

**HOUSE BILL NO. 78**

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES BROWN, Ulmer, Donley, Ellis, Koponen, Kubina, Finkelstein, Gruenberg

Introduced: 1/25/91

Referred: Labor and Commerce, Health, Education and Social Services, Finance

**A BILL****FOR AN ACT ENTITLED**

1 "An Act relating to employment rights based on pregnancy, childbirth, and related  
2 conditions, sick leave, and family leave."

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

4 \* Section 1. SHORT TITLE. This Act may be known as the Alaska Family Protection Act.

5 \* Sec. 2. FINDINGS AND PURPOSE. (a) The legislature finds that

6 (1) generally, parents are the best providers of care for their children;

7 (2) the number of single-parent households and two-parent households in which the single  
8 parent or both parents work outside the home is increasing significantly;

9 (3) it is important to the development of a child and to the family unit that parents be  
10 able to participate in early childrearing and the care of a child who has a serious health condition;

11 (4) the lack of employment opportunities to accommodate working parents can force  
12 individuals to choose between job security and parenting; and

13 (5) it is important for the family unit that a person be able to care for a parent or spouse  
14 who has a serious health condition.

1 (b) The legislature declares that the purposes of this Act are

2 (1) to balance the demands of the workplace with the needs of families, and to promote  
3 stability and economic security in families;

4 (2) to entitle employees to take reasonable leave for the birth or adoption of a child, for  
5 the care of a child, spouse, or parent who has a serious health condition, and in case of their own serious  
6 health condition; and

7 (3) to accommodate the legitimate interests of employers.

8 \* Sec. 3. AS 14.20.140 is amended by adding a new subsection to read:

9 (c) Notwithstanding a teacher's right to continued employment under AS 23.10.500 -  
10 23.10.550, a school district may notify a teacher of nonretention under this section for the  
11 following school year for a permissible reason.

12 \* Sec. 4. AS 14.20.145 is amended to read:

13 Sec. 14.20.145. AUTOMATIC REEMPLOYMENT. If notification of nonretention is not  
14 given according to AS 14.20.140, a teacher is entitled to be re-employed in the same district for  
15 the following school year on the contract terms the teacher and the employer may agree upon,  
16 or if no terms are agreed upon, the provisions of the previous contract are continued for the  
17 following school year, subject to AS 14.20.158. The right to be reemployed according to this  
18 section expires if the teacher does not accept reemployment within 30 days after the date on  
19 which the teacher receives a contract of reemployment. A teacher who is on family leave  
20 under AS 23.10.500 - 23.10.550 must comply with the 30-day deadline in this section to  
21 retain the teacher's reemployment rights under this section.

22 \* Sec. 5. AS 14.20.590 is amended by adding a new subsection to read:

23 (b) Notwithstanding any provision of AS 14.20.550 - 14.20.610 to the contrary, a  
24 negotiations agreement between an employer subject to AS 23.10.500 - 23.10.550 and an  
25 employee bargaining organization that conflicts with the benefit provisions of AS 23.10.500 -  
26 23.10.550 is void unless the agreement provides benefits at least as beneficial to the employee  
27 as those provided by AS 23.10.500 - 23.10.550 or unless the commissioner of education has  
28 waived compliance with AS 23.10.500 - 23.10.550 under AS 23.10.530(c).

29 \* Sec. 6. AS 23.10 is amended by adding new sections to read:

30 ARTICLE 8. PREGNANCY, CHILDBIRTH, AND FAMILY LEAVE.

31 Sec. 23.10.500. EMPLOYMENT BENEFITS AND PRIVILEGES FOR HEALTH AND

1 FAMILY CARE. (a) An employer shall grant an employee whose health is affected by preg-  
2 nancy, childbirth, or a related medical condition the same employment benefits and privileges that  
3 the employer grants to other employees with similar ability to work who are not so affected,  
4 including allowing the employee to take disability or sick leave or other accrued leave that the  
5 employer makes available to temporarily disabled employees.

