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8-LS1682J ✓
Cramer
3/14/94

CS FOR HOUSE BILL NO. 459()
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to minimum wage and overtime compensation claims."

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

3 * Section 1. AS 23.10.110(a) is amended to read:

4 (a) An employer who violates a provision of AS 23.10.060 or 23.10.065 is
5 liable to an employee affected in the amount of unpaid minimum wages, or unpaid
6 overtime compensation, as the case may be, and, except as provided in (d) - (f) of
7 this section, in an additional equal amount as liquidated damages.

8 * Sec. 2. AS 23.10.110(c) is amended to read:

9 (c) The court in an action brought under this section shall, in addition to a
10 judgment awarded to the prevailing party [PLAINTIFF], allow costs of the action and
11 reasonable attorney fees to be determined according to court rule. When the
12 commissioner is the prevailing party in an action brought under this section, the
13 commissioner shall remit the recovered attorney fees [PAID BY THE
14 DEFENDANT. THE ATTORNEY FEES IN THE CASE OF ACTIONS BROUGHT

1 UNDER THIS SECTION BY THE COMMISSIONER SHALL BE REMITTED BY
2 THE COMMISSIONER] to the Department of Revenue. The commissioner may not
3 be required to pay the filing fee or other costs. The commissioner in case of suit has
4 power to join various claimants against the same employer in one cause of action.

5 * Sec. 3. AS 23.10.110 is amended by adding new subsections to read:

6 (d) In an action under (a) of this section to recover unpaid minimum wages,
7 unpaid overtime compensation, or liquidated damages, if the employer shows to the
8 satisfaction of the court that the act or omission giving rise to the action was made in
9 good faith and that the employer had reasonable grounds for believing that the act or
10 omission was not in violation of AS 23.10.050 - 23.10.150, the court may decline to
11 award liquidated damages or may award an amount of liquidated damages less than
12 the amount set out in (a) of this section. The court shall, in a manner consistent with
13 applicable federal and state law, determine whether good faith has been established.
14 This subsection does not apply to an action brought under this section by the
15 commissioner.

16 (e) The commissioner may supervise the payment of the unpaid minimum
17 wages or unpaid overtime compensation owing to an employee under AS 23.10.060
18 or 23.10.065. Payment in full in accordance with an agreement by an employee to
19 settle a claim for unpaid minimum wages, unpaid overtime compensation, or liquidated
20 damages constitutes a waiver of any right the employee may have under (a) of this
21 section to unpaid minimum wages, unpaid overtime compensation, or liquidated
22 damages.

23 (f) In a settlement that is not supervised by the department or the court, an
24 employee is entitled to liquidated damages under (a) of this section unless the
25 employee and the employer enter into a written settlement agreement in which the
26 employee expressly waives the right to receive liquidated damages. The waiver must
27 be knowing and voluntary. A waiver may not be considered to be knowing and
28 voluntary unless the settlement agreement

- 29 (1) is written in a manner calculated to be understood by the employee;
30 (2) specifically waives rights or claims arising under AS 23.10.110(a);
31 (3) advises the employee to consult with an attorney or with the

1 department before entering into the agreement;

2 (4) allows the employee at least seven calendar days to consider
3 whether to accept the offer of settlement; and

4 (5) provides for a period of at least five days after the employee enters
5 into the agreement in which the employee may revoke the agreement; the settlement
6 agreement may not become effective or enforceable until the revocation period has
7 expired.

8 * Sec. 4. APPLICATION OF ACT. (a) AS 23.10.110(e), added by sec. 3 of this Act,
9 applies to agreements entered into on or after the effective date of this Act.

10 (b) AS 23.10.110(f), added by sec. 3 of this Act, applies to written agreements entered
11 into on or after the effective date of this Act.

12 (c) Except as provided in (a) and (b) of this section, to the extent constitutionally
13 permitted, this Act applies to actions commenced before, on, or after the effective date of this
14 Act that have not resulted in the entry of a final judgment before the effective date of this Act.

