

HB

384-S

SENATE COMMITTEE REPORT

FURTHER

DATE TURNED INTO OFFICE 5/10/88

4/14/88
Mr. President:

Finance Committee considered HB 384 (title am)

unemployment insurance; establishing a priority for payment; efd

and recommended

[] replace with _____ CS) [] same title
[] or adopt _____ SCS HB 384 (REC)) [] new title

[] attached amendment(s) and

[] do pass

[] do not pass

[] no recommendation

[] individual recommendations

[] further referral to _____

[] letter of intent adopted _____

Committee [] attached or [] adopted fiscal note(s)

[] new [] updated or [] previous

[] zero [] fiscal impact 97.0

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Handwritten signatures: Carl A. Shantz, Paul Fink, James D. ...]

[Handwritten signature: Rick Halford] NO REC
Chairman signature and recommendation

[] Committee Backup attached

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: ⁵⁶⁵ HB 384 (LIC)
PUBLISH DATE: SENATE 4/14/88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to
Unemployment Insurance..."
Sponsor: Governor
Requestor: House Labor and Commerce

Agency Affected: Labor
BRU: Employment Security
Components: Unemployment Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE	0	97.0	97.0	97.0	97.0	97.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See Attached

Prepared by: Joe Sitton, Director *JWS* Phone: 465-2712
Division: Employment Security Division Date: 1/28/88

Approved by Commissioner: Jim Sampson *J. Sampson* Date: 1/28/88
Agency: Labor

Distribution (by preparer):

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

(Same fiscal note for original bill)

ANALYSIS OF FISCAL NOTE FOR"An Act relating to Unemployment Insurance"

Section 9 of this bill provides for a penalty to be assessed claimants who are disqualified for the fraudulent receipt of unemployment insurance benefits. The penalty will be 50% of the benefits that were obtained fraudulently, and the penalties will be deposited in the general fund as unrestricted revenues. Calculations to arrived at estimated anticipated revenues are as follows:

Total detected fraudulent payments made per year	-	\$260,000
50% penalty on detected fraudulent payments	-	\$130,000
A 75% collection rate on the established penalties	-	\$ 97,500
Rounded off to	-	\$ 97,000/year

Assumptions:

1. An effective date of July 1, 1988.
2. Detected fraudulent payments will remain at about \$260,000/year thru 1992.
3. A 75% collection rate will be maintained. The other 25% are uncollectible because of people leaving the state, or otherwise not being able to pay back the funds.

Original sponsor: Rules/Governor

1 IN THE HOUSE
2 SENATE CS FOR HOUSE BILL NO. 384 (L&C)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - SECOND SESSION
5 A BILL
6 For an Act entitled: "An Act relating to unemployment insurance; estab-
7 lishing a priority for payment; and providing for an
8 effective date."
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
10 * Section 1. AS 16.10.290(a) is amended to read:
11 (a) A person applying for a license as a fish processor or
12 primary fish buyer shall file with the commissioner of labor a surety
13 bond running to the State of Alaska conditioned upon the promise to
14 pay, in the following order of priority, (1) all persons furnishing
15 labor to a fish processor or primary fish buyer, including contractual
16 employee benefits; [AND] (2) independent registered commercial fisher-
17 men for the price of the raw fishery resource purchased from them; and
18 (3) unemployment insurance contributions. The surety or sureties must
19 [SHALL] be satisfactory, in the determination of the commissioner.
20 * Sec. 2. AS 23.20.195(a) is amended to read:
21 (a) If the contributions are unpaid after 30 days from the date
22 of mailing or personal delivery of a written demand for payment, the
23 department may [SHALL] assess and collect in the same manner as con-
24 tributions a penalty equal to 10 percent of the contributions due. In
25 no event may the penalty be less than \$10 [\$1].
26 * Sec. 3. AS 23.20.205(c) is amended to read:
27 (c) If the amount assessed is not paid, or an appeal is not
28 filed under AS 23.20.220, within 30 days after [PERSONAL] service or
29 mailing of the notice, the department may [, SUBJECT TO AS 23.20.220,]

1 collect the amount stated in the assessment by the distraint, seizure
2 and sale of the property, goods, chattels and effects of the delin-
3 quent employer. Goods and property exempt from execution under the
4 laws of this state are exempt from distraint and sale under this
5 section.

