

HOUSE BILL NO. 523

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE KOPONEN

Introduced: 2/18/92

Referred: Labor & Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act converting the business license fee to a business license tax; adding, as an
2 element of that tax, computation of the tax based on the taxpayer's gross receipts; and
3 transferring administration of the levy to the Department of Revenue; and providing for
4 an effective date."

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

6 * **Section 1.** AS 06.20.030(c) is amended to read:

7 (c) The license fee required by this section is in place of the tax [FEE] under AS 43.70
8 (Alaska Business License Act).

9 * **Sec. 2.** AS 08.01.087 is amended to read:

10 **Sec. 08.01.087. INVESTIGATIVE AND ENFORCEMENT POWERS OF**
11 **DEPARTMENT.** (a) The department may, upon its own motion, conduct investigations

12 (1) to determine whether a person has violated a provision of this chapter or a
13 regulation adopted under it, [OR A PROVISION OF AS 43.70,] or a provision of this title or
14 regulation adopted under this title dealing with an occupation or board listed in AS 08.01.010;

1 or

2 (2) to secure information useful in the administration of this chapter.

3 (b) If it appears to the commissioner that a person has engaged in or is about to engage
4 in an act or practice in violation of a provision of this chapter or a regulation adopted under it,
5 [OR A PROVISION OF AS 43.70,] or a provision of this title or regulation adopted under this
6 title dealing with an occupation or board listed in AS 08.01.010, the commissioner may, if the
7 commissioner considers it in the public interest, and after notification of a proposed order or
8 action by telephone or telegraph to all board members, if a board regulates the act or practice
9 involved, unless a majority of the members of the board object within 10 days,

10 (1) issue an order directing the person to stop the act or practice; however,
11 reasonable notice of and an opportunity for a hearing must first be given to the person, except
12 that the commissioner may issue a temporary order before a hearing is held; a temporary order
13 remains in effect until a final order affirming, modifying, or reversing the temporary order is
14 issued or until 15 days after the person receives the notice and has not requested a hearing by
15 that time; a temporary order becomes final if the person to whom the notice is addressed does
16 not request a hearing within 15 days after receiving the notice; the commissioner or the
17 commissioner's designee shall be the hearing officer at the hearing and shall issue a final order
18 within 10 days after the hearing;

19 (2) bring an action in the superior court to enjoin the acts or practices and to
20 enforce compliance with this chapter, a regulation adopted under it, an order issued under it, or
21 with a provision of this title or regulation adopted under this title dealing with business licenses
22 or an occupation or board listed in AS 08.01.010;

23 (3) examine or have examined the books and records of a person whose business
24 activities require a business license or licensure by a board listed in AS 08.01.010, or whose
25 occupation is listed in AS 08.01.010; the commissioner may require the person to pay the
26 reasonable costs of the examination; and

27 (4) issue subpoenas for the attendance of witnesses, and the production of books,
28 records and other documents.

29 * Sec. 3. AS 08.01.102 is amended to read:

30 Sec. 08.01.102. CITATION FOR UNLICENSED PRACTICE OR ACTIVITY. The
31 department may issue a citation for a violation of a license requirement under this chapter [OR

1 AS 43.70] if there is probable cause to believe a person has practiced a profession [OR
2 ENGAGED IN BUSINESS] for which a license is required without holding the license. Each
3 day a violation continues after a citation for the violation has been issued constitutes a separate
4 violation.

5 * Sec. 4. AS 11.76.100(e) is amended to read:

6 (e) The court shall forward a record of each person convicted under this section who
7 holds a business license endorsement under AS 43.70.075, or who is an employee or agent of a
8 person who holds a license endorsement under AS 43.70.075 to the Department of Revenue
9 [COMMERCE AND ECONOMIC DEVELOPMENT].

10 * Sec. 5. AS 16.10.265(d) is amended to read:

11 (d) The commissioner of revenue [COMMERCE AND ECONOMIC DEVELOPMENT]
12 may suspend or revoke a business license issued under AS 43.70.020 and [THE
13 COMMISSIONER OF REVENUE] may suspend or revoke a license to engage in the business
14 of processing or buying raw fish if the licensee or an officer, director, or employee in a
15 policy-making position of the licensee has been convicted of three offenses under this section.
16 Proceedings to suspend or revoke a license are governed by the Administrative Procedure Act
17 (AS 44.62).

