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# COMMITTEE REPORT

## SENATE

FURTHER: None

1/15/81

Date: 23 MARCH 1981

Mr. President:

The Committee on LABOR & COMMERCE has had SB 85

permitting a minor under age of 18 to be employed in occupation in which a strike or lockout is in progress

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
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

Bob Mulcahy

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MEMBERS HAVING  
OTHER RECOMMENDATIONS:

Quinn - No Rec.

Robert King - No Rec.

John Foley - No Rec.

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Bob Mulcahy  
CHAIRMAN

# Minors can picket, can't work

by Clark Brooks  
Times Writer

Kids are people, too, goes the civil liberties cry, but a state labor law has some Anchorage youngsters wondering about their rights.

The Proctor's Grocery chain, whose Retail Clerks Union employees have been on strike since late August, was forced to lay off 15 teen-age box boys and maintenance workers Wednesday because of a state law that says its too dangerous for minors to cross picket lines. However, the law does not prohibit minors from picketing.

"It sounds to me like it's a violation of equal protection." Anchorage attorney Collin Middleton said today. "If you have a law that says it's OK to picket but not OK to work, how do you justify that?"

"I'm highly upset," said Robert Swanson, whose son Darrell Karpstra is among those out of a job today. "If a minor can picket, there's no reason he can't work. Darrell has worked at Proctor's a year and a half and never missed a day. I'm willing to get the other parents together, get a lawyer and take this thing to court."

Another youngster who lost his job, 15-year-old Scott Edgar, said the law violates his civil rights. He also criticized the law's double standard and questioned its validity.

"I feel that it's not right at all," he said today. "If I'm not allowed to work then why are kids under 18 allowed to picket? The law says it's dangerous to be working because you'll get beat up or something by the picketers. But it's not like that. I

know most of the people picketing and they wouldn't hurt anybody."

Edgar, who earned \$4.20 an hour as a box boy, called the state Department of Labor to find out why minors can picket but aren't allowed to work. He was told that the union assured the Labor Department that no minors were on the line. Union labor relations consultant Bob Bacolas Sr. told The Times this morning that he didn't know of any minors picketing.

Edgar, however, said there were several, including his neighbor, 16-year-old Kevin Spannagel. Linda Spannagel, Kevin's mother, confirmed today that her son has been picketing.

State Department of Labor official Dale Cheek said this morning that minors "have a right to picket but don't have a right to work." The reason he said, is that the youngsters on strike are not on the Proctor's payroll. The Labor Department, Cheek said, is investigating reports that the union has hired minors to picket, which is illegal.

Proctor's owner Orville Proctor said his main concern is how the layoffs will affect the youngsters.

"I think these kids are getting punished more than anyone else. That's the thing I hate about it. It's hurting the kids. It's not really hurting our company that much."

Parry Grover, Proctor's attorney, said the company has requested the Labor Department to review the matter. However, he said he doesn't intend to take the issue to court.

Grover said he was surprised when the state ordered enforcement of the law.

"It's been on the books a long time," he said, "and my understanding is that it's usually overlooked. This time it wasn't."

The Labor Department ordered the layoffs after receiving from Proctor's a routine request to approve employment of two minors.

October 7, 1980

8215 East Second Avenue  
Anchorage, AK 99504

Senator M.E. Dankworth  
2425 Hialeah Drive  
Anchorage, AK 99503

Dear Senator Dankworth:

Our son James G. Anderson has been working part-time for Proctors Country Supermarkets in Anchorage since August of 1978. This includes part-time during the school year and approximately 30 hours per week during the summer school vacation. In August 1980 the Retail Clerk's Union went on strike against Proctors. Our son decided to cross the picket line and continued to work. On October 1, 1980 our son was layed off based on the State Department of Labor's notifying Proctors that it was illegal for a minor to work in a business establishment where a strike is in progress "8AAC 05.250" which reads as follows:

OCCUPATIONS IN ANY INDUSTRY WHERE A STRIKE OR LOCKOUT IS IN PROGRESS. Work in any industry where a strike or lockout is in progress is dangerous and prohibited to minors under 18 years of age.

