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STATE OF ALASKA
THE LEGISLATURE

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JUNEAU, ALASKA 99811
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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	4/9/86	1:30 pm	
"	"	4/10/86	8 AM
"	"	4/18/86	1:30 PM

ANALYSIS OF HB 329
 Prepared by NATIONAL FEDERATION OF Independent Business
 Prepared 4-18-85

Employer Unemployment Costs

Assume: A business with a total of 8 employees, three of which are high school students. The salaries are as follows:

Manager -	\$ 35000
4 Employees @ an Average Salary of \$18,000	72000
3 Teenagers @ an Average of \$5,000 each	15000
	\$122000

	CURRENT LAW	Proposed LAW
<u>STATE Unemployment:</u>		
1 emp. @ 21,800	\$ 21,800	\$ 21,800
4 emp. @ 18,000	72,000	72,000
3 emp. @ 5,000	15,000	15,000
	122,000	93,800
Assume UI rate of 3%	x .03	x .03
<u>TOTAL STATE UI PAID</u>	\$ 3,660	\$ 2,814

<u>FUTA:</u>		
5 emp. @ 7,000	\$ 35,000	\$ 35,000
3 emp. @ 5,000	15,000	15,000
	50,000	50,000
FUTA rate - .8%	x .008	FUTA MAX. @ 6.2% x .062
<u>TOTAL FUTA</u>	400	3,100

Less STATE credit
 $93,800 \times .054 = 2,814$
 $5,065 - 2,814 = 2,251$
 $2,251 + 2,814 = 5,065$
 Credit Limited TO
 $5.4\% \text{ of } 50,000 = 2,700$

TOTAL FUTA TAX: 400

<u>TOTAL UI T. PAID:</u>		
STATE	\$ 3,660	\$ 2,814
Federal	400	400
<u>TOTAL</u>	\$ 4,060	\$ 3,214

SAVING of \$ 846.00

BACKGROUND OF HB 329

YOUNG PEOPLE CONTRIBUTE TO THE UNEMPLOYMENT COMPENSATION PROGRAM WHEREVER THEY WORK UNLESS THEY ARE WORKING FOR THEIR FOLKS AND ARE UNDER 18.

SOME OF THESE YOUNG PEOPLE PUT THEMSELVES THROUGH SCHOOL BY WORKING PART TIME FOR SOME ONE OTHER THAN THEIR OWN PARENTS. THEY MAKE THEIR CONTRIBUTIONS TO THE UNEMPLOYMENT COMPENSATION PROGRAM BUT THEY DON'T WORK ENOUGH QUARTERS TO BE ABLE TO DRAW ANY BENEFITS. THIS BILL WILL EXEMPT THOSE PEOPLE UP TO THE AGE 19 AND WORKING ON A PART TIME BASIS FROM CONTRIBUTING.

THIS BILL HAS BEEN NEEDED FOR YEARS AND WILL ALLOW MORE TAKE HOME PAY FOR THE PERSON WORKING PART TIME WHO CAN'T DRAW ANY BENEFITS FROM UNEMPLOYMENT COMPENSATION.

Bill No. House Bill 329

Date February 24, 1986

Title "An Act excluding certain service from the definition of employment in the Alaska Employment Security Act; and providing for an effective date."

Contact: Harry Sturrock
465-2712
Eileen Plate
465-2700

The Department of Labor opposes the proposed exclusion from UI coverage of individuals under the age of 19 who are attending school, as proposed in HB 329. The current provision excludes individuals under the age of 18 who are engaged in "family" employment. This exclusion is narrow and specific. The proposed amendment in HB 329, by raising the age limit and including school attendees, rules out a much larger class of workers, many of whom we believe should be compensable under the principles of the Unemployment Insurance program.