6 * Sec. 4. AS 23.20.220(a) is amended to read:

7 Sec. 23.20.220. APPEAL OF ASSESSMENT [PETITION FOR HEARING AND
8 SUMMARY JUDGMENT]. (a) When a notice of assessment is delivered or
9 mailed to a delinquent employer, the employer may within 30 days file
10 an appeal [A PETITION] in writing with the department, stating that
11 the assessment is unjust or incorrect and requesting a hearing on it.
12 The period for filing an appeal may be extended for a reasonable
13 period if the employer shows that the appeal was delayed as a result
14 of circumstances beyond the employer's control. The appeal [PETITION]
15 shall set out the reasons the assessment is objected to and the amount
16 of contributions which the employer admits is due, and must be accom-
17 panied by a bond or deposit of other security in the amount of the
18 assessment to ensure [INSURE] collection. The department may waive
19 the security requirement if the employer submits proof of solvency or
20 reasonable assurance, as prescribed by regulations, that the contribu-
21 tions, interest and penalties due are not in jeopardy. If [NO PETI-
22 TION IS FILED WITHIN THE TIME PRESCRIBED, OR IF] the employer fails to
23 provide the required security, the collection under AS 23.20.205(c) is
24 not stayed and the assessment is prima facie correct. The procedures
25 in AS 23.20.415 apply to an appeal under this subsection. [HOWEVER,
26 THE DEPARTMENT MAY ENTERTAIN A SUBSEQUENT APPLICATION FOR REFUND, AND,
27 IF DENIED A REFUND, A HEARING ON THE APPLICATION IN ACCORDANCE WITH
28 AS 23.20.225.]

29 * Sec. 5. AS 23.20 is amended by adding a new section to read:

1 Sec. 23.20.242. APPEALS BY OFFICER, MEMBER, OR EMPLOYEE. The
2 department shall permit each officer or employee of a corporation or a
3 member or employee of a partnership who is required to pay the contri-
4 butions and interest owed by the corporation or partnership under
5 AS 23.20.165 - 23.20.278 to appeal individually under those pro-
6 visions.

7 * Sec. 6. AS 23.20.277(b) is amended to read:

8 (b) At the end of each calendar quarter, or at the end of any
9 other period as determined by the department, the department shall
10 bill each government entity, nonprofit organization, or group of
11 nonprofit organizations, that [WHICH] has elected to make payments in
12 place of contributions for benefits paid during the quarter or other
13 prescribed period that is attributable to service in the employ of the
14 government entity or nonprofit organization. In the case of nonprofit
15 organizations, the amount billed is an amount equal to the full amount
16 of regula. benefits plus [ONE-HALF OF] the state share [AMOUNT] of
17 extended benefits and in the case of a government entity the amount
18 billed is [WHICH HAS ELECTED TO MAKE PAYMENTS UNDER THIS SECTION] an
19 amount equal to the full amount of the regular benefits plus the full
20 amount of the extended benefits paid [DURING THE QUARTER OR OTHER
21 PRESCRIBED PERIOD THAT IS ATTRIBUTABLE TO SERVICE IN THE EMPLOY OF THE
22 NONPROFIT ORGANIZATION].

23 * Sec. 7. AS 23.20.277(e) is amended to read:

24 (e) At the end of each taxable year, the department shall deter-
25 mine whether the total of payments for the year made by a nonprofit
26 organization is less than, or in excess of, the total amount of regu-
27 lar benefits plus the state share [ONE-HALF OF THE AMOUNT] of extended
28 benefits paid to individuals during the taxable year based on wages
29 attributable to service in the employ of the nonprofit organization;

1 and in the case of a government entity that has elected to make pay-
2 ments under this section, whether the total of payments for the year
3 is less than, or in excess of, the total amount of regular benefits
4 plus the total amount of extended benefits as determined in this
5 subsection. Each organization whose total payments for the taxable
6 year are less than the amount so determined is liable for payment of
7 the unpaid balance to the fund in accordance with (f) of this section.
8 If the total payments exceed the amount so determined for the taxable
9 year, all or part of the excess may, at the discretion of the depart-
10 ment, be refunded from the fund or retained in the fund as part of the
11 payments that [WHICH] may be required for the next taxable year.

