

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 147

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to unemployment insurance and unem-
7 ployment insurance contribution overpayments; estab-
8 lishing a priority for payment; and providing for an
9 effective date."

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

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

12 (a) A person applying for a license as a fish processor or
13 primary fish buyer shall file with the commissioner of labor a surety
14 bond running to the State of Alaska conditioned upon the promise to
15 pay (1) all persons furnishing labor to a fish processor or primary
16 fish buyer, including contractual employee benefits; [AND] (2) inde-
17 pendent registered commercial fishermen for the price of the raw
18 fishery resource purchased from them; and (3) unemployment insurance
19 contributions. If the surety bond is insufficient to satisfy all
20 obligations under this subsection, the obligations to persons furnish-
21 ing labor and to independent registered commercial fishermen shall be
22 paid before unemployment insurance contributions are paid. The surety
23 or sureties must [SHALL] be satisfactory, in the determination of the
24 commissioner.

25 * Sec. 2. AS 23.20.110 is amended by adding a new subsection to read:

26 (k) Upon request, the department shall disclose to the United
27 States Department of Housing and Urban Development and to representa-
28 tives of a public housing agency the following information: (1) wage
29 information; and (2) whether the individual is receiving, has

1 received, or has applied for, unemployment compensation, and the
2 amount of any such compensation being received or to be received by
3 the individual. Such information may be released only with respect to
4 individuals applying for or participating in a housing assistance
5 program administered by the United States Department of Housing and
6 Urban Development, and only if those individuals have signed a consent
7 form approved by the department.

8 * Sec. 3. AS 23.20.145(f) and (g) are amended to read:

9 (f) Money credited to the account of this state in the unemploy-
10 ment trust fund by the Secretary of the Treasury of the United States
11 under 42 U.S.C. 1103 (sec. 903, Social Security Act) may not be requi-
12 sitioned from this state's account or used except for the payment of
13 benefits and for the payment of expenses incurred for the adminis-
14 tration of this chapter. This money may be requisitioned under (b) of
15 this section for the payment of benefits. This money may also be
16 requisitioned and used for the payment of expenses incurred for the
17 administration of this chapter but only under a specific appropriation
18 by the legislature and only if the expenses are incurred and the money
19 is requisitioned after the enactment of an appropriation law that
20 [WHICH]

21 (1) specifies the purpose for which the money is appropri-
22 ated and the amount appropriated;

23 (2) limits the period within which the money may be obliga-
24 ted to a period ending not more than two years after the date of the
25 enactment of the appropriation law; and

26 (3) limits the amount that [WHICH] may be obligated during
27 a fiscal year to an amount that [WHICH] does not exceed the amount by
28 which (A) the aggregate of the amounts credited to the account of this
29 state under 42 U.S.C. 1103 (sec. 903, Social Security Act) during that

1 fiscal year and the 34 [24] preceding fiscal years exceeds (B) the
2 aggregate of the amounts obligated for administration and paid out for
3 benefits and charged against the amounts credited to the account of
4 this state during those 35 [25] fiscal years.

5 (g) Amounts credited to this state's account in the unemployment
6 trust fund under 42 U.S.C. 1103 (sec. 903, Social Security Act) which
7 are obligated for administration or paid out for benefits shall be
8 charged against equivalent amounts that [WHICH] were first credited
9 and that [WHICH] are not already so charged. However, an amount
10 obligated for administration during a fiscal year specified in this
11 section may not be charged against any amount credited during such a
12 fiscal year earlier than the 34th [24TH] preceding fiscal year.

13 * Sec. 4. AS 23.20.195(a) is amended to read:

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

19 * Sec. 5. AS 23.20.205(c) is amended to read:

20 (c) If the amount assessed is not paid, and an appeal is not
21 filed under AS 23.20.220, within 30 days after [PERSONAL] service or
22 mailing of the notice, the department may [, SUBJECT TO AS 23.20.220,]
23 collect the amount stated in the assessment by the distraint, seizure,
24 and sale of the property, goods, chattels, and effects of the delin-
25 quent employer. Goods and property exempt from execution under the
26 laws of this state are exempt from distraint and sale under this
27 section.