18 * Sec. 6. AS 43.05.230(g) is amended to read:

19 (g) The information contained in a license issued by the commissioner [OF REVENUE
20 OR THE COMMISSIONER OF COMMERCE AND ECONOMIC DEVELOPMENT] under
21 AS 43.50, AS 43.60, AS 43.65, AS 43.70, and AS 43.75 is public information.

22 * Sec. 7. AS 43.70.020(a) is amended to read:

23 (a) For the privilege of engaging in a business in the state, a person shall first apply,
24 upon forms prescribed by the commissioner, and obtain a license, and pay the tax [LICENSE
25 FEE] provided for in AS 43.70.030. A license issued to a firm for a particular line of business
26 covers all its operations in the state in the line of business regardless of the number of its
27 establishments. A license issued under this subsection must include

- 28 (1) the name and address of the licensee;
29 (2) the line of business to be conducted;
30 (3) the dates for which the license is issued; and
31 (4) the business name to be used by the licensee.

1 * Sec. 8. AS 43.70.020 is amended by adding new subsections to read:

2 (e) An applicant for a business license under this chapter shall submit the application and
3 pay an initial tax. The initial tax of \$25 applies to all of the provisions of this section and shall
4 accompany the application. The balance is due and payable on December 31 of each year and
5 shall be paid before the first day of March following, except that the department may extend the
6 time until the following April 30 upon application showing that the extension is necessary to
7 enable the applicant to ascertain the amount due.

8 (f) A business license issued under this section expires on December 31 of the calendar
9 year for which it is issued.

10 * Sec. 9. AS 43.70.030(a) is amended to read:

11 (a) The license ~~tax~~ [FEE] for each business is \$25 plus a sum equal to one percent of
12 the gross receipts in excess of \$100,000 from the business during the year for which the
13 license is issued [PER YEAR].

14 * Sec. 10. AS 43.70.030(c) is amended to read:

15 (c) The license for the privilege of taking orders through use of catalogs and by mail
16 order offices in the state is the same as set out in this chapter for business generally, and gross
17 volume of business of the offices includes all orders taken at them regardless of whether
18 delivery of merchandise is made through the offices.

19 * Sec. 11. AS 43.70.030 is amended by adding a new subsection to read:

20 (e) In place of the tax due under (a) of this section, the tax for each national bank and
21 state bank, trust company, and savings and loan association is seven percent of its net income.
22 Net income means the taxable income of each taxpayer before net operating loss deduction and
23 special deductions, computed as required under 26 U.S.C., and includes all other income,
24 including the income from federal, state, or municipal obligations. Each of these taxpayers
25 required to make a return under the provisions of 26 U.S.C. shall at the same time file with the
26 department

27 (1) a return setting out the amount of tax due under this chapter, and other
28 information for the purpose of carrying out the provisions of this chapter that the department
29 requires;

30 (2) a true and correct copy of the tax return that the taxpayer has filed with the
31 Internal Revenue Service, and shall notify the department in writing of any alternation in, or

1 modification of the taxpayer's federal income tax return and of a recomputation of tax or
2 determination of deficiency.

3 * Sec. 12. AS 43.70 is amended by adding a new section to read:

4 Sec. 43.70.071. SECURITY. A nonresident person who starts to perform a construction
5 contract or subcontract or other line of business in the state and is not known by the department
6 to be the holder of adequate property in the state to secure collection of the license money that
7 will probably accrue under this chapter by virtue of the business shall, in or with the application,
8 state under oath the extent of lienable real and personal property against which the tax may be
9 collected, and other information with respect to description, location, and value of the property
10 that the department prescribes. If the value of the property is not equal to three times the amount
11 of the tax for which the applicant will probably be liable to the state, the department shall not
12 issue the license until the applicant files a surety bond approved by the attorney general in a
13 penal sum equal to twice the probable amount of the tax for which the applicant will be liable,
14 conditioned upon payment of the tax in full when due, and with interest if not paid before
15 delinquency. The department may waive the bond requirement if the applicant posts other
16 security in the form of collateral acceptable to the department.

17 * Sec. 13. AS 43.70.080 is amended by adding new subsections to read:

18 (b) Subject to legislative appropriation for the purpose, from the proceeds of the tax
19 levied under this chapter, excluding penalties and the amount determined to have been spent by
20 the state in its collection, the department shall pay 70 percent of the money collected under this
21 chapter within the municipality

22 (1) to each unified municipality, each city in the unorganized borough, and each
23 borough for the area outside cities, in proportion to the revenue that was earned within them; and

24 (2) to cities and boroughs for the area of each borough inside cities, in proportion
25 to the revenue that was earned within them; the payment under this paragraph shall be divided
26 equally between the city and the borough.