12 * Sec. 8. AS 23.20.277(1) is amended to read:

13 (1) Each employer that is liable for payments in place of con-
14 tributions shall pay to the department for the fund the amount of
15 regular benefits plus the state share [AMOUNT OF ONE-HALF] of extended
16 benefits paid that are attributable to service in the employ of that
17 employer. However, a government entity that [WHICH] has elected to
18 make payments under this section is liable for the amount of regular
19 benefits plus the full amount of extended benefits that [WHICH] are
20 attributable to service in the employ of that entity. If benefits
21 paid to an individual are based on wages paid by more than one em-
22 ployer and one or more of these employers are liable for payments in
23 place of contributions, the amount payable to the fund by each em-
24 ployer that is liable for payments shall be determined by the depart-
25 ment in accordance with regulations adopted by the department.

26 * Sec. 9. AS 23.20.290(d) is amended to read:

27 (d) The [BEGINNING JANUARY 1, 1981, AND FOR EACH SUCCEEDING YEAR
28 THEREAFTER, THE] rate of contributions payable by each employee of an
29 employer who is subject to AS 23.20.165 is 18 percent of the average

1 benefit cost rate as determined in (e) of this section rounded to the
2 nearest 1/100th [ONE-TENTH] of one percent. However, the rate of
3 contributions for an employee may not be less than one-half percent or
4 more than one percent.

5 * Sec. 10. AS 23.20.390 is amended by adding a new subsection to read:

6 (f) In addition to the liability under (a) of this section for
7 the amount of benefits improperly paid, an individual who is disqual-
8 ified from receipt of benefits under AS 23.20.387 is liable to the
9 department for a penalty in an amount equal to 50 percent of the
10 benefits that were obtained by knowingly making a false statement or
11 misrepresenting a material fact, or knowingly failing to report a
12 material fact, with the intent to obtain or increase benefits under
13 this chapter. The department may, in accordance with regulations
14 adopted under this chapter, waive the collection of a penalty under
15 this section. The department shall deposit into the general fund the
16 penalty that it collects.

17 * Sec. 11. AS 23.20 is amended by adding a new section to read:

18 Sec. 23.20.391. LIEN. (a) A claim under AS 23.20.390 for
19 benefits that have been improperly paid as a result of a false state-
20 ment, misrepresentation, or omission, including a penalty as described
21 in AS 23.20.390(f), is a lien in favor of the state against the real
22 and personal property of the individual.

23 (b) The claim becomes a lien on property other than a motor
24 vehicle when the department files a notice of the lien with the re-
25 cording officer of the recording district in which the property is
26 located. The claim becomes a lien on a motor vehicle when the depart-
27 ment files a notice of the lien in the office of the commissioner of
28 public safety. Filing of the notice of lien is constructive notice to
29 creditors of the owner, and to subsequent purchasers and

1 encumbrancers, of the lien against the property described in the
2 notice.

3 (c) The department may release a notice of lien by filing a
4 certificate of release in the manner prescribed for the filing of a
5 notice of lien. The department may not file a certificate of release
6 until the amount of the claim, including a penalty, if any, is paid,
7 or until it receives assurance of payment that it considers adequate,
8 or until the individual is absolved from liability under AS 23.20.-
9 390(b).

10 * Sec. 12. AS 23.20 is amended by adding new sections to read:

11 Sec. 23.20.393. NOTICE OF ASSESSMENT; DISTRAINT AND SEIZURE.

12 (a) If the department's determination of liability under AS 23.20.390
13 is final and the individual has not made repayment within 90 days, the
14 department may issue a notice of assessment, specifying the amount
15 due, and may serve it on the individual. A peace officer or an au-
16 thorized representative of the department may serve the notice person-
17 ally or the department may mail the notice by certified or registered
18 mail with return receipt requested.

19 (b) If the notice is served by mail, the notice must be de-
20 posited in the post office, postage paid, and addressed to the indi-
21 vidual at the individual's last address of record. The date of ser-
22 vice is the date of delivery shown on the delivery receipt. However,
23 if the department determines that the addressee is deliberately avoid-
24 ing service, then the date of service is the day of mailing.

25 (c) If the amount assessed is not paid within 30 days after
26 personal service or mailing of the notice, the department may collect
27 the amount stated in the assessment by the distraint or seizure of the
28 property, assets, goods, and effects of the individual. Goods and
29 property exempt from execution under the laws of this state are exempt

1 from distraint under this section.

2 Sec. 23.20.394. NOTICE AND ORDER TO WITHHOLD AND DELIVER. (a)
3 The Department of Labor may issue to a person or to a political subdi-
4 vision or other department of the state a notice and order to withhold
5 and deliver property of any kind if (1) the Department of Labor has
6 reason to believe that the person, political subdivision, or other
7 department possesses property that is due or owing under this chapter,
8 or is the property of another person; and (2) notice of assessment has
9 been served at least 30 days before the issuance of the notice and
10 order to withhold and deliver.