Not all of these individuals are full-time students with minimal labor force attachment. Many of them actually reverse the normal pattern of school attendance and work -- attending school only a few hours per day or week and working virtually full-time. The proposed amendment would deny these individuals along with full-time students. In addition, many of these younger workers are (or will be) attempting to enter the labor market for the first time, and they will tend to experience longer periods of unemployment while establishing themselves in an occupation. We believe it is consistent with the purpose of the UI program that wage credits be available to these workers during this period.

While we agree that students who are not in the labor market and not attempting to find work when filing UI claims should be denied benefits, current eligibility criteria in the Act are already sufficient to disqualify these individuals (see AS 23.20.378(c)). Disqualifying ineligible individuals when they file is by far more equitable than simply denying coverage in advance to a whole class of individuals without regard to what their labor market attachment may be at the time they actually file claims.

Of course, one presumed result of the proposed amendment would be a net tax savings to employers in industries with a significant "student" work force. While no precise statistics are available at this time, the effect can be predicted, and we believe the perceived savings may be illusory.

Each employer is required to pay a federal unemployment tax of 6% (plus a .2% surcharge) on the first \$7,000 of wages of each employee. A credit of up to 90% of the basic federal tax (i.e. a credit of 5.4% leaving a net tax plus surcharge of .8%) is available to an employer who pays into an approved state UI trust fund.

The credit is two tiered: the first tier is the amount of state tax the employer actually pays on his covered employees, and the second tier is the amount the employer would have paid on his covered employees if taxed at the highest state rate. Because both federal and state unemployment taxes are aggregated in figuring the credit, the available credit is dependent on the number of employees covered under state law and the amount of wages paid to them. Employers would continue to be liable for the 6.2% federal tax on the first \$7,000 in wages of the affected employees. In order to realize a net

POSITION PAPER/Department of Labor

tax savings the employer must pay sufficient taxable wages to remaining employees to generate enough federal tax credit to make up for the loss of credit on the affected employees and/or realize sufficient state tax savings after excluding the "student" employees to offset the additional federal tax liability on these employees caused by the loss of the credit. Unless the employer pays yearly wages well in excess of the \$7,000 federal tax base on his student employees or has sufficient other highly paid employees to generate "excess" credit, the employer may actually pay an increased total federal/state tax under the proposed exclusion, as described in the example shown on the attached.

During 1984, 1,566 youth, 19 years and younger, were paid \$1,105,049 in unemployment insurance benefits. Although these person were not students when being paid UI, it is assumed a majority of them earned these wages qualifying them for UI while attending school.

There will also be additional administrative and recordkeeping problems associated with the proposed exclusion. Employers would be required to verify the age and school attendance of the excluded employees, and both of these factors would vary over time. This would require employers to keep constant track of the educational status of all employees under age 19 as well as their birthdays in order to begin and end withholdings and contributions at the proper times.

APPROVED:



Jim Robison, Commissioner
Department of Labor

EXAMPLE

Assumptions: Food Service establishment: 10 employees; 2 management and 8 youth.
Managers earn \$30,000 per year and youth earn \$7,000 per year.
Current average state UI rate for food service is 2.4%. State UI wage base is \$21,800.
FUTA charges for employer is 6.2% of \$7,000 (.8% if state law in conformity).

CURRENT LAW

State UI

\$21,800 x 2 =	\$43,600
\$ 7,000 x 8 =	\$56,000
Total Covered	
Wages:	\$99,600
UI Rate:	x .024
Total State UI	
tax pd by employer	\$2,390.40

FUTA

Total FUTA wages

10 x \$7,000 =	\$70,000
FUTA rate (.8%) =	x .008
Total FUTA employer	
pays:	\$ 560.00

State UI Tax	\$ 2,390.40
FUTA Tax	\$ 560.00
Total Tax pd by	
Employer	\$ 2,950.40

PROPOSED LAW

State UI

\$21,800 x 2 =	\$43,600
UI Rate:	x .024
State UI tax	
pd by employer	\$1,046.40

FUTA

Total FUTA wages

10 x \$7,000 =	\$70,000
FUTA max. rate =	x .062
FUTA takes	\$ 4,340.00
minus credit for 2	
covered employees:	
\$21,800 x 5.4% =	\$-2,354.40
Total FUTA for empl.	\$ 1,985.60