The law is clear and it's simply forced Proctors to take action by laying off all employees under 18 years of age. Interestingly enough the law does not apply to the striking picketers. The Retail Clerk's Union has a number of picketers under the age of 18 who continue to picket, continue to be paid and even continue to receive work credit from the local high school. In our son's case he loses this work credit.

As you might guess it's pretty difficult to convince a 17 year old that the system is fair when juvenile strikers can picket, get paid and receive school credit but the person who crosses the picket line and supports private enterprise gets layed off and loses salary, benefits and school credit. We've taught our son to be law abiding and support private enterprise but these obvious contradictions in the law make it difficult.

My recommendations are that 8AAC 05.250 be repealed. I believe that parents and employers can make a fair determination on the danger to juveniles during a strike situation and take appropriate action. An alternative course of action would be to modify the regulation to include all juveniles both picketers and working employees but I strongly feel the first course of action is the best.

October 7, 1980

I urge you to take whatever action necessary to repeal this unfair labor orientated regulation that makes no sense to private enterprise or the general public. Thank you in advance for your support.

Sincerely yours,

A handwritten signature in cursive script that reads "Christiane G. Anderson".

C.G. Anderson

CGA/cn

# PROCTOR'S GROCERY

7943 Duben St. Anchorage AK 99504. Phone 333-8488

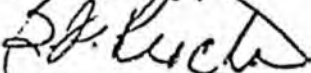
October 6, 1980

Senator Ed Dankworth  
2425 Hialeah Drive  
Anchorage, Alaska 99503

Dear Senator Dankworth;

I am writing with reference to the labor law that has recently been enforced at our grocery stores in regard to the minors not being able to work due to the current strike but yet they can carry a picket sign. If in fact this law was made to protect the youth from violence during a strike how then can we justify allowing them to be right in the firing line?? Also, are there so many "violent" actions taken during strikes to warrant a law that tells our young people it's better to walk a picket line than to earn a days pay for a days work? Then too I think this law is extremely discriminitory..If age nineteen you can work but if you happen to be seventeen you may not. I am not a parent but certainly concerned with the welfare of the young people and I sure don't think this law is doing them any kind of justice. At the age of seventeen it would not be too far out to think that some of these kids are buying cars or even not living at home. How are they to meet their responsibilities? I urge you to do your best to get rid of this unreasonable law. Thank you very much for any help you can give the kids.

Sincerely,



Bonnie J. Proctor

TO: Dale Cheek  
Wage & Hour Division  
Department of Labor

DATE: January 5, 1980  
ALASKA DEPT. LABOR  
RECEIVED  
FILE NO: J-66-354-81  
JAN 6 '81  
TELEPHONE NO: 465-3603

FROM: WILSON L. CONDON  
ATTORNEY GENERAL

SUBJECT: Minor's Right to Work  
During Strike

By: *T.M. Botelho*  
Bruce M. Botelho  
Assistant Attorney General

You have requested that this department review the legal basis of 8 AAC 05.250. That regulation provides:

8 AAC 05.250. OCCUPATIONS IN ANY INDUSTRY WHERE A STRIKE OR LOCKOUT IS IN PROGRESS. Work in any industry where a strike or lockout is in progress is dangerous and prohibited to minors under 18 years of age.

AS 44.62.030 declares in part that "no regulation adopted is valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute."

The cited authority for 8 AAC 05.250 is AS 23.10.350 and AS 23.10.360. There are set forth below:

Sec. 23.10.350. EMPLOYMENT OF CHILDREN UNDER 18. (a) No minor under 18 years of age may be employed or allowed to work

- (1) more than six days a week;
- (2) in hazardous excavation, or underground in mines; or as hoisting engineer in mines; or
- (3) in an occupation dangerous to life or limb or injurious to his health.

(b) If the commissioner determines that the duties to be performed by the minor would not unduly endanger the life, limb, or health of the minor and if the employment meets the conditions of wages and hours prevailing for the majority of the employees in the industry at the time of employment, the commissioner may grant an exemption in writing from (a) of this section for a minor 16 - 18 years of age

at those duties

(1) outside school hours, or while on school vacation, if the minor is attending school; or

(2) if the minor is no longer attending school.