11 (b) A peace officer or an authorized representative of the
12 department may serve the notice and order to withhold and deliver.
13 The person, political subdivision, or department upon whom service is
14 made shall answer the notice within 10 days.

15 (c) If the person, political subdivision, or department pos-
16 sesses property, credits, or money subject to the claim of the depart-
17 ment, it shall deliver the property to the department immediately upon
18 demand.

19 (d) If a person fails to answer the notice and order to withhold
20 and deliver within the time prescribed, the superior court in the
21 judicial district in which the order is served may enter a judgment by
22 default against the person for the full amount claimed by the depart-
23 ment in the notice to withhold and deliver, together with costs.

24 * Sec. 13. AS 23.20.530(a) is amended to read:

25 (a) In this chapter, "wages" means all remuneration for service
26 from whatever source, including, but not limited to, insured work,
27 noninsured work, or self-employment; commissions, bonuses, back pay
28 and the cash value of all remuneration in a medium other than cash
29 shall be treated as wages; gratuities customarily received by an

1 individual in the course of service from persons other than the indi-
2 vidual's employing unit may be treated as wages received from the
3 employing unit only to the extent the individual reports the gratu-
4 ities to the employing unit. The reasonable cash value of remunera-
5 tion in a medium other than cash, and the reasonable amount of gratu-
6 ities, shall be estimated and determined in accordance with regu-
7 lations adopted by the department; notwithstanding AS 23.20.350(a),
8 back pay awards shall be allocated to the weeks or quarters with
9 respect to which the pay was earned. If the remuneration of an indi-
10 vidual is not based upon a fixed period of time or if the individual's
11 wages are paid in irregular intervals or in a manner that [WHICH] does
12 not extend regularly over the period of employment, the wages shall be
13 allocated to weeks or quarters in accordance with regulations adopted
14 by the department. The regulations must [SHALL], so far as possible,
15 produce results reasonably similar to those that [WHICH] would prevail
16 if the individual's wages were paid at regular intervals. Wages
17 earned for services performed, but not paid because the employer has
18 filed for bankruptcy, are considered wages for the quarter in which
19 they were earned.

20 * Sec. 14. WAIVER FOR SELF-EMPLOYMENT PROJECT. (a) If a demonstration
21 project to provide self-employment allowances to certain unemployed persons
22 in the state is approved by the federal Department of Labor under sec. 9152
23 of Public Law 100-203, the state Department of Labor may provide self-
24 employment allowances to unemployed persons under AS 23.20 during the term
25 of the demonstration project.

26 (b) The state Department of Labor may waive AS 23.20.360, 23.20.378,
27 23.20.379, 23.20.406, and 23.20.505 for a person who participates in a
28 project under this section to the extent required for the state to partici-
29 pate in the project.

- 1 * Sec. 15. AS 23.20.175(a) and 23.20.175(b) are repealed.
- 2 * Sec. 16. Section 14 of this Act is repealed June 30, 1992.
- 3 * Sec. 17. Section 9 of this Act takes effect January 1, 1989.
- 4 * Sec. 18. Except for sec. 9, this Act takes effect immediately under
- 5 AS 01.10.070(c).

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2

HOUSE BILL NO. 384 (title am)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to unemployment insurance; estab-
7 lishing a priority for payment; and providing for an
8 effective date."

9

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

10

* Section 1. AS 16.10.290(a) is amended to read:

11

(a) A person applying for a license as a fish processor or
12 primary fish buyer shall file with the commissioner of labor a surety
13 bond running to the State of Alaska conditioned upon the promise to
14 pay, in the following order of priority, (1) all persons furnishing
15 labor to a fish processor or primary fish buyer, including contractual
16 employee benefits; [AND] (2) independent registered commercial fisher-
17 men for the price of the raw fishery resource purchased from them; and
18 (3) unemployment insurance contributions. The surety or sureties must
19 [SHALL] be satisfactory, in the determination of the commissioner.

20

* Sec. 2. AS 23.20.195(a) is amended to read:

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(a) If the contributions are unpaid after 30 days from the date
22 of mailing or personal delivery of a written demand for payment, the
23 department may [SHALL] assess and collect in the same manner as con-
24 tributions a penalty equal to 10 percent of the contributions due. In
25 no event may the penalty be less than \$10 [1].