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

29 Sec. 23.20.220. APPEAL OF ASSESSMENT [PETITION FOR HEARING AND

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

22 * Sec. 7. AS 23.20.220(b) is amended to read:

23 (b) Filing an appeal [A PETITION] on a disputed assessment with
24 the department stays the sale provided for in AS 23.20.210 until a
25 final decision on the assessment is made. However, the filing of an
26 appeal [A PETITION] does not affect the right of the department to
27 perfect a lien as provided in AS 23.20.200.

28 * Sec. 8. AS 23.20.220(c) is amended to read:

29 (c) After granting the appellant [PETITIONER] reasonable

1 opportunity for fair hearing, the department shall make a decision on
2 the appeal [PETITION]. The department's decision is final unless the
3 appellant [PETITIONER] initiates a proceeding for judicial review in
4 the manner provided by AS 23.20.445.

5 * Sec. 9. AS 23.20.240(a) is amended to read:

6 (a) If after notice an employer defaults in the payment of
7 contributions or interest, the amount due may be collected by a private
8 collection agency authorized by the department, by civil action
9 in the name of the state, or by both methods. The department shall
10 include in the amount due the fees or costs charged the department by
11 the private collection agency for the collection of the delinquent
12 amount. The [, AND THE] employer who is [IF FOUND] liable shall pay
13 the cost of the collection, including collection fees charged, and the
14 costs of legal action.

15 * Sec. 10. AS 23.20 is amended by adding a new section to read:

16 Sec. 23.20.242. APPEALS BY OFFICER, MEMBER, OR EMPLOYEE. The
17 department shall permit each officer or employee of a corporation or a
18 member or employee of a partnership who is required to pay the contri-
19 butions and interest owed by the corporation or partnership under
20 AS 23.20.165 -- 23.20.278 to appeal individually under those pro-
21 visions.

22 * Sec. 11. AS 23.20.277(b) is amended to read:

23 (b) At the end of each calendar quarter, or at the end of any
24 other period as determined by the department, the department shall
25 bill each government entity, nonprofit organization, or group of
26 nonprofit organizations, that [WHICH] has elected to make payments in
27 place of contributions for benefits paid during the quarter or other
28 prescribed period that is attributable to service in the employ of the
29 government entity or nonprofit organization. In the case of nonprofit

1 organizations, the amount billed is an amount equal to the full amount
2 of regular benefits plus [ONE-HALF OF] the state share [AMOUNT] of
3 extended benefits and in the case of a government entity the amount
4 billed is [WHICH HAS ELECTED TO MAKE PAYMENTS UNDER THIS SECTION] an
5 amount equal to the full amount of the regular benefits plus the full
6 amount of the extended benefits paid [DURING THE QUARTER OR OTHER
7 PRESCRIBED PERIOD THAT IS ATTRIBUTABLE TO SERVICE IN THE EMPLOY OF THE
8 NONPROFIT ORGANIZATION].

9 * Sec. 12. AS 23.20.277(e) is amended to read:

10 (e) At the end of each taxable year, the department shall deter-
11 mine whether the total of payments for the year made by a nonprofit
12 organization is less than, or in excess of, the total amount of regu-
13 lar benefits plus the state share [ONE-HALF OF THE AMOUNT] of extended
14 benefits paid to individuals during the taxable year based on wages
15 attributable to service in the employ of the nonprofit organization;
16 and in the case of a government entity that has elected to make pay-
17 ments under this section, whether the total of payments for the year
18 is less than, or in excess of, the total amount of regular benefits
19 plus the total amount of extended benefits as determined in this
20 subsection. Each organization whose total payments for the taxable
21 year are less than the amount so determined is liable for payment of
22 the unpaid balance to the fund in accordance with (f) of this section.
23 If the total payments exceed the amount so determined for the taxable
24 year, all or part of the excess may, at the discretion of the depart-
25 ment, be refunded from the fund or retained in the fund as part of the
26 payments that [WHICH] may be required for the next taxable year.