State UI Tax	\$ 1,046.40
FUTA Tax	\$ 1,985.60
Total Tax pd by	
Employer	\$ 3,032.00

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 01/31/86

REQUEST

Bill/Resolution No. : HB 329
 Title : "An Act excluding certain service from ... Employment Security Act"

Sponsor : Schultz & Marrou
 Requestor : House Labor & Commerce
 Date of Request : 3-1-85

FISCAL DETAIL

Agency Affected : Labor
 BRU : Employment Security

Components : Unemployment Insurance

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS :

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: AB John W. Shaw, Jr. Director
 Division : Employment Security

Phone : 465-2712
 Date : 02/03/86

Approved by Commissioner: AB Jim Robison
 Agency : Labor

Date : 02/03/86

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

**HOUSE
COMMITTEE REPORT**

(7)

Date referred: 2/7/86

FURTHER REFERRALS:

DATE: _____

The JUDICIARY Committee has considered HB 329

"An Act excluding certain service from the definition of employment in the Alaska Employment Security Act; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with _____ same title
 new title

and recommends _____

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

[Signature]
RECEIVED:

SIGNING OTHER RECOMMENDATIONS:

[Signature] NO REC
[Signature]
[Signature] No Rec
[Signature] NO REC

[Signature]
Chairman

1800 Glacier Avenue
Juneau, Alaska 99801
March 18, 1986

The Honorable Mike Miller
Member of The House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mike:

I understand that HB 319 - Exempt Young People in School From
Unemployment Tax is now in the House Judiciary Committee which
you chair. I am writing to you because I would like to see this
bill become law since I employ teenagers during the summer months.

Sincerely,



Constance H. Paddock

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST
 Bill/Resolution No.: HB 329
 Title: "An Act excluding certain service from... Employment Sec. Act"
 Sponsor: Schultz and Narrou
 Requestor: House Labor & Commerce
 Date of Request: 04-01-85

FISCAL DETAIL
 Agency Affected: Labor
 Program Category Affected: Social Services
 BRU, Program or Subprogram(s) Affected: Employment Security
Unemployment Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<u>OPERATING</u>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<u>TOTAL OPERATING</u>	0	0	0	0	0	0

<u>CAPITAL</u>						
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<u>REVENUE</u>						
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FUNDING: (Thousands of Dollars)

<u>GENERAL FUND</u>						
<u>FEDERAL FUNDS</u>						
<u>OTHER</u>						
<u>TOTAL</u>	0	0	0	0	0	0

POSITIONS:

<u>FULL-TIME</u>	0	0	0	0	0	0
<u>PART-TIME</u>						
<u>TEMPORARY</u>						

ANALYSIS: Attach a separate page if necessary

Prepared By: ^{4/3} John W. Shay, Jr. Phone: 465-2712
 Division: Employment Security Date: 04-02-85
 Approved by Commissioner: ¹⁰ Jim Robison Date: 04-02-85
 Agency: Labor

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

7/1/84

HB 329 File Contents

April 18, 1985 Meeting

- 1) Bill Summary -- Legislative Reporting Service
- 2) Overview -- Roger Poppe, Committee Aide
- 3) Sectional Analysis -- Rep. Schultz' office
- 4) Background on HB 329 -- Rep. Schultz' office
- 5) Alaska Statutes: AS 23.20.525-2b
- 6) Fiscal Note, analysis, and Position Statement -- Dept. of Labor

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 329
 Title: AN ACT EXCLUDING CERTAIN
SERVICE FROM THE EMPLOYMENT SEC. ACT
 Sponsor: SCHEUER AND HARRON
 Requestor: HOUSE LABOR & COMMERCE
 Date of Request: 01-04-86

FISCAL DETAIL

Agency Affected: Labor
 Program Category Affected: _____
Social Services
 BRU, program or subprogram(s) Affected:
Employment Security
Unemployment Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FI 85	FI 86	FI 87	FI 88	FI 89	FI 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: John W. Shay, Jr. Phone: 465-2712
 Division: Employment Security Date: 1/4/86

Approved by Commissioner: Jim Robison Date: 1/4/86
 Agency: Labor

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/85

INTRODUCTION OF BILLS (House)(cont'd)

HB 328 (cont'd)

Introduced March 27 and referred to Labor & Commerce.

