

H B

726

SENATE AMENDMENT

By Judiciary Committee

To: _____ SENATE BILL No. _____

To: Committee Substitute HOUSE BILL No. 726(L & C)

PAGE: 1 LINE: 18

Delete the word "employee" and insert "executive officer" in its place.

COMMITTEE REPORT

SENATE

5/11/82

FURTHER: None

Date: May 18, 1982

Mr. President:

The Committee on JUDICIARY has had CSHB 726(L&C) providing an exemption from the Alaska Employment Security Act for certain employees of certain corporations

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation *WITH ATTACHED AMENDMENT*
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Robert G. Anderson, V. Rep.

CHAIRMAN

Original sponsors: Barnes, Hayes
and Clocksin

Offered: 3/8/82
Referred: Rules

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2

CS FOR HOUSE BILL NO. 726 (L&C)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

TWELFTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act providing an exemption from the Alaska Employ-
ment Security Act for certain employees of certain
corporations."

7

8

9

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

10

* Section 1. AS 23.20.526 is amended by adding a new paragraph to read:

11

(21) service performed for a corporation by an employee of the

12

corporation if

13

(A) the corporation is incorporated under AS 10.05;

14

(B) the corporation is not a government corporation;

15

(C) the employee is an executive officer of the corpora-

16

tion who directly or indirectly owns 25 percent or more of the
voting securities of the corporation; and

17

18

(D) [the employee] agrees that the services ~~not be~~ ^{ARE NOT} "employ-
ment" under this paragraph.

19

20

21

AUTHORIZES THAT

22

23

THE EXECUTIVE OFFICER. IF

24

25

26

27

28

29



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

MAY 17, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

CSHB 726 - "An Act providing an exemption from the Alaska Employment Security Act for certain employees of certain corporations."

HJR 41 - Proposing an amendment to the Constitution of the State of Alaska defining the term "appropriation".

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:30 P.M. Committee members present were: Senators Rodey, Parr, Ray, and Anderson. Senator Bennett was absent.

002 - Call to order.

008 - Chairman Rodey brought CSHB 726 before the committee.

012 - Judy Knight, Department of Labor, testified stating the Department did not have a problem with the bill as written.

019 - Senator Ray states his opposition to the bill.

442 - Bill Cook, of Representative Barnes' office, testified in favor of CSHB 726.

495 - Judy Knight suggested adding "executive officer" on Page 1, Line 18, instead of "the employee".

518 - Senator Ray moved to adopt this amendment. There was no objection.

584 - Senator Ray moved to pass CSHB 726 with individual recommendations. There was no objection.

590 - Chairman Rodey brought HJR 41 before the committee.

594 - Representative Beirne testified in favor of this bill.

696 - After brief discussion, Senator Parr moved to pass HJR 41 with individual recommendations. There was no objection.

700 - Senator Rodey brought the Comparative Fault Act before the committee for possible introduction.

710 - Senator Ray moved to introduce the Comparative Fault Act and to put it into subcommittee. There was no objection.

725 - Chairman Rodey adjourned the meeting at 2:20 P.M.

Limited Entry Permit Broker



Services for Commercial Fishermen

THE ALASKA EXCHANGE

P.O. BOX 2593

JUNEAU, ALASKA 99803

Phone: (907) 789-2779

April 20, 1982

Senator Mulcahy, Chairman
Senate Labor and Commerce Committee
Pouch V
Juneau, AK 99811

Re: CSHB 726

Dear Senator Mulcahy:

In regard to the above-referenced bill, I am submitting the following:

I began my business, The Alaska Exchange, in January of 1979. In 1980, I became incorporated, mainly for liability purposes.

In incorporating, I became the major stockholder and the principal officer with an ownership of seventy percent of the corporation. Each of my five children became owners of six percent each of the corporation.

With incorporation came a set of rules and regulations with which to adhere.

Upon becoming incorporated, the corporation paid to me, when possible, a salary, and withheld and paid Federal income taxes, FICA and an unemployment contribution to the State of Alaska on my wages, as well as on any other employee's wages of the corporation.

Although I don't particularly appreciate paying the Federal income taxes and FICA taxes, I resent even more having to pay the State unemployment contribution tax. I really feel it is an unjust and unfair tax in my particular situation, for the following reasons:

1. I am the only employee of The Alaska Exchange, Inc., with the exception that, on rare occasions, the corporation hires and pays one of my children to work for the company.
2. Being the sole employee of the corporation, I am in between "a rock and a hard spot," so to speak, regarding having to pay State unemployment taxes on my wages. To put it more adequately, I'm in a "darned-if-you-do-and-darned-if-you-don't" type of situation.

