

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE LABOR AND  
COMMERCE COMMITTEE

2

SENATE CS FOR HOUSE BILL NO. 384 (L&C)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

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For an Act entitled: "An Act relating to unemployment insurance; estab-  
lishing a priority for payment; and providing for an  
effective date."

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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:

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

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

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(a) If the contributions are unpaid after 30 days from the date  
of mailing or personal delivery of a written demand for payment, the  
department may [SHALL] assess and collect in the same manner as con-  
tributions a penalty equal to 10 percent of the contributions due. In  
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 is not  
filed under AS 23.20.220, within 30 days after [PERSONAL] service or  
mailing of the notice, the department may [, SUBJECT TO AS 23.20.220,]

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1 collect the amount stated in the assessment by the distraint, seizure  
2 and sale of the property, goods, chattels and effects of the delin-  
3 quent employer. Goods and property exempt from execution under the  
4 laws of this state are exempt from distraint and sale under this  
5 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 ensure [INSURE] collection. The department may waive  
19 the security requirement if the employer submits proof of solvency or  
20 reasonable assurance, as prescribed by regulations, that the contribu-  
21 tions, interest and penalties due are not in jeopardy. If [NO PETI-  
22 TION IS FILED WITHIN THE TIME PRESCRIBED, OR IF] the employer fails to  
23 provide the required security, the collection under AS 23.20.205(c) is  
24 not stayed and the assessment is prima facie correct. The procedures  
25 in AS 23.20.415 apply to an appeal under this subsection. [HOWEVER,  
26 THE DEPARTMENT MAY ENTERTAIN A SUBSEQUENT APPLICATION FOR REFUND, AND,  
27 IF DENIED A REFUND, A HEARING ON THE APPLICATION IN ACCORDANCE WITH  
28 AS 23.20.225.]

29 \* Sec. 5. AS 23.20 is amended by adding a new section to read:

1           Sec. 23.20.242. APPEALS BY OFFICER, MEMBER, OR EMPLOYEE. The  
2 department shall permit each officer or employee of a corporation or a  
3 member or employee of a partnership who is required to pay the contri-  
4 butions and interest owed by the corporation or partnership under  
5 AS 23.20.165 - 23.20.278 to appeal individually under those pro-  
6 visions.

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

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

23 \* Sec. 7. AS 23.20.277(e) is amended to read:

24           (e) At the end of each taxable year, the department shall deter-  
25 mine whether the total of payments for the year made by a nonprofit  
26 organization is less than, or in excess of, the total amount of regu-  
27 lar benefits plus the state share [ONE-HALF OF THE AMOUNT] of extended  
28 benefits paid to individuals during the taxable year based on wages  
29 attributable to service in the employ of the nonprofit organization;

1 and in the case of a government entity that has elected to make pay-  
2 ments under this section, whether the total of payments for the year  
3 is less than, or in excess of, the total amount of regular benefits  
4 plus the total amount of extended benefits as determined in this  
5 subsection. Each organization whose total payments for the taxable  
6 year are less than the amount so determined is liable for payment of  
7 the unpaid balance to the fund in accordance with (f) of this section.  
8 If the total payments exceed the amount so determined for the taxable  
9 year, all or part of the excess may, at the discretion of the depart-  
10 ment, be refunded from the fund or retained in the fund as part of the  
11 payments that [WHICH] may be required for the next taxable year.

12 \* Sec. 8. AS 23.20.277(1) is amended to read:

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

26 \* Sec. 9. AS 23.20.290(d) is amended to read:

27 (d) The [BEGINNING JANUARY 1, 1981, AND FOR EACH SUCCEEDING YEAR  
28 THEREAFTER, THE] rate of contributions payable by each employee of an  
29 employer who is subject to AS 23.20.165 is 18 percent of the average

1 benefit cost rate as determined in (e) of this section rounded to the  
2 nearest 1/100th [ONE-TENTH] of one percent. However, the rate of  
3 contributions for an employee may not be less than one-half percent or  
4 more than one percent.

5 \* Sec. 10. AS 23.20.390 is amended by adding a new subsection to read:

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

17 \* Sec. 11. AS 23.20 is amended by adding a new section to read:

18 Sec. 23.20.391. LIEN. (a) A claim under AS 23.20.390 for  
19 benefits that have been improperly paid as a result of a false state-  
20 ment, misrepresentation, or omission, including a penalty as described  
21 in AS 23.20.390(f), is a lien in favor of the state against the real  
22 and personal property of the individual.

23 (b) The claim becomes a lien on property other than a motor  
24 vehicle when the department files a notice of the lien with the re-  
25 cording officer of the recording district in which the property is  
26 located. The claim becomes a lien on a motor vehicle when the depart-  
27 ment files a notice of the lien in the office of the commissioner of  
28 public safety. Filing of the notice of lien is constructive notice to  
29 creditors of the owner, and to subsequent purchasers and

1 encumbrancers, of the lien against the property described in the  
2 notice.