Sponsor Statement HB 459

OVERVIEW

This legislation addresses the awarding of punitive damages in claims of underpaid overtime compensation or statutory minimum wages under the Alaska Wage and Hour Act (AWHA). State statute imposes the payment of unpaid minimum wages or overtime compensation to an employee by an employer who has violated provisions of the AWHA. In addition to this, the employer may be liable for mandatory liquidated damages of an equal amount (AS 23.10.110(a)).

The Alaska Supreme Court in McKeown v. Kinney Shoe Corp., 820 P.2d 1068 (Alaska 1991), ruled that liquidated damages are **mandatory** and that any individual settlements out of court that did not include liquidated damages were invalid.

Prior to the Kinney Shoe ruling, an employee with a claim for underpaid overtime or minimum wages had a few options for redress. One, they could file complaint with the Alaska Dept. of Labor, who was able to negotiate a settlement. Two, the employer could attempt to reach a private settlement with the employer in question. In either of these cases, a settlement could be reached for an amount below full liquidated damages. Finally, if a settlement could not be reached in the above options, the case could be taken to court, where liquidated damages would be awarded in full if the case was found for the plaintiff.

As the law stands currently, an employer who is in violation of the state's minimum wage or overtime compensation laws is automatically liable for liquidated damages, regardless of the circumstances. Though this is intended as a to the employer in these instances, it creates an imbalance in certain situations. Under the current law, an employer who makes an "honest mistake" is punished as severely as an employer who knowingly violates the law. In these situations, the employer either takes his case to court, facing the possibility of paying full liquidated damages plus court costs or settling out of court for the claim plus full liquidated damages.

The Federal Labor Standards Act, upon which the AWHHA is based, contains identical language to AS 23.10.110(a), but also contains the following language:

. . . if the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing his act or omission was not in violation of the Fair Labor Standards Act, . . . the court may in its sound discretion, award no liquidated damages or award any amount thereof not to exceed the amount specified in [29 U.S. Code § 216].

29 U.S. Code § 260

This additional language in the FLSA creates some flexibility for employers when an honest mistake is made. The discretion is left to the courts to decide to award partial or no liquidated damages where the employer shows it acted in good faith and it had a reasonable basis for believing it was not violating the law.

HB 459 also adds a provision in Section 2 that provides the payment of court costs and attorney fees to the prevailing party in a claim decided by the court. Previous statute only provided payment of these costs to the plaintiff (employee) in these cases. This change would help to prevent erroneous claims against an employer from being brought to the court. If the Commissioner of Labor was the prevailing party in an action under this section, any court or attorney fees awarded would be remitted to the Division of Revenue for deposit into the General Fund. The House State Affairs committee added some further clarification to this provision in their committee substitute, by adding the word "recovered." (Page 1, line 14 now reads " . . . commissioner shall remit the recovered attorney fees to the Dept. of Revenue.")

The goal of HB 459 is to change the state standards regarding the awarding of liquidated damages to be congruent with the federal standards. This results in a more equitable situation for both parties; protection is still provided to the employee and flexibility is afforded to the employer who makes a mistake in good faith, providing they meet the burden of proof.

Sponsor Statement CSHB 459 (JUD)

OVERVIEW

This legislation addresses the awarding of punitive damages in claims of underpaid overtime compensation or statutory minimum wages under the Alaska Wage and Hour Act (AWHA). State statute imposes the payment of unpaid minimum wages or overtime compensation to an employee by an employer who has violated provisions of the AWHA. In addition to this, the employer may be liable for mandatory liquidated damages of an equal amount (AS 23.10.110(a)).

The Alaska Supreme Court in McKeown v. Kinney Shoe Corp., 820 P.2d 1068 (Alaska 1991), ruled that liquidated damages are mandatory and that any individual settlements out of court that did not include liquidated damages were invalid.