6 (b) An employee is eligible to take family leave if the employee has been employed by  
7 the employer for at least 35 hours a week for at least six consecutive months or for at least  
8 17 1/2 hours a week for at least 12 consecutive months immediately preceding the leave. The  
9 leave may be unpaid leave. However, the employee may choose to substitute, or the employer  
10 may require the employee to substitute, accrued paid vacation leave, sick leave, personal leave,  
11 or other paid leave during this period. An employer shall permit an eligible employee to take  
12 family leave because of a serious health condition for a total of 18 workweeks during any 24-  
13 month period. An employer shall permit an eligible employee to take family leave because of  
14 pregnancy and childbirth or adoption for a total of 18 workweeks within a 12-month period; the  
15 right to take leave for this reason expires on the date one year after the birth or placement of the  
16 child. If the employee is entitled to a longer period of time under (a) of this section, then the  
17 longer period applies. An eligible employee is entitled to take family leave

18 (1) because of pregnancy and the birth of a child of the employee or the  
19 placement of a child, other than the employee's stepchild, with the employee for adoption; an  
20 employer may require that an employee using family leave under this paragraph take the leave  
21 in a single block of time;

22 (2) in order to care for the employee's child, spouse, or parent who has a serious  
23 health condition; in this paragraph, "child" includes the employee's biological, adopted, or foster  
24 child, stepchild, legal ward, or a child to whom the employee stands in loco parentis; and

25 (3) because of the employee's own serious health condition.

26 (c) Notwithstanding (b) of this section, if a parent or child of two employees employed  
27 by the same employer has a serious health condition, the employer is not required to grant family  
28 leave to both employees simultaneously.

29 (d) During the time that an employee is on leave under this section, the employer shall  
30 maintain coverage under any group health plan at the level and under the conditions that  
31 coverage would have been provided if the employee had been employed continuously from the

1 date the leave began to the date the employee returns from leave under (e) of this section.  
2 However, the employer may require that the employee pay all or part of the costs for maintaining  
3 health insurance coverage during a period of unpaid leave.

4 (e) Unless the employer's business circumstances have changed to make it impossible  
5 or unreasonable, when an employee returns from leave under this section, the employer shall re-  
6 store the employee

7 (1) to the position of employment held by the employee when the leave began;  
8 or

9 (2) to a substantially similar position with substantially similar benefits, pay, and  
10 other terms and conditions of employment.

11 (f) This section does not apply to an employer's small business facility if the total  
12 number of employees employed within 50 road miles of the small business facility, including  
13 those employed at the facility, was fewer than 21 during the 20 consecutive workweeks in which  
14 the employer employed at least 21 employees at all business facilities.

15 Sec. 23.10.510. EMPLOYEE NOTICE. If the necessity for leave under AS 23.10.500  
16 is foreseeable based on an expected birth or adoption or on planned medical treatment or  
17 supervision, the employee shall provide the employer with prior notice of the expected need for  
18 leave in a manner that is reasonable and practicable. If the necessity for leave under that section  
19 is foreseeable based on planned medical treatment or supervision, the employee shall also make  
20 a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the  
21 operations of the employer, subject to the approval of the health care provider of the employee  
22 or the employee's child, spouse, or parent.

23 Sec. 23.10.520. EMPLOYEE TRANSFER. (a) A pregnant employee may request a  
24 transfer to a suitable position under this section. An employer may not fill the position with a  
25 person other than the requesting employee until the employer has offered the position to the  
26 employee and the employee has refused the offer. A position is suitable if

27 (1) it is an existing unfilled position in the same administrative division in which  
28 the employee is currently employed and is less strenuous or less hazardous than the employee's  
29 current position;

30 (2) transfer to the position is recommended by a licensed health care provider;

31 (3) the employee is qualified and immediately able to perform the duties of the

1 position; and

2 (4) the transfer will not subject the employer to legal liability.

3 (b) An employer shall compensate an employee who receives a transfer under this section  
4 at a rate at least equal to the lesser of the rate, as adjusted by changes to compensation that apply  
5 generally to the work force, at which

6 (1) the employee was compensated immediately before requesting the transfer,  
7 or

8 (2) the position into which the employee transfers is compensated.

9 Sec. 23.10.530. APPLICATION TO OTHER LAWS. (a) The provisions of  
10 AS 23.10.500 - 23.10.550 do not affect any other provision of law relating to sex discrimination,  
11 pregnancy, or parenthood.

12 (b) The provisions of AS 23.10.500 - 23.10.550 are subject to collective bargaining.  
13 However, except as provided in (c) of this section, a collective bargaining contract is void unless  
14 it contains terms giving employees benefits at least as beneficial to the employee as those pro-  
15 vided by AS 23.10.500 - 23.10.550.