27 * Sec. 13. AS 23.20.277(1) is amended to read:

28 (1) Each employer that is liable for payments in place of con-
29 tributions shall pay to the department for the fund the amount of

1 regular benefits plus the state share [AMOUNT OF ONE-HALF] of extended
2 benefits paid that are attributable to service in the employ of that
3 employer. However, a government entity that [WHICH] has elected to
4 make payments under this section is liable for the amount of regular
5 benefits plus the full amount of extended benefits that [WHICH] are
6 attributable to service in the employ of that entity. If benefits
7 paid to an individual are based on wages paid by more than one employ-
8 er and one or more of these employers are liable for payments in place
9 of contributions, the amount payable to the fund by each employer that
10 is liable for payments shall be determined by the department in accor-
11 dance with regulations adopted by the department.

12 * Sec. 14. AS 23.20.340(b) is amended to read:

13 (b) Within one year from the date of the initial determination
14 of the monetary amount established under AS 23.20.350, the department
15 shall reconsider only the determination of the monetary amount and
16 shall issue a redetermination amending the initial determination if it
17 finds that an error in computation or identity has been made or that
18 additional wages pertinent to the claimant's insured status have
19 become available, or that the initial determination resulted from a
20 nondisclosure or misrepresentation of a material fact concerning the
21 determination of monetary amount.

22 * Sec. 15. AS 23.20.378(c) is amended to read:

23 (c) An insured worker is disqualified for waiting-week credit or
24 benefits for a week of unemployment while the insured worker is pursu-
25 ing an academic education [ATTENDS AN ESTABLISHED SCHOOL IN A COURSE
26 OF STUDY PROVIDING ACADEMIC INSTRUCTION OF 10 OR MORE CREDIT HOURS PER
27 WEEK, OR THE EQUIVALENT]. A disqualification under this subsection
28 begins with the first week of academic instruction and ends with the
29 week immediately before the first full week in which the insured

1 worker is no longer pursuing an academic education [ATTENDING CLASSES
2 IF THE INSURED WORKER CERTIFIES THAT THE PERIOD OF NONATTENDANCE WILL
3 LAST AT LEAST 60 DAYS]. However, an insured worker who has been
4 pursuing an academic education for at least one school term and who
5 was working at least 30 hours a week during a significant portion of
6 the time that the worker was pursuing an academic education is not
7 disqualified for waiting-week credit or benefits under this subsection
8 if the worker's academic schedule does not preclude full-time work in
9 the worker's occupation and if the insured worker became unemployed
10 because the worker was laid off or the worker's job was eliminated.

11 In this subsection,

12 (1) "pursuing an academic education" means attending an
13 established school in a course of study providing academic instruction
14 of 10 or more credit hours per week, or the equivalent;

15 (2) [THE TERM] "school" includes primary schools, secondary
16 schools, and institutions of higher education.

17 * Sec. 16. AS 23.20.382(b) is repealed and reenacted to read:

18 Sec. 23.20.382. BENEFITS WHILE ATTENDING APPROVED [VOCATIONAL]
19 TRAINING COURSE.

20 (b) An otherwise eligible individual may not be denied benefits
21 or waiting-week credit for any week because the individual is in
22 training approved under 19 U.S.C. 2296(a)(1) (sec. 236(a)(1), Trade
23 Act of 1974), if

24 (1) while attending the training, the individual is not
25 available for work, fails to seek work, or refuses work; or

26 (2) the individual left work that was not suitable employ-
27 ment to enter training.