Child
Employment

HOUSE BILL NO. 329, by Reps. Shultz and Marrou. Would exclude from the definition of employment in the Alaska Employment Security Act (AS 23.20) "...service performed by a child under the age of 19 who is either in the employ of the child's father or mother or attending school and employed outside required school hours or during school vacation." Note: the law currently reads: "Exclusions from the definition of 'employment.' (a) In this chapter, unless the context otherwise requires, 'employment' does not include... service performed by a child under the age of 18 in the employ of the child's father or mother." The amendment would apply only to service performed after this law takes effect. Provides Act takes effect immediately.

Introduced March 27 and referred to Labor & Commerce, Judiciary.

Criminally &
Exploited
Children
(spec. Trooper
unit)

HOUSE BILL NO. 330, by Reps. Cotten, Hanley, Szymanski, Phillips, Taylor, Jenkins, Sund & Cotten. See SB 219, page 392, similar topic. Would establish in the Dept. of Public Safety, Division of State Troopers, a special unit for investigating incidents of missing children and the criminal exploitation of children. Would require the Commissioner of Public Safety to submit annually a report to the Legislature concerning the activities of the special unit. Provides Act takes effect July 1, 1985.

Introduced March 27 and referred to State Affairs, Judiciary, Finance.

Commercial
Fishing Gear
(2nd degree
theft)

HOUSE BILL NO. 331, by Reps. Thompson, Sund and Marrou. See Senate Bill 245, page 472, identical.

Introduced March 27 and referred to the House Special Committee on Fisheries, Judiciary, Finance.

Mobile Home
Park Eviction

HOUSE BILL NO. 332, by Reps. Gruenberg, Jenkins, Pourchot and Uehling. See Senate Bill 188, page 336, nearly identical --prohibits the eviction of a mobile home, mobile home park dweller or tenant (Senate version did not include tenant). Remaining language identical.

Introduced March 27 and referred to Judiciary.

Appropriation
(special)
(Small World)

HOUSE BILL NO. 333, by Rep. Thompson. Makes a special appropriation in the amount of \$1,007,975 to the Dept. of Community & Regional Affairs for payment as a grant to Small World, Inc., for construction of a nonprofit developmental daycare and preschool center in Kodiak. Appropriation to be disbursed in accordance with laws governing grants to named recipients. Provides Act takes effect immediately.

Introduced March 27 and referred to Community & Regional Affairs, Finance.

ANALYSIS OF HB 329

Section 1. AS 23.20.526 (a) (4) is amended to include a child under the age 19 and who is either employed by his father or mother or attending school and employed outside required school hours or during school vacation.

Section 2. The amendment to AS 23.20.526 (a) (4) in Sec. 1. of this Act applies to service performed after the effective date of this Act.

Section 3. Act takes effect immediately.

(23) "vocational training or retraining course" means a course of vocational or technical training or retraining in schools or classes, including but not limited to, field or laboratory work and related remedial or academic instruction, which is conducted as a program designed to prepare individuals for employment in trades, skills or crafts; the term "vocational training or retraining course" does not include a program of instruction for an individual, including a transfer credit program of instruction given at a community college, which is intended as credit for a degree from an institution of higher education;

(24) "wages" is defined in AS 23.20.530;

(25) "waiting week" means the first week of unemployment for which an individual files a claim during the individual's benefit year and for which no disqualification is imposed under AS 23.20.378 — 23.20.387;

