

1 IN THE HOUSE

BY THE LABOR AND  
COMMERCE COMMITTEE

2

HOUSE BILL NO. 542

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 employer obligations when an  
7 employer makes a substantial change in a business  
8 activity or when a governmental entity contracts  
9 certain activities to a private entity."

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

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\* Section 1. LEGISLATIVE FINDINGS. (a) The legislature finds that  
12 employment is vitally important to an individual's economic well-being and  
13 self-respect. Employees invest their skills and efforts in their employ-  
14 er's activity and have a vital stake in the employer's continued operation  
15 and their continued employment. When their employment is terminated due to  
16 the termination, transfer of ownership, or relocation of the business or  
17 governmental activity, the employees suffer heavy economic and personal  
18 losses.

19

(b) The legislature further finds that when an employer closes or  
20 relocates, particularly if the employer employs a large number of employees  
21 in a locality or within an industry, it is difficult, and sometimes impos-  
22 sible, for the former employees to find comparable employment with another  
23 employer. When an employer closes or relocates or when employees are  
24 terminated because of a transfer of ownership, long-time employees lose the  
25 seniority, benefits, and unaccrued pension credits they have earned during  
26 their many years of service. Employment offering comparable wages and  
27 benefits is unavailable to many, and some older employees will be unable to  
28 find alternative employment.

29

(c) The legislature determines that the potentially disastrous

1 effects of the sudden elimination of an employee's employment through no  
2 fault of the employee should be shared by the employer, who has made the  
3 decision that termination, sale, or relocation is economically advanta-  
4 geous. Moreover, continuity of employment is a desirable goal, which  
5 vitally affects the well-being of the individuals involved and the public  
6 as a whole, and should be encouraged.

7 \* Sec. 2. AS 23.10 is amended by adding new sections to read:

8 ARTICLE 7. EMPLOYMENT CLOSURE, RELOCATION, OR TRANSFER.

9 Sec. 23.10.450. SEVERANCE PAY. (a) Except as provided in (b)  
10 of this section, an employer who substantially changes a business  
11 activity is liable to an employee for severance pay at the rate of one  
12 month's pay for each year of service by the employee, not to exceed 24  
13 months' pay. The employer is liable to an employee who has been  
14 employed by the employer for less than one year for severance pay in  
15 the amount of one month's pay. The severance pay is in addition to a  
16 final wage payment to the employee and shall be paid within one regu-  
17 lar pay period after the employee's last day of work.

18 (b) An employer is not liable for severance pay under this  
19 section to an employee if

20 (1) the employee is covered by an express contract provid-  
21 ing for severance pay in an amount equal to or greater than that  
22 required by AS 23.10.450 - 23.10.530; or

23 (2) the predecessor or successor employer offers the em-  
24 ployee employment that provides wages and benefits that are substan-  
25 tially similar to those that the employee received before the substan-  
26 tial change to the business activity.

27 Sec. 23.10.460. CONTINUED EMPLOYMENT. (a) Except as provided  
28 in (d) of this section, a successor employer shall offer a position to  
29 each employee who was employed by the predecessor employer or who was

1 on layoff status from a permanent seasonal job when the transfer of  
2 ownership occurred. The successor employer shall offer the employee  
3 the position that the employee held before the transfer if a sub-  
4 stantial portion of the work performed by the employee continues to be  
5 performed by the successor employer in that location. If the employer  
6 no longer performs the work previously performed by an employee, the  
7 employer shall offer the employee a comparable position or, if a  
8 comparable position is not available, an available position for which  
9 the employee is qualified.

10 (b) The wages, benefits, and other conditions of employment  
11 offered or provided to a former employee of a predecessor employer may  
12 not be inferior to the wages, benefits, and other conditions of em-  
13 ployment provided to a new employee filling the same or a comparable  
14 position with the successor employer.

15 (c) For one year after an employee's date of hire by a successor  
16 employer under this section, the successor employer may not discharge  
17 the employee except for misconduct connected with the employee's work.

18 (d) This section does not apply to a former employee of a prede-  
19 cessor employer if

20 (1) the successor employer has no work available that the  
21 employee is qualified to perform and the successor employer offered  
22 all employees of the predecessor employer employment before hiring new  
23 employees; or

24 (2) the former employee held a managerial position with the  
25 predecessor employer in which the employee was responsible for setting  
26 fundamental company policy, and it is necessary for the successor  
27 employer to replace the employee in order to implement its management  
28 plan and the successor employer offered the employee another position  
29 for which the employee is qualified.

1           Sec. 23.10.470. GOVERNMENTAL LIABILITY. (a) A governmental  
2           entity that ceases to employ employees to perform an activity and  
3           contracts with one or more private entities to have all or a substan-  
4           tial portion of the activity performed by the private entities is  
5           liable for severance pay as a predecessor employer under AS 23.10.450  
6           and 23.10.480 to an employee whose employment is affected by the  
7           cessation. The contracting private entity is obligated to an affected  
8           governmental employee as a successor employer under AS 23.10.460 and  
9           23.10.480.

10           (b) In this section, "governmental entity" means the state, a  
11           municipality, a political subdivision of the state, the University of  
12           Alaska, or the Alaska Railroad, and includes an administrative unit of  
13           the state, municipality, political subdivision, university, or rail-  
14           road.