26

* Sec. 3. AS 23.20.205(c) is amended to read:

27

(c) If the amount assessed is not paid, or an appeal with the
28 required security is not filed as required in AS 23.20.220, within 30
29 days after [PERSONAL] service or mailing of the notice, the department

1 may[, SUBJECT TO AS 23.20.220,] collect the amount stated in the
2 assessment by the distraint, seizure and sale of the property, goods,
3 chattels and effects of the delinquent employer. Goods and property
4 exempt from execution under the laws of this state are exempt from
5 distraint and sale under this section.

6 * Sec. 4. AS 23.20.220(a) is amended to read:

7 Sec. 23.20.220. APPEAL OF ASSESSMENT [PETITION FOR HEARING AND
8 SUMMARY JUDGMENT]. (a) When a notice of assessment is delivered or
9 mailed to a delinquent employer, the employer may within 30 days file
10 an appeal [A PETITION] in writing, with the department, stating that
11 the assessment is unjust or incorrect and requesting a hearing on it.
12 The period for filing an appeal may be extended for a reasonable
13 period if the employer shows that the appeal was delayed as a result
14 of circumstances beyond the employer's control. The appeal [PETITION]
15 shall set out the reasons the assessment is objected to and the amount
16 of contributions which the employer admits is due, and must be accom-
17 panied by a bond or deposit of other security in the amount of the
18 assessment to insure collection. The department may waive the securi-
19 ty requirement if the employer submits proof of solvency or reasonable
20 assurance, as prescribed by regulations, that the contributions,
21 interest and penalties due are not in jeopardy. If the employer fails
22 to provide the required security, the collection under AS 23.20.205(c)
23 is not stayed and [IF NO PETITION IS FILED WITHIN THE TIME PRESCRIBED,
24 OR IF THE EMPLOYER FAILS TO PROVIDE THE REQUIRED SECURITY,] the as-
25 sessment is prima facie correct. The procedures in AS 23.20.415 apply
26 to an appeal under this subsection. [HOWEVER, THE DEPARTMENT MAY
27 ENTERTAIN A SUBSEQUENT APPLICATION FOR REFUND, AND, IF DENIED A RE-
28 FUND, A HEARING ON THE APPLICATION IN ACCORDANCE WITH AS 23.20.225.]

29 * Sec. 5. AS 23.20.277(b) is amended to read:

1 (b) At the end of each calendar quarter, or at the end of any
2 other period as determined by the department, the department shall
3 bill each government entity, nonprofit organization, or group of
4 nonprofit organizations, that [WHICH] has elected to make payments in
5 place of contributions for benefits paid during the quarter or other
6 prescribed period that is attributable to service in the employ of the
7 government entity or nonprofit organization. In the case of nonprofit
8 organizations, the amount billed is an amount equal to the full amount
9 of regular benefits plus [ONE-HALF OF] the state share [AMOUNT] of
10 extended benefits and in the case of a government entity the amount
11 billed is [WHICH HAS ELECTED TO MAKE PAYMENTS UNDER THIS SECTION] an
12 amount equal to the full amount of the regular benefits plus the full
13 amount of the extended benefits paid [DURING THE QUARTER OR OTHER
14 PRESCRIBED PERIOD THAT IS ATTRIBUTABLE TO SERVICE IN THE EMPLOY OF THE
15 NONPROFIT ORGANIZATION].

16 * Sec. 6. AS 23.20.277(e) is amended to read:

17 (e) At the end of each taxable year, the department shall deter-
18 mine whether the total of payments for the year made by a nonprofit
19 organization is less than, or in excess of, the total amount of
20 regular benefits plus the state share [ONE-HALF OF THE AMOUNT] of
21 extended benefits paid to individuals during the taxable year based on
22 wages attributable to service in the employ of the nonprofit
23 organization; and in the case of a government entity that has elected
24 to make payments under this section, whether the total of payments for
25 the year is less than, or in excess of, the total amount of regular
26 benefits plus the total amount of extended benefits as determined in
27 this subsection. Each organization whose total payments for the
28 taxable year are less than the amount so determined is liable for
29 payment of the unpaid balance to the fund in accordance with (f) of

1 this section. If the total payments exceed the amount so determined
2 for the taxable year, all or part of the excess may, at the discretion
3 of the department, be refunded from the fund or retained in the fund
4 as part of the payments that [WHICH] may be required for the next
5 taxable year.