April 20, 1982

For instance: In 1980, when I became incorporated, the corporation made a fairly good amount of money, and contributed, as per regulations, to the State unemployment taxes on wages. In 1981, the corporation did very poorly, and paid to me only two pay checks--one in January, and one in October. In 1982, the corporation is doing better financially than it did in 1981, but not nearly as well as it did in 1980.

The problem is, that during the lean months, when the corporation was not able to pay me a salary, I could not apply for unemployment wages to which I and the corporation had contributed. Even though I was working, but not paid, I was still considered an employee. If I had filed for unemployment wages, I would have had to accept a position of hire if it was offered, and would have been unable to collect any unemployment wages.

My complaint is that I am a sole employee of my own corporation in which I hold the majority of the stock, and I must contribute to the State unemployment system out of any wages paid to myself, but I can never, as long as I work for my own corporation, even if unsalaried, collect unemployment wages. I am, basically, paying hard-earned dollars into something that will never benefit me.

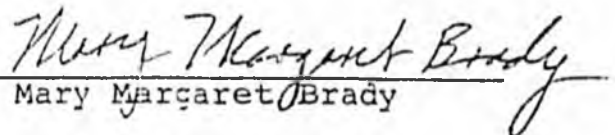
I feel that I am being taxed unfairly by the State unemployment contribution system. I think there must be others in a situation similar to mine that are also being unfairly taxed by the present law.

I would be happy to present additional testimony if it is needed.

Very truly yours,

THE ALASKA EXCHANGE, INC.

By


Mary Margaret Brady

GARY JENKINS PROPOSED
AMENDMENT;

PROPOSED

SCS FOR CS FOR HOUSE BILL NO. 726 (L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE - SECOND SESSION
A BILL

For an Act entitled: "An Act providing an exemption from the Alaska Employment Security Act for certain employees of certain corporations."

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

* Section 1. AS 23.20.526 is amended by adding a new paragraph to read:

- (21) service performed for a corporation by an employee of the corporation if
- (A) the corporation is incorporated under AS 10.05;
 - (B) the corporation is not a government corporation;
 - (C) the employee is an executive officer of the corporation; and
 - (D) the employee agrees that the services not be "employment" under this paragraph.

Bill No. Committee Substitute for House Bill 725 (L & C) Date April 7, 1982

Title "An Act providing an exemption from the Alaska Employment Security Act for certain employees of certain corporations."

Contact: A. G. Zillis
465-2712
Judy Knight
465-2700

AZ
J Knight

Committee substitute for House Bill 726 exempts certain employees of Alaskan corporations from the Alaska Employment Security Act (unemployment insurance). For this exemption, the employee must be an executive officer of the corporation who directly or indirectly owns 25 percent or more of the voting securities of the corporation, and further requires the agreement of the employee.

Although the department cannot ascertain how many corporations and employees may elect exemption under this provision, we feel it will be minimal. The provisions of this bill would not have a measurable effect on the administration of the unemployment insurance program nor employer rates for purposes of the Unemployment Insurance Trust Fund.

The Department of Labor has no objection to this exemption.

The employer covered is determined by the number of days or weeks a worker is employed or the amount of the employer's quarterly or yearly payroll. Originally, most State laws covered only the employers who, within a year, had eight or more workers in each of 20 weeks. This was due largely to the coverage provisions of the FUTA. As the States gained experience in administering unemployment insurance and as a result of the 1954 and 1970 amendments to the FUTA smaller firms have been brought under the acts in all States.

Thirty-one States have adopted the Federal definition of employer; i.e., a quarterly payroll of \$1,500 in the calendar year or preceding calendar year or one worker in 20 weeks. Eight States provide the broadest possible coverage by including all employers who have any covered service in their employ. The other States have requirements of less than 20 weeks or payrolls other than \$1,500 in a calendar quarter (Table 100).

110 COVERAGE BY REASON OF A FEDERAL REQUIREMENT

The 1970 and 1976 amendments to the FUTA added to the types of services which, as a condition for approval of the State law, must be covered under the State law. ~~This Federal requirement for the extension of coverage differs from an extension of coverage by reason of Federal coverage. If a State law fails to cover services that are covered under the FUTA, the employer must pay the full Federal tax and the employee may get no benefits based on such services, but certification of the State law is unaffected.~~ If, however, a State law fails to cover services which the Federal law requires the State to cover, or excludes services from coverage, the State law would not be approved for purposes of tax credits against the Federal tax and no employer in the State would receive a tax credit for State contributions.