Sec. 23.10.360. REGULATIONS FOR MINIMUM STANDARDS AND WORK OPPORTUNITIES. (a) The department may, from time to time after public notice and hearing, promulgate rules, regulations and orders establishing minimum standards for safety, working conditions, kind and extent of work in various phases of the respective fields of employment, maximum hours for the day and week, and minimum rates of pay, and other reasonable safeguards compatible with the welfare of all minors covered by §§ 325 - 370 of this chapter.

(b) The department shall make cooperative arrangements with other state and federal agencies and shall promulgate the regulations which are necessary to provide opportunities for work experience in safe and healthful occupations for minors.

(c) The department shall, after notice and hearing, promulgate regulations authorizing the employment of minors under 18 years of age and exempting appropriate employers from the reporting requirements of § 332 of this chapter.

While AS 23.10.350 does not appear to support 8 AAC 05.250, AS 23.10.360 expressly confers authority on the department to adopt regulations providing for "reasonable safeguards compatible with the welfare of. . . minors."

In 8 AAC 05.250 the department determined that minors should not be employed on business premises during a strike or lockout because of the risk of violence. This determination is compatible with AS 23.10.360 and the general purpose of child labor laws, to prevent injury to minors. Ramos v. County of Madra, 94 Cal. Rptr. 421, 484 P.2d 93 (Cal. 1971), Lopanic v. Berkeley Cooperative Gin Co., 191 S.2d 108 (Miss. 1966).

We do not believe a significant equal protection issue is raised by the mere fact that minors may take part in a strike while being prohibited from working on the premises in light of the fact that the legislature has conferred authority on the department only to regulate the employment of minors.

BMB/jal

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 23, 1981

SUBJECT: Minor picketing  
(Work Order No. 12-1204)

SB 85

TO: Senator Bob Mulcahy

FROM: *EHA* Linn H. Asper  
Legislative Counsel

You have asked if a statute prohibiting persons under the age of 18 from picketing in a peaceful strike or lockout will present constitutional problems with regard to picketing. The general rule is:

A statute or ordinance may, in the exercise of police power, authorize, and reasonably restrict and regulate, picketing, in order to avert some definite substantial danger clearly arising from the picketing, provided it does not deprive the citizen of his fundamental rights. Regulation by statute or ordinance must have a reasonable basis, and the regulations limiting or restricting the picketing must not be unreasonable or discriminatory. 51A C.J.S., Labor Relations, sec. 267.

Although the state has power to restrict the activities of minors, it appears that the restriction posed by your request is without justification. A peaceful strike presents no inherent substantial danger to a minor, and restricting the minor's right to participate would clearly deprive him of the fundamental right of freedom of expression. A Supreme Court case discusses in detail the types of things which constitute a reasonable basis for restricting the right to picket. These include prevention of disorder, restraint of coercion, protection of life or property, and promotion of general welfare. Edwards v. Commonwealth, 60 S.E.2d 916, 191 VA 272. There appears to be no connection between these justifications for restricting a minor's right to picket and to participate in a peaceful strike.

Senator Bob Mulcahy  
Page 2  
March 23, 1981

It has also been held that a state may enjoin peaceful picketing if it is done to enforce a valid public policy. Burr v. N.L.R.B., 321 F.2d 612 (1963). Again, there appears to be no policy sufficient to justify arbitrary discrimination against laborers under the age of 18.

One qualification to my opinion that minors cannot be barred from picketing in a peaceful strike is that determining that a strike is going to be peaceful may be quite difficult, and if there is even a moderate risk that the picketing could result in violence, the state could step in to protect minors by refusing to allow them to participate in a potentially dangerous situation.

LHA:ljb

# STATE OF ALASKA

## DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

P. O. BOX 1149  
JUNEAU, ALASKA 99811

Phone: 465-2700

January 20, 1981

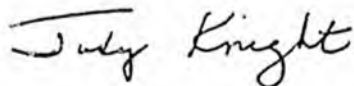
Honorable M. E. Danforth  
Alaska State Senator  
Pouch V  
State Capitol  
Juneau, Alaska 99811

Dear Senator Dankworth:

Enclosed for your information is a Department of Labor Position Paper on Senate Bill 85, which deals with the employment of minors in workplaces where a strike or lockout is in progress.