27 (c) The rural services account is established in the general fund. The department shall
28 deposit into the rural services account 70 percent of the money collected under this chapter in
29 the unorganized borough but outside of a municipality. The legislature may use money in the
30 account for the provision of services to residents of the unorganized borough.

31 * Sec. 14. AS 43.70 is amended by adding a new section to read:

1 **Sec. 43.70.101. EXEMPTIONS. (a) The following gross receipts are exempt from**
2 **taxation under this chapter:**

3 (1) gross receipts from educational, religious, benevolent, fraternal, or charitable
4 activities, where the entire amount of the receipts is held or expended for these activities, except
5 receipts that are the result of a continuous engaging in a business or occupation otherwise subject
6 to this chapter;

7 (2) gross receipts from the operation of a hospital;

8 (3) gross receipts from a municipally owned and operated utility and from
9 operation of a utility by an incorporated utility district, nonprofit association, or nonprofit
10 cooperative;

11 (4) gross receipts from home handicrafts up to \$500;

12 (5) gross receipts of a resident wholesale firm registered in the state as a domestic
13 corporation, or otherwise identifiable as a resident wholesaler, from sale of a finished product to
14 dealers for resale to consumers, where the resale is subject to tax under this chapter;

15 (6) gross receipts derived from a sale made to a person in a foreign country for
16 shipment out of the United States, except when the goods or products sold are exported in bond
17 for reentry into the United States;

18 (7) gross receipts of a manufacturer or processor derived from the sale of the
19 manufacturer's or processor's product that was manufactured or processed in the state, except
20 where the product is sold directly to the consumer;

21 (8) gross receipts subject to the tax imposed by AS 43.55;

22 (9) gross receipts from the taxes imposed by the state upon the sale of motor fuel;

23 (10) gross receipts from a consumers' sales tax collected by a taxpayer for a
24 political subdivision of this state; in this paragraph, "consumer" means the person who, in the
25 ordinary common meaning of the term, ultimately uses goods, and diminishes or destroys their
26 utility.

27 (b) The exemption from taxation of certain gross receipts as provided in this chapter does
28 not exempt a person from payment of the \$25 initial license fee.

29 * **Sec. 15. AS 43.70.110(2) is amended to read:**

30 (2) "commissioner" means the commissioner of revenue [COMMERCE AND
31 ECONOMIC DEVELOPMENT];

1 * Sec. 16. AS 43.70.110(3) is amended to read:

2 (3) "department" means the Department of Revenue [COMMERCE AND
3 ECONOMIC DEVELOPMENT];

4 * Sec. 17. AS 43.70.110 is amended by adding new paragraphs to read:

5 (5) "gross receipts"

6 (A) means receipts from sources in the state, whether in the form of
7 money, credits, or other valuable consideration received from engaging in or conducting
8 a business without deducting the cost of the property sold, the cost of the materials used,
9 labor or service cost, interest paid, taxes, losses, or any other expense;

10 (B) includes

11 (i) all amounts paid or assigned to subcontractors;

12 (ii) receipts from sales, wherever made, of goods, wares, and
13 merchandise manufactured or processed or originating in the state;

14 (iii) the gross commission of an individual who represents firms
15 taxed under this chapter on volume of business done who works as an agent on
16 commission instead of as an employee;

17 (C) does not include cash discounts allowed and taken on sales, and sales
18 refunds, either in cash or by credit, uncollectible accounts written off, and payments
19 received in final liquidation of accounts included in the gross receipts of a previous return
20 made by the person;

21 (6) "income year" means calendar year or, if a person carries on business during
22 only a part of the income year, the period within the income year during which the person carries
23 on business;

24 (7) "tax" means the business license tax imposed under this chapter.

25 * Sec. 18. AS 43.99.950 is amended to read:

26 Sec. 43.99.950. DEFINITIONS. In [EXCEPT IN AS 43.70, IN] this title,

27 (1) "commissioner" means the commissioner of revenue; and

28 (2) "department" means the Department of Revenue.

29 * Sec. 19. AS 08.01.010(25), 08.01.050(a)(21), and 08.01.065(d) are repealed.

30 * Sec. 20. This Act takes effect January 1, 1993.