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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. 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.



Alaska State Legislature

Senate

Official Business

Labor & Commerce Committee

Pouch V
State Capitol
Juneau, Alaska 99811

CS HB 726:

Exempts certain employees of Alaskan corporations from the Alaska Employment Security Act. Criteria for exemption:

- 1) Employee must be an executive officer of the corporation
- 2) Employee must own 25% or more of the voting securities of the corporation
- 3) Employee must agree

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
Mary Margaret Brady



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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

January 22, 1982

MEMORANDUM

TO: Representative Ramona 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
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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	102	0	102	0
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

for the first time under 26 U.S.C. 3304(a) an unemployment compensation law sub-

mitted to him by the Virgin Islands." See revisor's note above.

NOTES TO DECISIONS

Place of business. — Premises leased by a lumber mill operator for the purpose of hiring workers to harvest the timber thereon to be delivered to the mill for processing were considered a place of business for the purpose of unemployment tax liability. *Clayton v. State*, Sup. Ct. Op. No. 1890 (File No. 4116), 598 P.2d 84 (1979).

Discretion of department of labor under subsection (a)(10). — It is evident from the statutory requirement of a showing "to the satisfaction of the department" under subsection (a)(10) that the Department of Labor is vested with broad discretion in deciding whether an "employment" relationship exists. *Clayton v. State*, Sup. Ct. Op. No. 1890 (File No. 4116), 598 P.2d 84 (1979).

Proof required under subsection (a)(10). — Under subsection (a)(10) of this section, a business proprietor must prove the factors listed in (A), (B) and (C) to win an exemption from the tax. *Clayton v. State*, Sup. Ct. Op. No. 1890 (File No. 4116), 598 P.2d 84 (1979).

Where an employer could not demonstrate that workers hired for a particular job were customarily entrepreneurs engaged in an independently established business, but that the unavailability of work created unemployment for them, he failed to carry the burden of proof to establish the requirements of subsection (a)(10)(C) of this section. *Clayton v. State*, Sup. Ct. Op. No. 1890 (File No. 4116), 598 P.2d 84 (1979).

Sec. 23.20.526. Exclusions from definition of "employment."
(a) In AS 23.20.005 — 23.20.535, unless the context otherwise requires, "employment" does not include

(1) domestic service in a private home, except as provided in AS 23.20.525(a)(15);

(2) newsboys' services in selling or distributing newspapers on the street or from house to house;

(3) service not in the course of the employing unit's trade or business performed in a calendar quarter by an individual, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employing unit to perform the service; an individual is here considered to be regularly employed to perform service not in the course of an employing unit's trade or business during a calendar quarter only if he performs the service for some portion of the day on each of some 24 days during the quarter or during the preceding calendar quarter;

(4) service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 18 in the employ of his father or mother;

(5) service with respect to which unemployment insurance is payable under an unemployment insurance program established by an Act of Congress;

(6) service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(7) service performed in the employ of an instrumentality wholly owned by a foreign government if

(A) the service is of a character similar to that performed in foreign countries by employees of the United States government or its instrumentalities; and

(B) the department finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and its instrumentalities;

(8) service performed by an insurance agent, insurance solicitor, a real estate broker, a real estate salesman or a securities salesman to the extent he is compensated by commission, unless the service is required to be covered under the Federal Unemployment Tax Act as amended;

(9) notwithstanding AS 23.20.525(a)(11), service performed by an officer or member of the crew of an American vessel on or in connection with the vessel, if the operating office, from which the operations of the vessel operating on navigable waters inside or outside the United States are ordinarily and regularly supervised, managed, directed and controlled, is outside this state;

(10) service performed on or in connection with a vessel not an American vessel by an individual if he performed service on and in connection with the vessel when outside the United States;

(11) service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by AS 23.20.005 — 23.20.535, except that to the extent that the Congress of the United States permits states to require an instrumentality of the United States to make payments into an unemployment fund under a state employment security law, all of the provisions of AS 23.20.005 — 23.20.535 apply to the instrumentalities, and to service performed for the instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and service; however, if this state is not certified for any year by the Secretary of Labor under § 3304(c) of the Federal Unemployment Tax Act, the payments required of the instrumentalities with respect to the year shall be refunded by the department from the fund in the same manner and within the same period as is provided in AS 23.20.225 with respect to contributions erroneously collected;

(12) service performed in the employ of another state, or political subdivision of another state, or an instrumentality of another state or political subdivision which is wholly owned by another state or its political subdivision, or a service performed in the employ of an instrumentality of another state or its political subdivisions to the extent that the instrumentality is, with respect to the service, exempt under the Constitution of the United States from the tax imposed by § 3301 of the Federal Unemployment Tax Act;

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

(14) service covered by an election approved by the agency charged with the administration of any other state or federal employment security law, in accordance with an arrangement under AS 23.20.090(a) during the effective period of the election;

(15) service performed by an individual in agricultural labor, except as provided in AS 23.20.525(a)(16); the term "agricultural labor" means remunerated service

(A) on a farm, in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(B) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of the farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of the service is performed on a farm;

(C) in connection with the production or harvesting of any commodity defined as an agricultural commodity in sec. 15(g) of the Agricultural Marketing Act, as amended (46 Stat. 1550, sec. 3; 12 U.S.C. 1141j), or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(D) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if the operator produced more than one-half of the commodity with respect to which the service is performed except as stated in (b) of this section;

(E) in the employ of a group of operators of farms (or a cooperative organization of which the operators are members) in the performance of service described in (D) of this paragraph, but only if the operators produced more than one-half of the commodity with respect to which the service is performed;

(F) on a farm operated for profit if the service is not in the course of the employer's trade or business.