If you have any questions, please let me know.

Sincerely,



Judy Knight  
Legislative Liaison

Enclosure

cc w enc: Senate Labor & Commerce Committee

JAN 21 1981

Bill No. Senate Bill 85

Date January 20, 1981

Title "An Act permitting a minor under the age of 18 to be employed in an occupation in which a strike or lockout is in progress."

Contact: Judy Knight  
465-2700  
Dale W. Cheek  
465-4870

This bill would clarify AS 23.10.350(3) in that it would specify that a minor under the age of 18 working in a place where a strike or lockout was in progress would not necessarily be in "an occupation dangerous to life or limb or injurious to health" per se. This would also bring our law into conformity with the Fair Labor Standards Act because that act and the regulations promulgated to implement it do not prohibit a minor from working in a place where a strike is in progress, if the occupation is otherwise permissible.

If this bill is passed into law it would appear that the Commissioner of Labor could still determine that a minor working where a strike or lockout was in progress could be endangered if that particular strike or lockout manifested into violence or because of the intensity of the situation. So, under certain conditions minors could still be prohibited from working in strike situations.

Departmental Position: Neutral

Fiscal Impact: -0-

# STATE OF ALASKA

## DEPARTMENT OF LABOR

WAGE AND HOUR DIVISION

JAY S. HAMMOND, GOVERNOR

P.O. BOX 630  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-4870

January 9, 1981

The Honorable Ed Dankworth  
Alaska State Legislature  
Alaska State Senate  
Pouch V  
Juneau, Alaska 99811

Re: 8 AAC 05.250 OCCUPATIONS IN ANY INDUSTRY WHERE A STRIKE  
OR LOCKOUT IS IN PROGRESS.

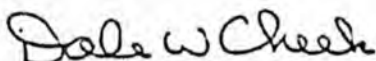
Dear Senator Dankworth:

A member of your staff, Ms. Theresa Friend, who was doing research on the regulation in question requested that I furnish you with a copy of the Attorney General's Opinion. I have just recently received a copy of Mr. Bruce M. Botelho's Opinion File No. J-66-354-81.

The opinion by Mr. Botelho sets out the Department position that was followed throughout this strike at Proctor's. I felt from the first that we had no authority over those minors who volunteered to walk the picket line as long as they did not received a salary; because the Statutes and Regulations refer to "employed by", "working at", and other terms relating to a employer/employee relationship. Although it appeared to be blatantly unfair to remove minors who were working and allow minors to picket I did not think then and I do not think now that the Department of Labor had any authority over those volunteer pickets.

If you are contemplating revisions to the Statutes or Regulations, I would appreciate the opportunity to work with your staff. If I can be of further service in this matter, please advise.

Very truly yours,



Dale W. Cheek  
Director  
Wage and Hour Division

DWC/jep  
cc: Commissioner Orbeck  
Enclosure



Official Business

# Alaska State Legislature

Senate

Committee on Labor & Commerce

Peuch V  
State Capitol  
Juneau, Alaska 99811

Summary - SB 85 by Senator Dankworth

"An Act permitting a minor under the age of 18 to be employed in an occupation in which a strike or lockout is in progress."

Title explains intent of legislation. No fiscal impact. This subsection permits a minor to work where a strike is in progress but requires the Commissioner of Labor's approval as to the safety of the situation.

The Department of Labor has provided a position paper in which they state that they are neutral regarding the subject.

Attached:

Copy of the Bill

Copy of the affected Statute

Dept. of Labor Position Paper

Backup material relating to reason for legislation



Official Business

# Alaska State Legislature

## Senate

### Committee on Labor & Commerce

Pouch V  
State Capitol  
Juneau, Alaska 99811

March 23, 1981

#### COMMITTEE MEETING MINUTES

The meeting was called to order at 3:09 P.M. by Chairman Mulcahy. Those present were: Senators Hokman, Ziegler, Fahrenkamp and Rodey.

First on the agenda was SB 200 "An Act relating to the fisheries business tax (AS 43.75.015); and providing for an effective date."