(26) "week" means the period of seven consecutive days which the department may by regulation prescribe. (§§ 202 — 204 ch 5 ESLA 1955; § 205 ch 5 ESLA 1955; am § 1 ch 169 SLA 1957; §§ 206, 208, 210, 212, 213, 236 — 238, 240, 241, 252, 253 ch 5 ESLA 1955; § 13 ch 64 SLA 1959; am § 1 ch 93 SLA 1960; am §§ 10 — 13 ch 106 SLA 1971; am § 24 ch 208 SLA 1975; am § 2 ch 74 SLA 1976; am §§ 13, 14 ch 122 SLA 1977; am §§ 73, 74, 77, 80 ch 9 SLA 1980; am §§ 28, 29 ch 115 SLA 1982)

Revisor's notes. — For conditional repeal and reenactment of (14) of this section (formerly (12)), see the Revisor's note at AS 23.20.278. For effective date of the 1977 amendment to (22) of this section (formerly (19)), see the Revisor's note at AS 23.20.085. This section was reorganized in 1984 to place the defined terms in alphabetical order.

Effect of amendments. — The 1980 amendment repealed paragraph (18), rewrote paragraphs (21) and (26), and added paragraph (27).

The 1982 amendment substituted "the state in which it is located" for "this state" in subparagraph (24)(B), and in paragraph (22), substituted "vocational training or retraining course" for "training or retraining" in two places and deleted "entry level" preceding "employment in trades."

Section 34, ch. 122, SLA 1977, provides: "Section 33 of this Act takes effect upon the condition and at the time that:

"(1) a decision of a federal court of competent jurisdiction, which decision is not subject to appeal or for which the time in which to appeal has run without an appeal having been taken, that the requirement of 26 U.S.C. 3304(a)(6) is unconstitutional becomes final; or

"(2) Congressional repeal of 26 U.S.C. 3304(a)(6) takes effect in accordance with law."

A review of legislation through P.L. 97-43, 95 Stat. 947, approved August 20, 1981, indicates that 26 U.S.C. 3304(a)(6) has not been repealed.

Collateral references — Liability of political party or its subdivision for contributions under unemployment compensation acts. 43 ALR3d 1351.

Sec. 23.20.525. "Employment" defined. (a) In this chapter, unless the context otherwise requires, "employment" means

(1) service performed by an individual for wages or by an officer of a corporation, including service in interstate commerce;

(2) service performed by an individual who under (10) of this subsection has the status of an employee;

though remuneration for the services is less than \$250 in a calendar quarter, but only if the organization had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not the weeks were consecutive, within either the current or preceding calendar year, regardless of whether the individuals were employed at the same moment of time;

(7) service of an individual who is a citizen of the United States, performed outside the United States, except in Canada, after December 31, 1971 in the employ of an American employer, or of this state or of any of its instrumentalities or any of its political subdivisions, other than service which is considered "employment" under the provisions of (11) or (12) of this subsection or the parallel provisions of the law of another state, if

(A) the employer's principal place of business in the United States is located in this state; or

(B) the employer has no place of business in the United States, but

(i) the employer is an individual who is a resident of this state; or

(ii) the employer is a corporation which is organized under the laws of this state; or

(iii) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or

(C) none of the criteria in (A) and (B) of this paragraph is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on service described in this paragraph, under the law of this state;

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

(9) notwithstanding any other provisions of this section, service with respect to which tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act is required to be covered under this chapter;

(10) service performed by an individual whether or not the common-law relationship of master and servant exists, unless and until it is shown to the satisfaction of the department that

(A) the individual has been and will continue to be free from control and direction in connection with the performance of the service, both under the individual's contract for the performance of service and in fact;

(B) the service is performed either outside the usual course of the business for which the service is performed or is performed outside of all the places of business of the enterprise for which the service is performed; and

(C) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the service performed;

(11) an individual's entire service performed inside or both inside and outside this state if the service is localized in this state: service is considered to be localized inside a state or territory if