110.01 Coverage of nonprofit organizations.--Service for nonprofit organizations continues to be excluded from coverage under the FUTA, but some service is required to be covered under the State laws. Coverage under State laws is required for service for nonprofit organizations which employ four or more workers in 20 weeks, are organizations which are described in section 501 (c) (3) of the Federal Internal Revenue Code of 1954, and which are exempt from Federal income tax under section 501 (a) of the code. However, a number of States have covered nonprofit organizations under the regular coverage provisions. The State law is required to give each nonprofit organization that must be covered an option on financing benefits. Such nonprofit organizations must be given the right either to reimburse the State for benefits paid or pay contributions under the State law's regular tax provisions.

110.02 Coverage of governmental entities.--The Federal law requires that States cover most services for the State and its political subdivisions. When service is performed for an instrumentality owned by more than one State or political subdivision, coverage is determined based on the location of the work. See section 120. States are required to pay compensation based on service with a governmental entity or a nonprofit organization under the same terms and conditions as for other covered services. There are, however, special provisions applicable to school personnel between school terms. See section 450.03 for a discussion of these special provisions. The States are required to provide local governmental entities a choice of financing benefits either through reimbursement, contributions, or any other method deemed feasible by the State (Table 209).

Since the Federal law includes no size-of-firm restrictions for governmental entities as it does for nonprofit organizations, all governmental entities, regardless of size, must be covered. There are, however, certain types of services which the

*Comparison of State Unemployment Insurance Laws
U.S. Dept of Labor, Manpower Adm.*

in the employ of a hospital by an individual who has completed a 4 years' course in a medical school chartered or approved pursuant to State law;

(14) service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

(15)(A) service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(16) service performed in the employ of an international organization;

(17) service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except—

(A) service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and

(B) service performed on or in connection with a vessel of more than 10 net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States); or

(18) service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of sect. 101(a)(15) of the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a)(15)(F) or (J)), and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be.

(d) Included and excluded service

For purposes of this chapter, if the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than 31

consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by subsection (c)(9).

(e) State agency

For purposes of this chapter, the term "State agency" means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

(f) Unemployment fund

For purposes of this chapter, the term "unemployment fund" means a special fund, established under a State law and administered by a State agency, for the payment of compensation. Any sums standing to the account of the State agency in the Unemployment Trust Fund established by section 904 of the Social Security Act, as amended (42 U.S.C. 1104), shall be deemed to be a part of the unemployment fund of the State, and no sums paid out of the Unemployment Trust Fund to such State agency shall cease to be a part of the unemployment fund of the State until expended by such State agency. An unemployment fund shall be deemed to be maintained during a taxable year only if throughout such year, or such portion of the year as the unemployment fund was in existence, no part of the moneys of such fund was expended for any purpose other than the payment of compensation (exclusive of expenses of administration) and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305(d); except that—

(1) an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration; and

(2) the amounts specified by section 903(c)(2) of the Social Security Act may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices.

(g) Contributions

For purposes of this chapter, the term "contributions" means payment required by a State law to be made into an unemployment fund by any person on account of having individuals in his employ, to the extent that such payments are made by him without being deducted or deductible from the remuneration of individuals in his employ.

(h) Compensation

For purposes of this chapter, the term "compensation" means cash benefits payable to individuals with respect to their unemployment.

(i) Employee

For purposes of this chapter, the term "employee" has the meaning assigned to such term by section 3121(d), except that subparagraphs (B) and (C) of paragraph (3) shall not apply.

was 1103(c)(2)

see attached

see next page

OVERVIEW OF HB 726

House bill 726 is very straight forward and is intended to allow those persons who are employed by a corporation and who also have the power to vote 25% or more of any class of voting securities of the corporation, to choose to exempt themselves from paying State Unemployment security ~~tax~~ *insurance*

Sole proprietors already enjoy such an exemption, and I believe that those individuals who fall within the criteria laid out in this bill should also enjoy such an exemption.

The total financial advantage for those persons who exercise this option in terms of total dollars is not substantial. (See page 2 House Research report).

