Sec. 6. AS 23.20.277(e) is amended to read:

17 (e) At the end of each taxable year, the department shall deter-
18 mine whether the total of payments for the year made by a nonprofit
19 organization is less than, or in excess of, the total amount of
20 regular benefits plus the state share [ONE-HALF OF THE AMOUNT] of
21 extended benefits paid to individuals during the taxable year based on
22 wages attributable to service in the employ of the nonprofit
23 organization; and in the case of a government entity that has elected
24 to make payments under this section, whether the total of payments for
25 the year is less than, or in excess of, the total amount of regular
26 benefits plus the total amount of extended benefits as determined in
27 this subsection. Each organization whose total payments for the
28 taxable year are less than the amount so determined is liable for
29 payment of the unpaid balance to the fund in accordance with (f) of

1 this section. If the total payments exceed the amount so determined
2 for the taxable year, all or part of the excess may, at the discretion
3 of the department, be refunded from the fund or retained in the fund
4 as part of the payments that [WHICH] may be required for the next
5 taxable year.

6 * Sec. 7. AS 23.20.277(1) is amended to read:

7 (1) Each employer that is liable for payments in place of
8 contributions shall pay to the department for the fund the amount of
9 regular benefits plus the state share [AMOUNT OF ONE-HALF] of extended
10 benefits paid that are attributable to service in the employ of that
11 employer. However, a government entity that [WHICH] has elected to
12 make payments under this section is liable for the amount of regular
13 benefits plus the full amount of extended benefits which are
14 attributable to service in the employ of that entity. If benefits
15 paid to an individual are based on wages paid by more than one
16 employer and one or more of these employers are liable for payments in
17 place of contributions, the amount payable to the fund by each
18 employer that is liable for payments shall be determined by the
19 department in accordance with regulations adopted by the department.

20 * Sec. 8. AS 23.20.290(d) is amended to read:

21 (d) Beginning January 1, 1981, and for each succeeding year
22 thereafter, the rate of contributions payable by each employee of an
23 employer who is subject to AS 23.20.165 is 18 percent of the average
24 benefit cost rate as determined in (e) of this section rounded to the
25 nearest one-hundredth [ONE-TENTH] of one percent. However, the rate
26 of contributions for an employee may not be less than one-half percent
27 or more than one percent.

28 * Sec. 9. AS 23.20.390 is amended by adding a new subsection to read:

29 (f) In addition to the liability under (a) of this section for

1 the amount of benefits improperly paid, an individual who is disqual-
2 ified from receipt of benefits under AS 23.20.387 is liable to the
3 department for a penalty in an amount equal to 50 percent of the
4 benefits that were obtained by knowingly making a false statement or
5 misrepresenting a material fact, or knowingly failing to report a
6 material fact, with the intent to obtain or increase benefits under
7 this chapter. The department may, in accordance with regulations
8 adopted under this chapter, waive the collection of a penalty under
9 this section. The department shall deposit into the general fund the
10 penalty that it collects.

11 * Sec. 10. AS 23.20 is amended by adding new sections to read:

12 Sec. 23.20.391. LIEN. (a) A claim under AS 23.20.390 for
13 benefits that have been improperly paid as a result of a false
14 statement, misrepresentation, or omission, including a penalty as
15 described in AS 23.20.390(f), is a lien in favor of the state against
16 all of the real and personal property of the individual.

17 (b) The claim becomes a lien when the department files a notice
18 of the lien with the recording officer of the recording district in
19 which the property is located. The claim becomes a lien on a motor
20 vehicle when the department files a notice of the lien in the office
21 of the commissioner of public safety. Filing of the notice of lien is
22 constructive notice to creditors of the owner, and to subsequent
23 purchasers and encumbrancers, of the lien against the property de-
24 scribed in the notice.

25 (c) The department may release a notice of lien by filing a
26 certificate of release in the manner prescribed for the filing of a
27 notice of lien. The department may not file a certificate of release
28 until the amount of the claim, including a penalty, if any, is paid,
29 or until it receives assurance of payment which it considers adequate,

1 or until the individual is absolved from liability under AS 23.20.-
2 390(b).