(A) the service is performed entirely inside the state or territory; or

(B) the service is performed both inside and outside the state or territory but the service performed outside the state or territory is incidental to the individual's service inside the state or territory; for example, where it is temporary or transitory in nature or consists of isolated transactions;

(12) an individual's entire service performed inside or both inside and outside this state if the service is not localized in a state or territory but some of the service is performed in this state and

(A) the individual's base of operations is in this state; or

(B) if there is no base of operations, then the place from which the service is directed or controlled is in this state; or

(C) the individual's base of operations or place from which the service is directed or controlled is not in a state or territory in which some part of the service is performed, but the individual's residence is in this state;

(13) service covered by an election under AS 23.20.325, and service covered by an election approved by the commissioner in accordance with an arrangement under AS 23.20.090(a) during the effective period of the election;

(14) service performed after December 31, 1977 in the employ of this state or any of its instrumentalities or any political subdivision of this state or any of its instrumentalities or any instrumentality of any of the foregoing and one or more other states or political subdivisions, if that service is excluded from "employment" under 26 U.S.C. 3306(c)(7) (Federal Unemployment Tax Act, Internal Revenue Code) and is not excluded from "employment" under AS 23.20.526(d)(8);

(15) domestic services performed after December 31, 1977 for an employer who paid wages of \$1,000 or more in any calendar quarter in the current or preceding calendar year for those services;

(16) service performed after December 31, 1977 by an individual in agricultural labor when that service is performed for a person who

(A) during any calendar quarter in either the current or the preceding year paid remuneration in cash of \$20,000 or more to individuals employed in agricultural labor; or

(B) employed in a portion of the day either the current week or the preceding week were consistently employed at

(C) for the purpose of furnishing agricultural labor for any other person as a crew leader

(i) if that crew leader is not the Farm Labor Contractor and all the members of the crew are engaged in harvesting or crop production, which is production of agricultural products;

(ii) if that individual is not the meaning of (10)

(D) for the purpose of furnishing labor for any other person as a crew leader under

(i) that other person is not the employer of that individual;

(ii) that other person is not the person to that individual's remuneration paid on behalf of the crew leader in agricultural labor;

(E) for the purpose of furnishing an individual who

(i) furnishes agricultural labor for any other person;

(ii) pays, either on behalf of that person, the individual's remuneration for agricultural labor performed;

(iii) has not entered into an agreement with the operator under which the individual is an employee of that farmer;

(b) In (a)(7) of this section, the person who is

(1) an individual

(2) a partnership or other unincorporated firm of the United States;

(3) a trust, if all the beneficiaries are citizens or

(4) a corporation or other legal entity of any state. (§§ 214—

(B) employed in agricultural labor 10 or more individuals for some portion of the day in each of at least 20 different calendar weeks in either the current or the preceding calendar year, whether or not the weeks were consecutive, and regardless of whether the individuals were employed at the same moment of time;

(C) for the purposes of this paragraph any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of that crew leader

(i) if that crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963, or substantially all the members of that crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by that crew leader; and

(ii) if that individual is not an employee of that other person within the meaning of (10) of this subsection;

(D) for the purposes of this paragraph, in the case of an individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of that crew leader under (C) of this paragraph,

(i) that other person and not the crew leader shall be treated as the employer of that individual; and

(ii) that other person shall be treated as having paid cash remuneration to that individual in an amount equal to the amount of cash remuneration paid to that individual by the crew leader, either on behalf of the crew leader or on behalf of that other person, for the service in agricultural labor performed for that other person;

(E) for the purposes of this paragraph, the term "crew leader" means an individual who

(i) furnishes individuals to perform service in agricultural labor for any other person;

(ii) pays, either on behalf of the crew leader or on behalf of that other person, the individuals furnished by the crew leader for the service in agricultural labor performed by the individuals; and

(iii) has not entered into a written agreement with that farm operator under which the agricultural worker is designated as an employee of that farm operator.