15           Sec. 23.10.480. LIMITATIONS ON EMPLOYERS. (a) An employer may  
16           not avoid the obligation under AS 23.10.450 by discharging or laying  
17           off employees in anticipation of a substantial change in business  
18           activity.

19           (b) A successor employer's obligation under AS 23.10.460 is not  
20           affected if the predecessor employer discharges or lays off employees  
21           in anticipation of a substantial change in business activity.

22           (c) A predecessor or successor employer is relieved of obliga-  
23           tions to an employee only if the employer proves by clear and convinc-  
24           ing evidence that the employee's discharge or layoff was not a result  
25           of the expected substantial change in activity.

26           Sec. 23.10.490. CIVIL SUIT. An employee may bring suit in  
27           superior court to enforce the employee's rights under AS 23.10.450 -  
28           23.10.530. The courts may direct specific performance of the suc-  
29           cessor employer's obligation under AS 23.10.460 to offer employment to

1 an employee of its predecessor.

2 Sec. 23.10.500. ASSIGNMENT TO DEPARTMENT. The department may  
3 take assignments of claims for severance pay under AS 23.10.450 and  
4 prosecute actions for the collection of severance pay under the same  
5 conditions provided for the assignment and prosecution of claims for  
6 unpaid wages.

7 Sec. 23.10.510. COSTS AND ATTORNEY'S FEES. An individual who  
8 successfully prosecutes a claim for severance pay under AS 23.10.450  
9 or a claim to enforce the successor employer's duty to offer employ-  
10 ment to the predecessor's employees under AS 23.10.460 shall be award-  
11 ed costs and attorney's fees, including costs and attorney's fees  
12 necessary to collect a judgment.

13 Sec. 23.10.520. LIENS. (a) A person with a claim for severance  
14 pay against a predecessor employer or a claim for employment from a  
15 successor employer has a lien under AS 23.10.450 - 23.10.530 against  
16 an employer other than a governmental employer for money owing on

17 (1) the property used in the operation of the business or  
18 part of the business that has been relocated, terminated, or trans-  
19 ferred creating an obligation under AS 23.10.450 - 23.10.530; and

20 (2) proceeds of the sale or transfer of ownership of the  
21 property.

22 (b) The person shall file a notice of the claim with the office  
23 of the recorder of the recording district in which the affected busi-  
24 ness or part of the business is or was located within 60 days after  
25 the employee's termination of employment. The notice shall state the  
26 employee's name and address, the employee's demands, the name and  
27 address of the employer, the name and address of the successor employ-  
28 er, if applicable, and the date of the employee's last service. The  
29 employee shall verify the lien on oath. When the notice is filed, a

1 copy shall be served or mailed to the predecessor employer and, if  
2 applicable, to the successor employer.

3 (c) The lien may be enforced within the same time and in the  
4 same manner as

5 (1) mechanics' liens are enforced under AS 34.35.050 - 34.-  
6 35.120 when the lien is upon real property; or

7 (2) chattel liens are enforced under AS 34.35.175 - 34.35.-  
8 215 when the lien is upon personal property.

9 (d) A lien under this section is superior to and preferred to a  
10 lien, mortgage, or encumbrance that attaches

11 (1) after the substantial change in business activity that  
12 created the obligation under AS 23.10.450 - 23.10.530; and

13 (2) before the time described under (1) of this subsection  
14 but was not filed or recorded so as to create constructive notice of  
15 the encumbrance.

16 Sec. 23.10.530. DEFINITIONS. In AS 23.10.450 - 23.10.530

17 (1) "comparable position" means a position that requires  
18 comparable education, skills, experience, and effort and is performed  
19 under similar working conditions;

20 (2) "employee" means an individual employed by an employer  
21 or a governmental entity;

22 (3) "employer" includes an individual, partnership, asso-  
23 ciation, corporation, business trust, or other nongovernmental entity  
24 that employs eight or more persons;

25 (4) "one month's pay" means the average monthly compen-  
26 sation paid to an employee by an employer based on the amount of  
27 compensation received by the employee during the preceding 12 months;

28 (5) "predecessor employer" means an employer who has trans-  
29 ferred the ownership of a business or a part of a business to another;

1           (6) "relocation" of a business or part of a business means  
2 removal of all or substantially all operations of the business, a  
3 separate facility or branch, or a distinct division or department of a  
4 business to a location at least 60 miles away from their original  
5 location;

6           (7) "substantial change in a business activity" means the  
7 relocation, termination, or transfer of ownership in a business or a  
8 part of a business;

9           (8) "successor employer" means an employer to whom the  
10 ownership of a business or a part of a business has been transferred;

11           (9) "termination" of a business or part of a business means  
12 that all or substantially all operations of the business, a separate  
13 facility or branch, or a distinct division or department of a business  
14 cease and that the business or part of the business is permanently  
15 closed;

16           (10) "transfer of ownership" of a business or part of a  
17 business includes a transfer of ownership in a business, a separate  
18 facility or branch, or a distinct division or department of a busi-  
19 ness, including sale of stock, a sale of assets, a foreclosure or  
20 other form of repossession by creditors, a gift, a devise, or any  
21 other means of transfer of ownership;

22           (11) "years of service" includes all years during which the  
23 employee was employed

24                   (A) by the employer;

25                   (B) by an owner, subsidiary, division, or other entity  
26 related to the employer; or

27                   (C) in the same operation or facility while it was  
28 owned by a predecessor to the employer.