Senator Dick Eliason addressed SB 200, explaining the background of the fisheries business tax, and that the tax is retroactive for two years. (tape reading 010 to 272)

Mr. Gary Jenkins, Director of the Audit Division, Department of Revenue testified on the problems with administering the bill; fish buyers are not always identifiable. Suggested language-salmon must be sold to a licensed processor; easier to administer. (tape reading 275 to 458)

Mr. Lewis Schnaper representing the Alaska Trollers Association testified in support of SB 200, stating that the class of fishermen who have made substantial investments, 50 to 75 trollers with freezing capacities would be impacted; less economical to freeze but the quality speaks to the need. The Canadians recognize the value of sea frozen salmon, and it is the most effective use of a fishermans fuel.

Senator Pat Rodey offered proposed language; frozen salmon must be transferred to a licensed buyer.

Chairman Mulcahy moved we accept Senator Rodeys amendment and move SB 200 as amended. (tape reading 570)

Next on the agenda was SB 81 "An Act increasing the number of directors of the Alaska Housing Finance Corporation."

This bill was brought up for discussion; Senator Ziegler questioned the need for the bill, Senator Mulcahy offered background on the bill, and it was decided to hold the bill for later. (tape reading 580 to 630)

page 2  
Senate L & C minutes  
March 23, 1981

Next on the agenda was SB 85 "An Act permitting a minor under the age of 18 to be employed in an occupation in which a strike or lockout is in progress."

Chairman Mulcahy offer background testimony, and addressed the constitutionality of the rights of minors to picket. Chairman Mulcahy proposed we move the bill and Senator Hohman recommended the bill move from Committee. (tape reading 634 to 653)

Next on the agenda was SB 282 "An Act relating to the legal rate of interest."

Mr. Fred Koken, First Vice-President of Foster and Marshall testified on SB 282, elaborating on the problems with SB 19 usury rates, and how the bill did not reflect the needs of his industry. The policy on interest at Foster & Marshall is dictated by competition in the industry. (tape reading 678 to 830)

Committee ~~action on~~ <sup>moved</sup> SB 282 was ~~"Do Pass"~~

Next on the agenda was SB 172 "An Act relating to Uniform Commercial Code filings; and providing for an effective date."

There was no testimony and it was recommended that we hold the bill for further work. (tape reading 660 to 669)

The meeting was adjourned by Chairman Mulcahy at 3:50 P.M.

mates are entitled to a minimum  
McGinnis v. Stevens, Sup. Ct. Op.  
07 (File Nos. 2255, 2312), 543 P.2d  
1975).  
plied in Alaska Int'l Indus., Inc. v.  
ra, Sup. Ct. Op. No. 1966 (File Nos.  
676, 602 P.2d 1240 (1979).

ive regulations.

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File Nos. 3652, 3676), 602 P.2d  
70).

McGinnis v. Stevens, Sup. Ct.  
207 (File Nos. 2255, 2312), 543  
(1975).

Women.

employment.

d.

Editor's note. — The repealed section  
derived from § 7, ch. 117, SLA 1965.

Article 7. Employment of Children.

Section	Section
332. Authorization for children under 17 to work	350. Employment of children under 18
340. Children under 16	355. Persons under 19
345. [Repealed]	360. Regulations for minimum standards and work opportunities

Sec. 23.10.332. Authorization for children under 17 to work. Except for employment exempted under AS 23.10.330 and other employment specifically exempted by regulations adopted by the department, no minor under 17 years of age may be employed or allowed to work without the written authorization of the commissioner unless authorized under AS 23.10.360. The department shall adopt regulations necessary to implement this section. (§ 3 ch 112 SLA 1976)

Sec. 23.10.340. Children under 16.  
(b) Repealed by § 7 ch 112 SLA 1976.  
(am § 7 ch 112 SLA 1976)

Effect of amendment. — The 1976 amendment repealed subsection (b), which read "No minor under 16 years of age may be employed or allowed to work in a restaurant." As the rest of the section was not affected by the amendment, it is not set out.

Sec. 23.10.345. Exemptions for minors over 16 or who have graduated from high school.  
Repealed by § 7 ch 112 SLA 1976.

