

1 IN THE HOUSE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2

HOUSE BILL NO. 384 (title am)

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; estab-  
7 lishing a priority for payment; and providing for an  
8 effective date."

9

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

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

11

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

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

21

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

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

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

1 may[, SUBJECT TO AS 23.20.220,] collect the amount stated in the  
2 assessment by the distraint, seizure and sale of the property, goods,  
3 chattels and effects of the delinquent employer. Goods and property  
4 exempt from execution under the laws of this state are exempt from  
5 distraint and sale under this section.

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

7       Sec. 23.20.220. APPEAL OF ASSESSMENT [PETITION FOR HEARING AND  
8 SUMMARY JUDGMENT]. (a) When a notice of assessment is delivered or  
9 mailed to a delinquent employer, the employer may within 30 days file  
10 an appeal [A PETITION] in writing, with the department, stating that  
11 the assessment is unjust or incorrect and requesting a hearing on it.  
12 The period for filing an appeal may be extended for a reasonable  
13 period if the employer shows that the appeal was delayed as a result  
14 of circumstances beyond the employer's control. The appeal [PETITION]  
15 shall set out the reasons the assessment is objected to and the amount  
16 of contributions which the employer admits is due, and must be accom-  
17 panied by a bond or deposit of other security in the amount of the  
18 assessment to insure collection. The department may waive the securi-  
19 ty requirement if the employer submits proof of solvency or reasonable  
20 assurance, as prescribed by regulations, that the contributions,  
21 interest and penalties due are not in jeopardy. If the employer fails  
22 to provide the required security, the collection under AS 23.20.205(c)  
23 is not stayed and [IF NO PETITION IS FILED WITHIN THE TIME PRESCRIBED,  
24 OR IF THE EMPLOYER FAILS TO PROVIDE THE REQUIRED SECURITY,] the as-  
25 sessment is prima facie correct. The procedures in AS 23.20.415 apply  
26 to an appeal under this subsection. [HOWEVER, THE DEPARTMENT MAY  
27 ENTERTAIN A SUBSEQUENT APPLICATION FOR REFUND, AND, IF DENIED A RE-  
28 FUND, A HEARING ON THE APPLICATION IN ACCORDANCE WITH 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 con-  
8 tributions 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 attribut-  
14 able to service in the employ of that entity. If benefits paid to an  
15 individual are based on wages paid by more than one employer and one  
16 or more of these employers are liable for payments in place of contri-  
17 butions, the amount payable to the fund by each employer that is  
18 liable for payments shall be determined by the department in accord-  
19 ance 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 state-  
14 ment, misrepresentation, or omission, including a penalty as described  
15 in AS 23.20.390(f), is a lien in favor of the state against all of the  
16 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 avoid-  
16 ing 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).

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