3 Sec. 23.20.393. NOTICE OF ASSESSMENT; DISTRAINT AND SEIZURE.

4 (a) If the department's determination of liability under AS 23.20.390
5 is final and the individual has not made repayment within 90 days, the
6 department may issue a notice of assessment, specifying the amount
7 due, and may serve it on the individual. A peace officer or an
8 authorized representative of the department may serve the notice
9 personally or the department may mail the notice by certified or
10 registered mail with return receipt requested.

11 (b) If the notice is served by mail, the notice must be de-
12 posited in the post office, postage paid, and addressed to the indi-
13 vidual at the individual's last address of record. The date of ser-
14 vice is the date of delivery shown on the delivery receipt. However,
15 if the department determines that the addressee is deliberately
16 avoiding service, then the date of service is the day of mailing.

17 (c) If the amount assessed is not paid within 30 days after
18 personal service or mailing of the notice, the department may collect
19 the amount stated in the assessment by the distraint or seizure of the
20 property, assets, goods, and effects of the individual. Goods and
21 property exempt from execution under the laws of this state are exempt
22 from distraint under this section.

23 Sec. 23.20.394. NOTICE AND ORDER TO WITHHOLD AND DELIVER. (a)

24 The department may issue to a person or to a political subdivision or
25 department of the state a notice and order to withhold and deliver
26 property of any kind if (1) the department has reason to believe that
27 the person, political subdivision, or department possesses property
28 that is due or owing, or is the property of another person; and (2)
29 notice of assessment has been served at least 30 days before the

1 issuance of the notice and order to withhold and deliver.

2 (b) A peace officer or an authorized representative of the
3 department may serve the notice and order to withhold and deliver.
4 The person, political subdivision, or department upon whom service is
5 made shall answer the notice within 10 days.

6 (c) If the person, political subdivision, or department pos-
7 sesses property, credits, or money subject to the claim of the depart-
8 ment, it shall deliver the property to the department immediately upon
9 demand.

10 (d) If a person fails to answer the notice and order to withhold
11 and deliver within the time prescribed, the superior court in the
12 judicial district in which the order is served may enter a judgment by
13 default against the person for the full amount claimed by the depart-
14 ment in the notice to withhold and deliver, together with costs.

15 * Sec. 11. AS 23.20.530(a) is amended to read:

16 (a) In this chapter, "wages" means all remuneration for service
17 from whatever source, including, but not limited to, insured work,
18 noninsured work, or self-employment; commissions, bonuses, back pay
19 and the cash value of all remuneration in a medium other than cash
20 shall be treated as wages; gratuities customarily received by an
21 individual in the course of service from persons other than the indi-
22 vidual's employing unit may be treated as wages received from the
23 employing unit only to the extent the individual reports the gratu-
24 ities to the employing unit. The reasonable cash value of remunera-
25 tion in a medium other than cash, and the reasonable amount of gratu-
26 ities, shall be estimated and determined in accordance with regu-
27 lations adopted by the department; notwithstanding AS 23.20.350(a),
28 back pay awards shall be allocated to the weeks or quarters with
29 respect to which the pay was earned. If the remuneration of an

1 individual is not based upon a fixed period of time or if the
2 individual's wages are paid in irregular intervals or in a manner that
3 [WHICH] does not extend regularly over the period of employment, the
4 wages shall be allocated to weeks or quarters in accordance with
5 regulations adopted by the department. The regulations must [SHALL],
6 so far as possible, produce results reasonably similar to those that
7 [WHICH] would prevail if the individual's wages were paid at regular
8 intervals. Wages earned for services performed, but not paid because
9 the employer has filed for bankruptcy, are considered wages for the
10 quarter in which they were earned.

11 * Sec. 12. AS 23.20.175(a) and (b) are repealed.

12 * Sec. 13. Section 8 of this Act takes effect January 1, 1989.

13 * Sec. 14. Sections 1 -- 7 and 9 -- 12 of this Act take effect
14 immediately under AS 01.10.070(c).

15

16

17