6 * Sec. 7. AS 23.20.277(1) is amended to read:

7 (1) Each employer that is liable for payments in place of con-
8 tributions shall pay to the department for the fund the amount of
9 regular benefits plus the state share [AMOUNT OF ONE-HALF] of extended
10 benefits paid that are attributable to service in the employ of that
11 employer. However, a government entity that [WHICH] has elected to
12 make payments under this section is liable for the amount of regular
13 benefits plus the full amount of extended benefits which are attribut-
14 able to service in the employ of that entity. If benefits paid to an
15 individual are based on wages paid by more than one employer and one
16 or more of these employers are liable for payments in place of contri-
17 butions, the amount payable to the fund by each employer that is
18 liable for payments shall be determined by the department in accord-
19 ance with regulations adopted by the department.

20 * Sec. 8. AS 23.20.290(d) is amended to read:

21 (d) Beginning January 1, 1981, and for each succeeding year
22 thereafter, the rate of contributions payable by each employee of an
23 employer who is subject to AS 23.20.165 is 18 percent of the average
24 benefit cost rate as determined in (e) of this section rounded to the
25 nearest one-hundredth [ONE-TENTH] of one percent. However, the rate
26 of contributions for an employee may not be less than one-half percent
27 or more than one percent.

28 * Sec. 9. AS 23.20.390 is amended by adding a new subsection to read:

29 (f) In addition to the liability under (a) of this section for

1 the amount of benefits improperly paid, an individual who is disqual-
2 ified from receipt of benefits under AS 23.20.387 is liable to the
3 department for a penalty in an amount equal to 50 percent of the
4 benefits that were obtained by knowingly making a false statement or
5 misrepresenting a material fact, or knowingly failing to report a
6 material fact, with the intent to obtain or increase benefits under
7 this chapter. The department may, in accordance with regulations
8 adopted under this chapter, waive the collection of a penalty under
9 this section. The department shall deposit into the general fund the
10 penalty that it collects.

11 * Sec. 10. AS 23.20 is amended by adding new sections to read:

12 Sec. 23.20.391. LIEN. (a) A claim under AS 23.20.390 for
13 benefits that have been improperly paid as a result of a false state-
14 ment, misrepresentation, or omission, including a penalty as described
15 in AS 23.20.390(f), is a lien in favor of the state against all of the
16 real and personal property of the individual.

17 (b) The claim becomes a lien when the department files a notice
18 of the lien with the recording officer of the recording district in
19 which the property is located. The claim becomes a lien on a motor
20 vehicle when the department files a notice of the lien in the office
21 of the commissioner of public safety. Filing of the notice of lien is
22 constructive notice to creditors of the owner, and to subsequent
23 purchasers and encumbrancers, of the lien against the property de-
24 scribed in the notice.

25 (c) The department may release a notice of lien by filing a
26 certificate of release in the manner prescribed for the filing of a
27 notice of lien. The department may not file a certificate of release
28 until the amount of the claim, including a penalty, if any, is paid,
29 or until it receives assurance of payment which it considers adequate,

1 or until the individual is absolved from liability under AS 23.20.-
2 390(b).

3 Sec. 23.20.393. NOTICE OF ASSESSMENT; DISTRAINT AND SEIZURE.

4 (a) If the department's determination of liability under AS 23.20.390
5 is final and the individual has not made repayment within 90 days, the
6 department may issue a notice of assessment, specifying the amount
7 due, and may serve it on the individual. A peace officer or an
8 authorized representative of the department may serve the notice
9 personally or the department may mail the notice by certified or
10 registered mail with return receipt requested.

11 (b) If the notice is served by mail, the notice must be de-
12 posited in the post office, postage paid, and addressed to the indi-
13 vidual at the individual's last address of record. The date of ser-
14 vice is the date of delivery shown on the delivery receipt. However,
15 if the department determines that the addressee is deliberately avoid-
16 ing service, then the date of service is the day of mailing.

17 (c) If the amount assessed is not paid within 30 days after
18 personal service or mailing of the notice, the department may collect
19 the amount stated in the assessment by the distraint or seizure of the
20 property, assets, goods, and effects of the individual. Goods and
21 property exempt from execution under the laws of this state are exempt
22 from distraint under this section.