Cross references. — As to authorization for children under 17 to work, see AS 23.10.332. As to employment of children under 18, see AS 23.10.350. For provisions authorizing employment of minors on licensed premises of a hotel or restaurant, see AS 04.15.020(h).  
Editor's note. — The repealed section derived from § 2, ch. 73, SLA 1949; § 1, ch. 28, SLA 1951; § 1, ch. 26, SLA 1964.

Sec. 23.10.350. Employment of children under 18. (a) No minor under 18 years of age may be employed or allowed to work

- (1) more than six days a week;
- (2) in hazardous excavation, or underground in mines; or as hoisting engineer in mines; or
- (3) in an occupation dangerous to life or limb or injurious to his health.

(b) If the commissioner determines that the duties to be performed by the minor would not unduly endanger the life, limb, or health of the minor and if the employment meets the conditions of wages and hours prevailing for the majority of the employees in the industry at the time

of employment, the commissioner may grant an exemption in writing from (a) of this section for a minor 16 — 18 years of age to work at those duties

SB 85

(1) outside school hours, or while on school vacation, if the minor is attending school; or

(2) if the minor is no longer attending school. (§§ 2, 3 ch 73 SLA 1949; am §§ 1, 2 ch 28 SLA 1951; § 4 ch 73 SLA 1949; am § 64 ch 127 SLA 1974; am § 4 ch 112 SLA 1976)

Effect of amendments. — The 1974 amendment deleted "if the minor is a girl" from the beginning of paragraph (3) of this section as it existed prior to the 1976 amendment.

The 1976 amendment rewrote this section.

Premise behind present paragraph (3) of subsection (a). — The child labor laws, and present paragraph (3) of subsection (a) of this section in particular, are premised in part on the notion that a child is not competent to assess the risks of personal injury and exploitation attendant in the performance of hazardous activities. Whitney-Fidalgo Seafoods, Inc. v. Beukers, Sup. Ct. Op. No. 1277 (File No. 2654), 554 P.2d 250 (1976).

Illegally-employed child may assert common-law rights against employer.

— Where an employer has knowingly entered into an illegal contract of employment with a child, in express violation of a statute, the employer will not be permitted to insist that a child is an "employee" within the terms of

Workmen's Compensation Act, so that the child can no longer assert its common-law rights against the employer. Whitney-Fidalgo Seafoods, Inc. v. Beukers, Sup. Ct. Op. No. 1277 (File No. 2654), 554 P.2d 250 (1976).

Absent any evidence of a conscious intent on her part to choose compensation benefits, an illegally employed minor cannot be held to have waived her right to a common-law remedy. Whitney-Fidalgo Seafoods, Inc. v. Beukers, Sup. Ct. Op. No. 1277 (File No. 2654), 554 P.2d 250 (1976).

And AS 23.30.055 does not bar common-law damage action by such child. — AS 23.30.055, the exclusive liability provision of the Alaska Workmen's Compensation Act, does not bar a common-law damage action when such an action is brought against an employer by a person who was employed in violation of child labor laws at the time of injury. Whitney-Fidalgo Seafoods Inc. v. Beukers, Sup. Ct. Op. No. 1277 (File No. 2654), 554 P.2d 250 (1976).

Sec. 23.10.355. Persons under 19. No person under 19 may be employed or allowed to sell or serve intoxicating liquors or to work in any room or other place where intoxicating liquors are sold for consumption on the premises, except as provided in AS 04.15.020(b). (§ 3 ch 73 SLA 1949; am § 2 ch 28 SLA 1951; am § 24 ch 245 SLA 1970; am § 5 ch 112 SLA 1976)

Effect of amendment. The 1976 amendment substituted "AS

04.15.020(h)" for "AS 04.15.020(d)" at the end of the section.

Sec. 23.10.360. Regulations for minimum standards and work opportunities.

(c) The department shall, after notice and hearing, promulgate regulations authorizing the employment of minors under 15 years of age and exempting appropriate employers from the reporting requirements of § 332 of this chapter. (am § 6 ch 112 SLA 1976)

127 71

Supplement

127 73