(16) Repealed by § 25 ch 122 SLA 1977.

(17) service performed after December 31, 1971, by nurses, technicians, and other professional employees of hospitals no part of the net earnings of which inures to the benefit of a private shareholder or individual, unless the service is required to be covered under the Federal Unemployment Tax Act;

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(18) Repealed by § 25 ch 122 SLA 1977.

(19) Repealed by § 80 ch 9 SLA 1980.

(20) service performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life under an arrangement with the owner or operator of that boat under which

(A) that individual does not receive any cash remuneration except as provided in (B) of this paragraph;

(B) that individual receives a share of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of that catch; and

(C) the amount of that individual's share depends on the amount of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life; but only if the operating crew of that boat (or each boat from which the individual receives a share in the case of a fishing operation involving more than one boat) is normally made up of fewer than 10 individuals.

(d) For the purposes of AS 23.20.525(a)(4), (5), (6) and (14), the term "employment" does not apply to service performed

(1) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by the order;

(2) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving the rehabilitation or remunerative work;

(3) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or any agency of a state or political subdivision of the state, by an individual receiving work relief or work training;

(4) for a state hospital by an inmate of a prison or correctional institution;

(5) in the employ of a school, college, or university, if the service is performed by a student who is enrolled and is regularly attending classes at the school, college or university;

(6) by an individual under the age of 22 who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at the institution, which combines academic instruction with work experience, if the service is an integral part of the program, and the institution has so certified to the employer, except that this para-

graph does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(7) in the employ of a hospital, if the service is performed by a patient of the hospital, as defined in AS 23.20.520;

(8) in the employ of the state or a political subdivision of the state if the service is performed by an individual in the exercise of duties:

(A) as a "public official" as defined in AS 39.50.200(1) or any other elected official;

(B) as a member of the Alaska Army National Guard or Alaska Air National Guard or Alaska Naval Militia; or

(C) as an employee serving on only a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency.

(9) in the employ of

(A) a church or a convention or association of churches; or

(B) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or a convention or association of churches.

(am § 1 ch 55 SLA 1976; am §§ 19 — 23, 25 ch 122 SLA 1977; am § 80 ch 9; am § 3 ch 145 SLA 1980)

Effect of amendments. — The 1977 amendment added "except as provided in AS 23.20.525(a)(15)" to the end of paragraph (1) of subsection (a); in paragraph (15) of subsection (a), inserted "except as provided in AS 23.20.525(a)(16)" in the introductory language and deleted "or is domestic service in a private home of the employer" at the end of subparagraph (F); substituted "AS 23.20.525(a)(4), (5), (6) and (14)" for "§ 525(a)(4), (5) and (6)" in the introductory language of subsection (d); added paragraph (8) to subsection (d); added paragraph (20) to subsection (a); repealed paragraphs (16) and (18) of subsection (a), which read "except as provided in § 525(a)(4) of this chapter, service performed in the employ of the state or a political subdivision of the state unless coverage is elected under § 325 or § 226 of this chapter" and "service performed by employees of state-assisted agricultural fairs," respectively.

The first 1980 amendment repealed paragraph (19) of subsection (a).

The second 1980 amendment added paragraph (9) of subsection (d).

As the rest of the section was not affected by the amendments, it is not set out.

Editor's notes. — Section 35 of ch. 122 makes § 23 of the act effective June 15, 1977, in accordance with AS 01.10.070(c) and retroactive to April 1, 1977, except that § 23 shall become inoperative and

void "if the United States Secretary of Labor, within 30 days after the effective date of this Act, finds that the provisions of this Act do not meet the requirements of section 1207(e) of the Tax Reform Act of 1976 (P.L. 94-455) and section 3306(c) of the Federal Unemployment Tax Act (26 U.S.C. 3306(c)). The amendment made by § 23, ch. 122, SLA 1977, is effective because the finding described in § 35, ch. 122 SLA 1977, was not made by the Secretary of Labor within the 30-day period.

Section 27, ch. 122, SLA 1977, provides: "(a) Notwithstanding the provisions of AS 23.20.350, benefits may be paid to an individual after December 31, 1977 on wages earned by that individual in a category of employment which was not covered under AS 23.20 [AS 23.20.005 -- 23.20.535] at any time during calendar year 1975 and which was service which is covered under AS 23.20 [AS 23.20.005 — 23.20.535], effective January 1, 1978, as the result of enactment of sec. 19 of this Act.

"(b) An employing unit which elects to make payments in place of contributions as provided in AS 23.20.278, as enacted by sec. 3 [4] of this Act, is not liable to make those payments with respect to benefits paid to an individual as a result of the operation of (a) of this section to the extent that the unemployment compensation fund is reimbursed for those benefits under sec. 121 of P. L. 94-566."

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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)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME						
PART TIME						
TEMPORARY						

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

No fiscal impact.

IV. DATE 4/5/82

PREPARED BY Nico Bus, Finance Officer

AGENCY Labor

PHONE 465-2720

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)