23 Sec. 23.20.394. NOTICE AND ORDER TO WITHHOLD AND DELIVER. (a)

24 The department may issue to a person or to a political subdivision or
25 department of the state a notice and order to withhold and deliver
26 property of any kind if (1) the department has reason to believe that
27 the person, political subdivision, or department possesses property
28 that is due or owing, or is the property of another person; and (2)
29 notice of assessment has been served at least 30 days before the

1 issuance of the notice and order to withhold and deliver.

2 (b) A peace officer or an authorized representative of the
3 department may serve the notice and order to withhold and deliver.
4 The person, political subdivision, or department upon whom service is
5 made shall answer the notice within 10 days.

6 (c) If the person, political subdivision, or department pos-
7 sesses property, credits, or money subject to the claim of the depart-
8 ment, it shall deliver the property to the department immediately upon
9 demand.

10 (d) If a person fails to answer the notice and order to withhold
11 and deliver within the time prescribed, the superior court in the
12 judicial district in which the order is served may enter a judgment by
13 default against the person for the full amount claimed by the depart-
14 ment in the notice to withhold and deliver, together with costs.

15 * Sec. 11. AS 23.20.530(a) is amended to read:

16 (a) In this chapter, "wages" means all remuneration for service
17 from whatever source, including, but not limited to, insured work,
18 noninsured work, or self-employment; commissions, bonuses, back pay
19 and the cash value of all remuneration in a medium other than cash
20 shall be treated as wages; gratuities customarily received by an
21 individual in the course of service from persons other than the indi-
22 vidual's employing unit may be treated as wages received from the
23 employing unit only to the extent the individual reports the gratu-
24 ities to the employing unit. The reasonable cash value of remunera-
25 tion in a medium other than cash, and the reasonable amount of gratu-
26 ities, shall be estimated and determined in accordance with regu-
27 lations adopted by the department; notwithstanding AS 23.20.350(a),
28 back pay awards shall be allocated to the weeks or quarters with
29 respect to which the pay was earned. If the remuneration of an

1 individual is not based upon a fixed period of time or if the
2 individual's wages are paid in irregular intervals or in a manner that
3 [WHICH] does not extend regularly over the period of employment, the
4 wages shall be allocated to weeks or quarters in accordance with
5 regulations adopted by the department. The regulations must [SHALL],
6 so far as possible, produce results reasonably similar to those that
7 [WHICH] would prevail if the individual's wages were paid at regular
8 intervals. Wages earned for services performed, but not paid because
9 the employer has filed for bankruptcy, are considered wages for the
10 quarter in which they were earned.

11 * Sec. 12. AS 23.20.175(a) and (b) are repealed.

12 * Sec. 13. Section 8 of this Act takes effect January 1, 1989.

13 * Sec. 14. Sections 1 -- 7 and 9 -- 12 of this Act take effect
14 immediately under AS 01.10.070(c).

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STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 20, 1988

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to unemployment insurance. The bill makes miscellaneous amendments, including some that are merely housekeeping amendments, to current law. A section-by-section analysis of the bill follows.

SECTION-BY-SECTION ANALYSIS

Section 1:

The proposed amendment of AS 16.10.290(a) enhances the department's ability to collect delinquent unemployment insurance contributions from fish processors and fish buyers. The department's figures indicate that, as of January 1, 1987, 25 percent of all fish processors and buyers were delinquent in their contributions. Those delinquencies resulted in a loss to the unemployment trust fund of about \$720,000 as of that date. Under the proposed amendment, the department may assert claims for contributions against the fish processors' and buyers' surety bonds, such claims having next priority after claims for wages and for payment for raw fish.

Section 2:

The amendment of AS 23.20.195(a) in this section is a housekeeping measure providing for the 10 percent penalty on delinquent employer reports and taxes to be discretionary instead of mandatory. It also increases the minimum penalty to \$10 from \$1. This provision is not presently enforced in cases for which it is not cost effective to do so. A discretionary penalty would conform the statute to current practice, and remove the requirement on the department to assess and collect penalties regardless of whether the state actually loses money in doing so.

HB 384
cc

Sections 3 and 4:

The amendments to AS 23.20.205(c) and AS 23.20.220(a) in these sections clarify the procedures for the appeal by an employer of the department's assessment against the employer for unemployment contributions. The department may extend the 30-day appeal filing deadline for circumstances beyond the control of an employer. Also, the amendments clarify that if the employer files security with the appeal, the collection of the assessment will be stayed pending determination of the appeal.

In addition, extraneous language in AS 23.20.220 is being deleted.