(b) In (a)(7) of this section, "American employer" means a person who is

(1) an individual who is a resident of the United States;

(2) a partnership if two-thirds or more of the partners are residents of the United States;

(3) a trust, if all of the trustees are residents of the United States; or

(4) a corporation organized under the laws of the United States or of any state. (§§ 214—216 ch 5 ESLA 1955; § 217 ch 5 ESLA 1955; am

§ 1 ch 60 SLA 1960; §§ 218—220 ch 5 ESLA 1955; §§ 220.1, 220.2 ch 5 ESLA 1955, added by §§ 2, 3 ch 169 SLA 1957; § 220.3 ch 5 ESLA 1955, added by § 1 ch 108 SLA 1961; § 221 ch 5 ESLA 1955; § 222 ch 5 ESLA 1955; am § 1 ch 87 SLA 1962; §§ 223, 224 ch 5 ESLA 1955; §§ 226, 227 ch 5 ESLA 1955; § 228 ch 5 ESLA 1955; am § 4 ch 169 SLA 1957; §§ 229—234 ch 5 ESLA 1955; § 234.1 ch 5 ESLA 1955, added by § 1 ch 46 SLA 1959; § 234.2 ch 5 ESLA 1955, added by § 2 ch 60 SLA 1960; am § 1 ch 22 SLA 1967; am § 14 ch 106 SLA 1971; am §§ 15 — 18 ch 122 SLA 1977; am §§ 75, 76 ch 9 SLA 1980)

Revisor's notes. — For effective date of amendments made by sec. 17 of the 1977 Act, see the Revisor's note at AS 23.20.085. For conditional repeal of other 1977 amendments, see the Revisor's note at AS 23.20.278.

Effect of amendments. — The 1980 amendment, in subsection (a), inserted a

comma following "January 1, 1978" at the beginning of paragraph (5), deleted "or AS 23.20.326" at the end of paragraph (5), and substituted "within the meaning of (10) of this subsection" for "within the meaning of (A) of this paragraph" in paragraph (16)(C)(ii).

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).

Collateral references. — Taxicab driver as employee of owner of cab, or independent contractor, within social security and unemployment insurance statutes. 10 ALR2d 369.

Seasonal employees. 24 ALR2d 1400.

Sec. 23.20.526. Exclusions from definition of "employment."

(a) In this chapter, 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);

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).

Insurance agents or salesmen as within coverage of social security or unemployment compensation acts. 39 ALR3d 872.

Trucker as employee or independent contractor. 2 ALR4th 1219.

(2) newsboys' street or from home;
(3) service not performed in a remunerated unit to be regularly employed by an employing unit to be regularly employed by an individual performing some 24 days during a quarter;

(4) service performed by a minor's son, daughter or other relative under the age of 18 in the household;

(5) service with a person not eligible under an unexpired term of Congress;

(6) service performed by a person acting as a contractor's representative;

(7) service performed by a person owned by a foreign corporation;

(A) the service is performed in foreign countries by employees of different nationalities; and

(B) the department has certified to the foreign government, or the foreign government is claimed, grants a service performed in the United States government a service performed in the United States government;

(8) service performed by a real estate broker, a person whose services are required to be covered by the act;

(9) notwithstanding the fact that the officer or member of the crew of a vessel, if the vessel operating on the waters of the United States are not directed and controlled by the United States government;

(10) service performed by a person on an American vessel by a person on and in connection with the vessel;

(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 the individual 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 the individual's son, daughter, or spouse, and service performed by a child under the age of 18 in the employ of the child's 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 the person 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 inside and 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 the individual performed service on and in connection with the vessel when outside the United States;

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 (A) 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, § 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;

(18) *[Repealed, § 25 ch 122 SLA 1977.]*

(19) *[Repealed, § 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;

(21) service performed as a prospective or impaneled juror in a court;

(22) 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; and

(C) the employee is an executive officer of the corporation.