The main advantage is that, under this bill, each eligible person may now choose to either use the money for inclusion in the state program or for other purposes better suited to their needs.

The 25% figure in this bill is based, as a matter of personal opinion, on that point at which a corporate shareholder should enjoy the same privileges as a sole proprietor. Similar legislation in other states (see page 1 House Research report) is based on different definitions with Colorado's law being very close in concept to this bill. By specifically calling out 25%, there would be no question as to who was or was not eligible for exemption.

Bill No. Committee Substitute for House Bill 726 (L & C) Date April 7, 1982

Title "An Act providing an exemption from the Alaska Employment Security Act for certain employees of certain corporations."

Contact: A. G. Zillig
465-2712
Judy Knight
465-2700

By Knight

Committee substitute for House Bill 726 exempts certain employees of Alaskan corporations from the Alaska Employment Security Act (unemployment insurance). For this exemption, the employee must be an executive officer of the corporation who directly or indirectly owns 25 percent or more of the voting securities of the corporation, and further requires the agreement of the employee.

Although the department cannot ascertain how many corporations and employees may elect exemption under this provision, we feel it will be minimal. The provisions of this bill would not have a measurable effect on the administration of the unemployment insurance program nor employer rates for purposes of the Unemployment Insurance Trust Fund.

The Department of Labor has no objection to this exemption.



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

January 22, 1982

MEMORANDUM

TO: Representative Rainona Barnes

FROM: David Teal
Research Staff

RE: Unemployment Insurance
Research Request Number 82-6

Dave Stancliffe requested this agency to examine the possibility of exempting shareholder/employees of a corporation from State unemployment insurance taxes. Provisions which currently accomplish this intent in several states are briefly described below.

California Sole stockholders of corporations are exempt from State unemployment insurance taxes.

Colorado Corporate officers with a majority or controlling interest in the corporation are exempt from State unemployment insurance taxes.

Iowa Shareholder/employees are exempt from State unemployment insurance taxes only if the employer is not subject to the Federal Unemployment Tax Act (FUTA). Attachments to this memorandum define employee for the purpose of FUTA coverage.

Minnesota Shareholder/employees of family agricultural corporations are exempt from State unemployment insurance taxes.

Delaware Officers of corporations performing civil or social functions are exempt from State unemployment insurance taxes if the officers work on a part-time basis and are paid no more than \$75 per week.

Washington Corporate officers may elect exemption from State unemployment insurance taxes if the corporation is not a non-profit or government corporation.

Representative Barnes
 January 22, 1982
 page 2

Primary differences among State laws concern the requirements for exemption and whether the exemption is mandatory or optional. Corporate officer status and/or controlling, majority, or sole interest in the corporation are minimum qualifications in most states. The degree of corporate control required for exemption was not specified for Iowa.

In all cases, the exemption is accompanied by loss of FUTA tax credits on services performed by those exempted from State taxes. That is, if the exemption were in effect, the federal unemployment insurance tax rate would increase from a rate of .7 percent to a rate of 3.4 percent on the first \$6,000 of earnings. Assuming annual earnings exceed Alaska's taxable wage base of \$14,600, exemption would provide a net gain to the shareholder/employee of \$118 to \$650 per year, depending on the State tax rate assigned. The table below describes the effects of exemption on employers with minimum and maximum tax rates assigned by the Alaska Department of Labor.

Effect of Exemption from State Unemployment Insurance Taxes
 Alaska 1982

	minimum tax rate (1.22%)		maximum tax rate (4.86%)	
	current law	with exemption	current law	with exemption
FUTA tax	\$ 42	\$204	\$ 42	\$204
employer share	178	0	710	0
employee share	<u>102</u>	<u>0</u>	<u>102</u>	<u>0</u>
TOTAL	\$322	\$204	\$854	\$204
net change		\$118		\$650

As you are aware, unemployment insurance is an extremely complex subject. If the terminology or law require further explanation, I will be happy to offer my assistance.

Attachments

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS for House Bill No. 726 (L & C)

Title "An Act providing for an exemption from the Alaska Employment Security . . ."

Requested by Senate Labor & Commerce Date 4/5/82

II. FISCAL DETAIL

Agency Affected Labor

Program Category Affected Social Services

BRU, Program, or Subprogram(s) Affected Employment Security

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

No fiscal impact.

IV. DATE 4/5/82

PREPARED BY Nice Bus, Finance Officer

AGENCY Labor

PHONE 465-2720

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)