16 (c) The commissioner of education may approve a collective bargaining agreement  
17 entered into between a school district or a regional educational attendance area and a bargaining  
18 organization representing certificated employees that does not meet the leave requirements of  
19 AS 23.10.500 - 23.10.550, if the district or attendance area establishes to the satisfaction of the  
20 commissioner that a variance from the requirements of AS 23.10.500 - 23.10.550 is necessary  
21 to avoid a hardship on the school district based on the lack of qualified, available substitute  
22 teachers to replace teachers on leave under AS 23.10.500 - 23.10.550 or the lack of available  
23 housing for replacement teachers who do not live in the community.

24 Sec. 23.10.540. INVESTIGATION AND CONCILIATION OF COMPLAINTS. (a) A  
25 person aggrieved by a denial of a right or privilege granted by AS 23.10.500 - 23.10.540 may  
26 file a complaint with the department.

27 (b) The department shall informally, promptly, and impartially investigate the matters set  
28 out in a filed complaint. If the investigator determines that the allegations are supported by  
29 substantial evidence, the investigator shall immediately try to eliminate the denial of rights or  
30 privileges by conference, conciliation, and persuasion.

31 Sec. 23.10.550. DEFINITIONS. In AS 23.10.500 - 23.10.550,

- 1 (1) "child" means an individual who is
- 2 (A) under 18 years of age; or
- 3 (B) 18 years of age or older and incapable of self-care because of mental
- 4 or physical disability;
- 5 (2) "employer" means a person, including the state and a political subdivision of
- 6 the state, who employed at least 21 employees in the state for each working day during any
- 7 period of 20 consecutive workweeks in the preceding two calendar years;
- 8 (3) "health care provider" has the meaning given in AS 18.23.070;
- 9 (4) "parent" means a biological or adoptive parent, a parent-in-law, or a
- 10 stepparent;
- 11 (5) "serious health condition" means an illness, injury, impairment, or physical
- 12 or mental condition that involves
- 13 (A) inpatient care in a hospital, hospice, or residential health care facility;
- 14 or
- 15 (B) continuing treatment or continuing supervision by a health care
- 16 provider;
- 17 (6) "small business facility" means a facility of an employer that did not employ
- 18 21 or more employees during any period of 20 consecutive workweeks in the preceding two
- 19 calendar years;
- 20 (7) "state" includes the University of Alaska and the executive, legislative, and
- 21 judicial branches of state government including public and quasi-public corporations and
- 22 authorities established by law.

23 \* Sec. 7. AS 23.40.200 is amended by adding a new subsection to read:

24 (g) Notwithstanding any provision of AS 23.40.070 - 23.40.260 to the contrary, an

25 agreement between an employer subject to AS 23.10.500 - 23.10.550 and an employee bargaining

26 organization that conflicts with the benefit provisions of AS 23.10.500 - 23.10.550 is void unless

27 the agreement provides benefits at least as beneficial to the employee as those provided by

28 AS 23.10.500 - 23.10.550.

29 \* Sec. 8. AS 39.20.225(b)(4) is amended to read:

30 (4) Pregnancy and childbirth or the placement of a child, other than the

31 employee's stepchild, with the employee for adoption is a medical reason for ~~an~~ [A FEMALE]

- 1 (1) "child" means an individual who is  
2 (A) under 18 years of age; or  
3 (B) 18 years of age or older and incapable of self-care because of mental  
4 or physical disability;
- 5 (2) "employer" means a person, including the state and a political subdivision of  
6 the state, who employed at least 21 employees in the state for each working day during any  
7 period of 20 consecutive workweeks in the preceding two calendar years;
- 8 (3) "health care provider" has the meaning given in AS 18.23.070;
- 9 (4) "parent" means a biological or adoptive parent, a parent-in-law, or a  
10 stepparent;
- 11 (5) "serious health condition" means an illness, injury, impairment, or physical  
12 or mental condition that involves
- 13 (A) inpatient care in a hospital, hospice, or residential health care facility;  
14 or  
15 (B) continuing treatment or continuing supervision by a health care  
16 provider;
- 17 (6) "small business facility" means a facility of an employer that did not employ  
18 21 or more employees during any period of 20 consecutive workweeks in the preceding two  
19 calendar years;
- 20 (7) "state" includes the University of Alaska and the executive, legislative, and  
21 judicial branches of state government including public and quasi-public corporations and  
22 authorities established by law.