Sections 5, 6, and 7:

Under current law, nonprofit organizations and governmental entities may elect to reimburse the Alaska Department of Labor after it has paid either regular or extended unemployment insurance benefits to an unemployed worker, instead of paying contributions ahead of time under AS 23.20.165. Under AS 23.20.406, extended benefits are payable to an unemployed worker only after that person (1) has exhausted his or her regular benefits and (2) is otherwise qualified under AS 23.20. In addition, extended benefits are only available during certain high unemployment periods. See AS 23.20.408. If a nonprofit organization does not pay contributions in advance under AS 23.20.165, then, currently, it must reimburse 100 percent of the regular benefits and 50 percent of the extended benefits paid by the Alaska Department of Labor. The federal government reimburses the other 50 percent of the extended benefits paid by the Alaska Department of Labor.

Under the Gramm-Rudman-Hollings Act (the federal Balanced Budget and Emergency Deficit Control Act of 1985), the federal share (currently 50 percent) of extended benefits payments might decrease because it is subject to sequestration. If that happens, under existing AS 23.20.277(b) the state would have to absorb the loss of federal money because the nonprofit organization share is fixed at 50 percent. To offset that loss, nonprofit organizations that choose to reimburse the department for benefits paid to their former employees will, under the amendments to AS 23.20.277(b), (e), and (1) (secs. 5, 6, and 7 of the bill), be required to reimburse the difference between the 100 percent of the extended benefits already paid by the department and the amount subsequently reimbursed by the federal government. The amount charged government entities will not change

because they already reimburse 100 percent of the extended benefits paid by the department.

Section 8:

This amendment of AS 23.20.290(d) provides for rounding the employee contribution to the nearest one-hundredth of one percent. Current law requires rounding to the nearest one-tenth of one percent. Under current AS 23.20.290(c), however, the employer contribution is to be rounded to the nearest one-hundredth, so employers currently pay or collect one tax rounded to one-hundredth and another rounded to one-tenth on the same wages. The amendment provides more consistency for employers.

Section 9:

Under proposed AS 23.20.390(f), individuals who fraudulently obtain benefits incur an additional monetary penalty of 50 percent of the amount improperly received, unless the department waives the penalty, with any penalties collected to go to the general fund. Currently, under AS 23.20.387, a person who fraudulently receives benefits is disqualified from receiving benefits for a specified period of time, and, under AS 23.20.390(a), must repay the benefits fraudulently received (a situation similar to an interest-free loan). As a further disincentive for fraud, the 50 percent penalty is proposed.

Section 10:

This section proposes new AS 23.20.391, 23.20.393, and 23.20.394, which establish provisions for liens and attachment of property to facilitate the collection of overpayments that are caused by fraudulent receipt of benefits. The three proposed statutes are based on existing AS 23.20.200, 23.20.205, and 23.20.215, respectively, regarding liens on the property of an employer for failure to make the required contributions. Proposed AS 23.20.391(b), which tracks existing AS 23.20.200(b), refers to the lien being "constructive notice to creditors" and is intended to establish the priority of the state over unsecured and unrecorded creditors, whether prior or subsequent, as well as subsequent secured creditors.

Section 11:

Under current law, an individual's eligibility for unemployment insurance benefits is based upon wages paid to the

individual. Thus, if an individual works for an employer who files for bankruptcy and does not pay its employees, the individual does not qualify for unemployment benefits. The proposed amendment to AS 23.20.530(a) in this section rectifies this situation. This section expands the definition of "wages" to include earnings for work that an employee performs but is not paid for because the employer files for bankruptcy.

Section 12:

This section repeals two outdated subsections of AS 23.20.175.

Sections 13 and 14:

These sections provide for effective dates, with the amendment regarding the rounding of employee contributions taking effect January 1, 1989, and the other changes taking effect immediately.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "Steve Cowper".

Steve Cowper
Governor

SENATE COMMITTEE REPORT

FURTHER

FINANCE

DATE TURNED INTO OFFICE _____

4/7/88

Mr. President:

LABOR AND COMMERCE Committee considered HB 384 (title am)

unemployment insurance; establishing a priority for payment; efd

majority
and recommended

replace with _____ CS SCS HB 384 (LIC) same title
 or adopt _____ CS SCS FOR HD 304 LHO new title

attached amendment(s) and *+ do pass*

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted _____

Committee attached or adopted fiscal note(s)
 new updated or previous
 zero fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

M. J. ...
Fabre...

Tim Kelly - Potomac

Chairman signature and recommendation

Committee Backup attached