Prior to the Kinney Shoe ruling, an employee with a claim for underpaid overtime or minimum wages had a few options for redress. One, they could file complaint with the Alaska Dept. of Labor, who was able to negotiate a settlement. Two, the employer could attempt to reach a private settlement with the employer in question. In either of these cases, a settlement could be reached for an amount below full liquidated damages. Finally, if a settlement could not be reached in the above options, the case could be taken to court, where liquidated damages would be awarded in full if the case was found for the plaintiff.

As the law stands currently, an employer who is in violation of the state's minimum wage or overtime compensation laws is automatically liable for liquidated damages, regardless of the circumstances. Though this is intended as a ^{to} deterrent to the employer in these instances, it creates an imbalance in certain situations. Under the current law, an employer who makes an "honest mistake" is punished as severely as an employer who knowingly violates the law. In these situations, the employer either takes his case to court, facing the possibility of paying full liquidated damages plus court costs or settling out of court for the claim plus full liquidated damages.

The Federal Labor Standards Act, upon which the AWhA is based, contains identical language to AS 23.10.110(a), but also contains the following language:

. . . if the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he had reasonable grounds for believing his act or omission was not in violation of the Fair Labor Standards Act, . . . the court may in its sound discretion, award no liquidated damages or award any amount thereof not to exceed the amount specified in [29 U.S. Code § 216].

29 U.S. Code § 260

This additional language in the FLSA creates some flexibility for employers when an honest mistake is made. The discretion is left to the courts to decide to award partial or no liquidated damages where the employer shows it acted in good faith and it had a reasonable basis for believing it was not violating the law.

CSHB 459 (JUD) also adds a provision in Section 2 that provides the payment of court costs and attorney fees to the prevailing party in a claim decided by the court. Previous statute only provided payment of these costs to the plaintiff (employee) in these cases. This change would help to prevent erroneous claims against an employer from being brought to the court. If the Commissioner of Labor was the prevailing party in an action under this section, any court or attorney fees awarded would be remitted to the Division of Revenue for deposit into the General Fund. The House State Affairs committee added some further clarification to this provision in their committee substitute, by adding the word "recovered." (Page 1, line 14 now reads ". . . commissioner shall remit the recovered attorney fees to the Dept. of Revenue.")

CSHB 459 (JUD) would also provide some protection to the employee during a compensation claim in settlements that are not supervised by the Dept. of Labor or the courts. In Section 3 (f), an employee may enter into a written settlement agreement with the employer waiving the right to receive full or any liquidated damages. CSHB 459 (JUD) requires that this settlement meets five qualifications: (1) the settlement is written in a manner that is understood by the employee; (2) specifically waives the rights or claims in AS 23.10110(a); (3) advises the employee to consult with an attorney or with the Dept. of Labor before entering the agreement;

(4) allows the employee seven days to consider the settlement and (5) gives the employee 5 days after they enter into the settlement to revoke agreement.

The goal of HB 459 is to change the state standards regarding the awarding of liquidated damages to be congruent with the federal standards. This results in a more equitable situation for both parties; protection is still provided to the employee and flexibility is afforded to the employer who makes a mistake in good faith, providing they meet the burden of proof.

Court award partial
or no damages

change court fee pymt
whoever loses pays

Sec. (e) written settlements

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO : CSHB 459 (STA)

Revision Date: _____
 Title: Damages and attorney fees for
unpaid wages
 Sponsor: House Labor & Commerce
 Requestor: House Judiciary

Department Affected: Labor
 BRU: Labor Standards & Safety
 Component: Wage & Hour
 COMPONENT SERIAL NO. 345

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

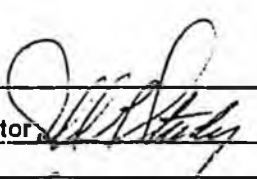
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

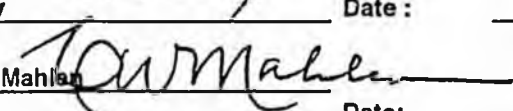
POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Donald G. Study, CSP, Director  Phone: 465-6003
 Division: Labor Standards & Safety Date: 3/16/94