23 \* Sec. 7. AS 23.40.200 is amended by adding a new subsection to read:

24 (g) Notwithstanding any provision of AS 23.40.070 - 23.40.260 to the contrary, an  
25 agreement between an employer subject to AS 23.10.500 - 23.10.550 and an employee bargaining  
26 organization that conflicts with the benefit provisions of AS 23.10.500 - 23.10.550 is void unless  
27 the agreement provides benefits at least as beneficial to the employee as those provided by  
28 AS 23.10.500 - 23.10.550.

29 \* Sec. 8. AS 39.20.225(b)(4) is amended to read:

30 (4) Pregnancy and childbirth or the placement of a child, other than the  
31 employee's stepchild, with the employee for adoption is a medical reason for ~~an~~ [A FEMALE]

1 officer or employee to take personal leave. [A FEMALE OFFICER OR EMPLOYEE,  
2 OTHERWISE QUALIFIED FOR A LEAVE OF ABSENCE, IS ENTITLED TO TAKE A  
3 MAXIMUM OF NINE WEEKS LEAVE IMMEDIATELY PRECEDING AND FOLLOWING  
4 CHILDBIRTH. IF THE OFFICER'S OR EMPLOYEE'S ACCRUED PERSONAL LEAVE IS  
5 INSUFFICIENT FOR THIS PURPOSE, THE OFFICER OR EMPLOYEE IS ENTITLED TO  
6 TAKE LEAVE WITHOUT PAY FOR THE BALANCE OF THE NINE-WEEK PERIOD.]

7 \* Sec. 9. AS 39.20 is amended by adding a new section to read:

8 Sec. 39.20.305. FAMILY AND HEALTH LEAVE. (a) An officer or employee who is  
9 otherwise qualified to take leave of absence may take family leave because of a serious health  
10 condition for a total of 18 workweeks during any 24-month period. An otherwise qualified  
11 officer or employee may take family leave because of pregnancy and childbirth or adoption for  
12 a total of 18 workweeks within a 12-month period; the right to take leave for this reason expires  
13 on the date one year after the birth or placement of the child. An officer or employee taking  
14 leave under this section shall use accrued paid leave until the officer or employee has only five  
15 days of paid leave remaining. The officer or employee may choose whether to retain a balance  
16 of five days of paid leave and take the remaining leave as unpaid leave or whether to exhaust  
17 the paid leave balance. After reducing accrued paid leave as required by this subsection, the  
18 officer or employee may take leave without pay for the balance of the family leave. If the  
19 employee is entitled to a longer period of time under AS 23.10.500, then the longer period  
20 applies. An eligible employee is entitled to take family leave

21 (1) because of pregnancy and the birth of a child of the employee or the  
22 placement of a child, other than the employee's stepchild, with the employee for adoption; the  
23 department or agency may require that an employee using family leave under this paragraph take  
24 the leave in a single block of time;

25 (2) in order to care for the employee's child, spouse, or parent who has a serious  
26 health condition; in this paragraph, "child" includes the employee's biological, adopted, or foster  
27 child, stepchild, legal ward, or a child to whom the employee stands in loco parentis; and

28 (3) because of the employee's own serious health condition.

29 (b) If the necessity for family leave under (a) of this section is foreseeable based on an  
30 expected birth or adoption or on planned medical treatment or supervision, the employee shall  
31 provide the employee's department or agency head with prior notice of the expected need for

1 leave in a manner that is reasonable and practicable. If the necessity for leave under this section  
2 is foreseeable based on planned medical treatment or supervision, the employee shall also make  
3 a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the  
4 operations of the state department or agency, subject to the approval of the health care provider  
5 of the employee or the employee's child, spouse, or parent.

6 (c) Notwithstanding (a) of this section, if a parent or child of two employees employed  
7 by the state has a serious health condition, the state is not required to grant family leave to both  
8 employees simultaneously.

9 (d) In this section, "child," "health care provider," "parent," and "serious health condition"  
10 have the meanings given in AS 23.10.550.

11 \* Sec. 10. Notwithstanding AS 14.20.590(b), enacted by sec. 5 of this Act, AS 23.10.500 - 23.10.550,  
12 enacted by sec. 6 of this Act, and AS 23.40.200(g), enacted by sec. 7 of this Act, a collective bargaining  
13 agreement in effect on the effective date of this Act that contains terms that do not comply with  
14 AS 23.10.500 - 23.10.550 remains valid until the agreement expires. However, the contract may not be  
15 extended by agreement or renewed unless it complies with AS 14.20.590(b), AS 23.10.530, or  
16 AS 23.40.200(g), as applicable.