(b) Notwithstanding any other provision of this section, the provisions of (a)(15)(D) and (E) of this section are not applicable to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(c) In (a)(15) of this section, "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(d) For the purposes of AS 23.20.525(a)(4) — (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 the person's 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 paragraph 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, if the service is performed

(A) as a "public official" as defined in AS 23.20.530(a)(1);

(B) as a member of the Alaska National Guard or

(C) as an employee of the state, except for storm, snow, earth

(9) in the employ of

(A) a church or

(B) an organization,

for purposes and which are not supported by a church or AS 23.20.530 ch 106 SLA 1971; AS 23.20.530 SLA 1977; am § 8 ch 91 SLA 1982; am

Revisor's notes. — Repeal of 1977 amendment. Revisor's note at AS 23.20.530

Effect of amendment. — 1980 amendment repeals subsection (a).

The second 1980 amendment repeals paragraph (9) of subsection (a).

The first 1982 amendment repeals paragraph (22) of subsection (a).

The second 1982 amendment repeals paragraph (21) of subsection (a).

The 1984 amendment repeals paragraph (B) of subsection (a), added by AS 23.20.530(a)(1) SLA 1984. The amendment indirectly repeals 25 percent voting securities of the state at the end of subparagraph (B) of subsection (a) read "the executive officer's services not be 'employment' paragraph."

Collateral references. — AS 23.20.530(a)(1) SLA 1984. Repeals contractor rather than within unemployment compensation AS 23.20.530 SLA 1984. 124 ALR 632.

Sec. 23.20.530. — All remuneration for services is limited to, insurance commissions, bonuses, and other compensation customarily received by persons other than the wages received from

(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(a) 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. (§ 15 ch 106 SLA 1971; am § 1 ch 55 SLA 1976; am §§ 19 — 23, 25 ch 122 SLA 1977; am § 80 ch 9 SLA 1980; am § 3 ch 145 SLA 1980; am § 1 ch 91 SLA 1982; am § 30 ch 115 SLA 1982; am § 14 ch 106 SLA 1984)

Revisor's notes. — For conditional repeal of 1977 amendments, see the Revisor's note at AS 23.20.278.

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

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

The first 1982 amendment added paragraph (22) to subsection (a).

The second 1982 amendment added paragraph (21) to subsection (a).

The 1984 amendment, in paragraph (22) of subsection (a), added "and" at the end of subparagraph (B), deleted "who directly or indirectly owns 25 percent or more of the voting securities of the corporation; and" at the end of subparagraph (C), and repealed former subparagraph (D), which read "the executive officer agrees that the services not be 'employment' under this paragraph."

Collateral references. Who is independent contractor rather than employee within unemployment compensation act. 124 ALR 632.

Test of independent contractor relationship. 124 ALR 1029; 147 ALR 828.

Who is "member of a crew" within meaning of social security and unemployment compensation acts. 161 ALR 842.

Taxicab driver as employee of owner of cab, or independent contractor, within social security and unemployment insurance statutes. 10 ALR2d 369.

Salesman or commission as within act. 29 ALR2d 751.

What constitutes "agricultural" or "farm" labor within social security or unemployment acts. 56 ALR2d 406.

Own projects or activities, right to unemployment compensation of one working on. 65 ALR2d 1182.

Insurance agents or salesmen as within coverage of social security or unemployment compensation acts. 39 ALR3d 872.

Part-time or intermittent workers as covered by or eligible for benefits under state unemployment compensation act. 95 ALR3d 891.

Sec. 23.20.530. Wages defined. (a) In this chapter, "wages" means all remuneration for service from whatever source, including, but not limited to, insured work, noninsured work, or self-employment; commissions, bonuses, back pay and the cash value of all remuneration in a medium other than cash shall be treated as wages; gratuities customarily received by an individual in the course of service from persons other than the individual's employing unit may be treated as wages received from the employing unit only to the extent the individ-