28 * Sec. 17. AS 23.20.382 is amended by adding a new subsection to read:

29 (d) An otherwise eligible individual may not be denied benefits

1 or waiting-week credit for any week because the individual is in any
2 training approved under 29 U.S.C. 1651 -- 1658, as amended by P.L.
3 100-418 (sec. 302, Job Training Partnership Act), and, while attending
4 the training, is not available for work, fails to seek work, or re-
5 fuses work.

6 * Sec. 18. AS 23.20.387(a) is amended to read:

7 (a) An insured worker is disqualified for benefits for the week
8 with respect to which the false statement or misrepresentation was
9 made and for an additional period of not less than six weeks or more
10 than 52 weeks if the department determines that the insured worker has
11 knowingly made a false statement or misrepresentation of a material
12 fact or knowingly failed to report a material fact with intent to
13 obtain or increase benefits under this chapter. The length of the
14 additional [THIS] disqualification and the beginning date of that
15 [THE] disqualification shall be determined by the department according
16 to the circumstances in each case.

17 * Sec. 19. AS 23.20.390 is amended by adding a new subsection to read:

18 (f) In addition to the liability under (a) of this section for
19 the amount of benefits improperly paid, an individual who is disqual-
20 ified from receipt of benefits under AS 23.20.387 is liable to the
21 department for a penalty in an amount equal to 50 percent of the
22 benefits that were obtained by knowingly making a false statement or
23 misrepresenting a material fact, or knowingly failing to report a
24 material fact, with the intent to obtain or increase benefits under
25 this chapter. The department may, in accordance with regulations
26 adopted under this chapter, waive the collection of a penalty under
27 this section. The department shall deposit into the general fund the
28 penalty that it collects.

29 * Sec. 20. AS 23.20 is amended by adding a new section to read:

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

6 (b) The claim becomes a lien on property other than a motor
7 vehicle when the department files a notice of the lien with the re-
8 cording officer of the recording district in which the property is
9 located. The claim becomes a lien on a motor vehicle when the depart-
10 ment files a notice of the lien under AS 28.10. Filing of the notice
11 of lien is constructive notice to creditors of the owner, and to
12 subsequent purchasers and encumbrancers, of the lien against the
13 property described in the notice.

14 (c) The department may release a notice of lien by filing a
15 certificate of release in the manner prescribed for the filing of a
16 notice of lien. The department may not file a certificate of release
17 until the amount of the claim, including a penalty, if any, is paid,
18 or until it receives assurance of payment that it considers adequate,
19 or until the individual is absolved from liability under AS 23.20.-
20 390(b).

21 * Sec. 21. AS 23.20 is amended by adding new sections to read:

22 Sec. 23.20.393. NOTICE OF ASSESSMENT: DISTRAINT AND SEIZURE.

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

1 (b) If the notice is served by mail, the notice must be deposit-
2 ed in the post office, postage paid, and addressed to the individual
3 at the individual's last address of record. The date of service is
4 the date of delivery shown on the delivery receipt. However, if the
5 department determines that the addressee is deliberately avoiding
6 service, then the date of service is the day of mailing.

7 (c) If the amount assessed is not paid within 30 days after
8 personal service or mailing of the notice, the department may collect
9 the amount stated in the assessment by the distraint or seizure of the
10 property, assets, goods, and effects of the individual. Goods and
11 property exempt from execution under the laws of this state are exempt
12 from distraint under this section.

13 Sec. 23.20.394. NOTICE AND ORDER TO WITHHOLD AND DELIVER. (a)
14 The Department of Labor may issue to a person or to a political subdivi-
15 sion or other department of the state a notice and order to withhold
16 and deliver property of any kind if (1) the Department of Labor has
17 reason to believe that the person, political subdivision, or other
18 department possesses property that is due or owing under this chapter,
19 or is the property of another person; and (2) notice of assessment has
20 been served at least 30 days before the issuance of the notice and
21 order to withhold and deliver.

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

26 (c) If the person, political subdivision, or department possess-
27 es property, credits, or money subject to the claim of the department,
28 it shall deliver the property to the department immediately upon
29 demand.