3 (c) The department may release a notice of lien by filing a  
4 certificate of release in the manner prescribed for the filing of a  
5 notice of lien. The department may not file a certificate of release  
6 until the amount of the claim, including a penalty, if any, is paid,  
7 or until it receives assurance of payment that it considers adequate,  
8 or until the individual is absolved from liability under AS 23.20.-  
9 390(b).

10 -\* Sec. 12. AS 23.20 is amended by adding new sections to read:

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

12 (a) If the department's determination of liability under AS 23.20.390  
13 is final and the individual has not made repayment within 90 days, the  
14 department may issue a notice of assessment, specifying the amount  
15 due, and may serve it on the individual. A peace officer or an au-  
16 thorized representative of the department may serve the notice person-  
17 ally or the department may mail the notice by certified or registered  
18 mail with return receipt requested.

19 (b) If the notice is served by mail, the notice must be de-  
20 posited in the post office, postage paid, and addressed to the indi-  
21 vidual at the individual's last address of record. The date of ser-  
22 vice is the date of delivery shown on the delivery receipt. However,  
23 if the department determines that the addressee is deliberately avoid-  
24 ing service, then the date of service is the day of mailing.

25 (c) If the amount assessed is not paid within 30 days after  
26 personal service or mailing of the notice, the department may collect  
27 the amount stated in the assessment by the distraint or seizure of the  
28 property, assets, goods, and effects of the individual. Goods and  
29 property exempt from execution under the laws of this state are exempt

1 from distraint under this section.

2 Sec. 23.20.394. NOTICE AND ORDER TO WITHHOLD AND DELIVER. (a)  
3 The Department of Labor may issue to a person or to a political subdi-  
4 vision or other department of the state a notice and order to withhold  
5 and deliver property of any kind if (1) the Department of Labor has  
6 reason to believe that the person, political subdivision, or other  
7 department possesses property that is due or owing under this chapter,  
8 or is the property of another person; and (2) notice of assessment has  
9 been served at least 30 days before the issuance of the notice and  
10 order to withhold and deliver.

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

15 (c) If the person, political subdivision, or department pos-  
16 sesses property, credits, or money subject to the claim of the depart-  
17 ment, it shall deliver the property to the department immediately upon  
18 demand.

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

24 \* Sec. 13. AS 23.20.530(a) is amended to read:

25 (a) In this chapter, "wages" means all remuneration for service  
26 from whatever source, including, but not limited to, insured work,  
27 noninsured work, or self-employment; commissions, bonuses, back pay  
28 and the cash value of all remuneration in a medium other than cash  
29 shall be treated as wages; gratuities customarily received by an

1 individual in the course of service from persons other than the indi-  
2 vidual's employing unit may be treated as wages received from the  
3 employing unit only to the extent the individual reports the gratu-  
4 ities to the employing unit. The reasonable cash value of remunera-  
5 tion in a medium other than cash, and the reasonable amount of gratu-  
6 ities, shall be estimated and determined in accordance with regu-  
7 lations adopted by the department; notwithstanding AS 23.20.350(a),  
8 back pay awards shall be allocated to the weeks or quarters with  
9 respect to which the pay was earned. If the remuneration of an indi-  
10 vidual is not based upon a fixed period of time or if the individual's  
11 wages are paid in irregular intervals or in a manner that [WHICH] does  
12 not extend regularly over the period of employment, the wages shall be  
13 allocated to weeks or quarters in accordance with regulations adopted  
14 by the department. The regulations must [SHALL], so far as possible,  
15 produce results reasonably similar to those that [WHICH] would prevail  
16 if the individual's wages were paid at regular intervals. Wages  
17 earned for services performed, but not paid because the employer has  
18 filed for bankruptcy, are considered wages for the quarter in which  
19 they were earned.

20 \* Sec. 14. WAIVER FOR SELF-EMPLOYMENT PROJECT. (a) If a demonstration  
21 project to provide self-employment allowances to certain unemployed persons  
22 in the state is approved by the federal Department of Labor under sec. 9152  
23 of Public Law 100-203, the state Department of Labor may provide self-  
24 employment allowances to unemployed persons under AS 23.20 during the term  
25 of the demonstration project.

26 (b) The state Department of Labor may waive AS 23.20.360, 23.20.378,  
27 23.20.379, 23.20.406, and 23.20.505 for a person who participates in a  
28 project under this section to the extent required for the state to partici-  
29 pate in the project.

- 1     \* Sec. 15. AS 23.20.175(a) and 23.20.175(b) are repealed.
- 2     \* Sec. 16. Section 14 of this Act is repealed June 30, 1992.
- 3     \* Sec. 17. Section 9 of this Act takes effect January 1, 1989.
- 4     \* Sec. 18. Except for sec. 9, this Act takes effect immediately under
- 5 AS 01.10.070(c).