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

6 * Sec. 22. AS 23.20.530(a) is amended to read:

7 (a) In this chapter, "wages" means all remuneration for service
8 from whatever source, including, but not limited to, insured work,
9 noninsured work, or self-employment; commissions, bonuses, back pay
10 and the cash value of all remuneration in a medium other than cash
11 shall be treated as wages; gratuities customarily received by an
12 individual in the course of service from persons other than the indi-
13 vidual's employing unit may be treated as wages received from the
14 employing unit only to the extent the individual reports the gratu-
15 ities to the employing unit. The reasonable cash value of remunera-
16 tion in a medium other than cash, and the reasonable amount of gratu-
17 ities, shall be estimated and determined in accordance with regu-
18 lations adopted by the department; notwithstanding AS 23.20.350(a),
19 back pay awards shall be allocated to the weeks or quarters with
20 respect to which the pay was earned. If the remuneration of an indi-
21 vidual is not based upon a fixed period of time or if the individual's
22 wages are paid in irregular intervals or in a manner that [WHICH] does
23 not extend regularly over the period of employment, the wages shall be
24 allocated to weeks or quarters in accordance with regulations adopted
25 by the department. The regulations must [SHALL], so far as possible,
26 produce results reasonably similar to those that [WHICH] would prevail
27 if the individual's wages were paid at regular intervals. Wages
28 earned for services performed, but not paid because the employer has
29 filed for bankruptcy, are considered wages for the quarter in which

1 they were earned.

2 * Sec. 23. AS 23.20 is amended by adding a new section to read:

3 Sec. 23.20.533. APPLICATION FOR DEMONSTRATION PROJECT. (a) The
4 Department of Labor shall pursue application with appropriate agencies
5 to qualify this state as a pilot state for demonstration programs
6 related to helping unemployed Alaskans regain employment, if adminis-
7 trative money is available to operate the project.

8 (b) The Department of Labor may waive provisions of AS 23.20 for
9 individuals who participate in such demonstration project, to the
10 extent required for the state to participate in the project.

11 * Sec. 24. AS 34.45.760(10) is amended to read:

12 (10) "intangible property"

13 (A) includes

14 (i) money, checks, drafts, deposits, interest,
15 dividends, and income;

16 (ii) credit balances, customer overpayments, gift
17 certificates, security deposits, refunds, credit memos,
18 unpaid wages, and unidentified remittances;

19 (iii) stocks and other intangible ownership inter-
20 ests in business associations;

21 (iv) money deposited to redeem stocks, bonds,
22 coupons, and other securities, or to make distributions;

23 (v) amounts due and payable under the terms of
24 insurance policies; and

25 (vi) amounts distributable from a trust or custo-
26 dial fund established under a plan to provide health, wel-
27 fare, pension, vacation, severance, retirement, death, stock
28 purchase, profit-sharing, employee savings, supplemental
29 unemployment insurance, or similar benefits;

- 1 (B) does not include
- 2 (i) unused airline tickets; [OR]
- 3 (ii) shares of stock issued by a corporation
- 4 organized under 43 U.S.C. 1601 -- 1629a (Alaska Native
- 5 Claims Settlement Act) or unclaimed dividends payable on the
- 6 shares of stock; or
- 7 (iii) overpaid contributions by employers to the
- 8 unemployment compensation fund under AS 23.20.130;
- 9 * Sec. 25. AS 23.20.175(a), 23.20.175(b), 23.20.175(c)(1), 23.20.350-
- 10 (f)(4), and 23.20.350(f)(5) are repealed.
- 11 * Sec. 26. Section 24 of this Act is retroactive to September 7, 1986.
- 12 * Sec. 27. Sections 24 and 26 of this Act take effect immediately under
- 13 AS 01.10.070(c).
- 14 * Sec. 28. This Act takes effect July 2, 1989.