Approved by Commissioner: Charles W. Mahler 
 Agency: Department of Labor Date: 3/16/94

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FISCAL NOTE

No. 1

Bill Version: HB 459

(H) Publish Date: 2/23/94

STATE OF ALASKA
194 LEGISLATIVE SESSION

BILL NO :

Revision Date: _____

Department Affected: Labor

Title: Damages and attorney fees for
unpaid wages

BRU: Labor Standards & Safety

Component: Wage & Hour

Sponsor: House Labor & Commerce

Requestor: House Labor & Commerce

COMPONENT SERIAL NO. 345

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Donald G. Study, CSP, Director Phone: 465-6003

Division: Labor Standards & Safety Date: 2/22/94

Approved by Commissioner: Charles W. Mahlen

Agency: Department of Labor Date: 2/22/94

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HOUSE COMMITTEE REP

(7)

Date Referred: March 11, 1994

FURTHER REFERRALS:

Date of Committee Action: _____

The JUDICIARY Committee considered:

HB 459

HOUSE BILL NO. 459

DAMAGES & ATTORNEY FEES FOR UNPAID WAGES

"An Act relating to liquidated damages and attorney fees for minimum wage and overtime compensation claims."

RECOMMENDATIONS:

be replaced with CSHB 459 (JUD) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Laird Phillips</i>	<input checked="" type="checkbox"/>	<i>Rep. Davidson</i>	<input checked="" type="checkbox"/>		
<i>Donnette James</i>	<input checked="" type="checkbox"/>	<i>Steve D. ...</i>	<input checked="" type="checkbox"/>		
<i>Brian Porter</i>	<input checked="" type="checkbox"/>	<i>Joseph ...</i>		<input checked="" type="checkbox"/>	
<i>[Signature]</i>	<input checked="" type="checkbox"/>				

Brian Porter
 CHAIRMAN'S SIGNATURE

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2079
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 14, 1994

SUBJECT: Sectional Summary of CSHB 459(). (Minimum wage and overtime compensation claims)

TO: Representative Eldon Mulder

FROM: Teresa B. Cramer *TC*
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1 applies the exceptions enacted in section 3 of the bill to the general rule established in the statute that employers who violate the overtime wage or minimum wage requirements are liable for liquidated damages in the amount of the unpaid minimum wage or overtime compensation.

Sec. 2 permits the court to award attorney fees to the prevailing party, as determined by court rule, rather than only providing for attorney fees for a prevailing plaintiff.

Sec. 3 adds new provisions to permit the court to decline to award liquidated damages or to award an amount less than the amount required under AS 23.10.-110(a), which is amended by sec. 1 of this bill. The court may do so if the employer shows to the satisfaction of the court that the employer acted in good faith and that the employer had reasonable grounds for believing that it was not violating the minimum wage or overtime requirements. This waiver does not apply to an action brought by the Commissioner of Labor.

Under subsection (e), the commissioner is permitted to supervise the payment of unpaid minimum wage or overtime claims including settlements. Under bill Sec. 4(a), subsection (e) applies to agreements entered into on or after the effective date of the Act.

SECTIONAL ANALYSIS

Representative Eldon Mulder

March 14, 1994

Page 2

Subsection (f) permits an employee to waive the right to liquidated damages in a written settlement agreement with the employer. The settlement must meet standards listed in the subsection. Under bill Sec. 4(b), subsection (f) applies to written agreements entered into on or after the effective date of the Act.

Sec. 4 addresses how to apply the provisions of the Act. As noted in the discussion above, Sec. 4(a) and (b) apply the settlement provisions to agreements entered into on or after the date the Act takes effect. Under Sec. 4(c), to the extent constitutionally permitted, the rest of the Act applies to actions in which a final judgement has not been entered on the date the Act takes effect.

TC:pl
94-201.plm

DIVISION OF LEGAL SERVICES

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130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 18, 1994

SUBJECT: Sectional Summary of HB 459. (Liquidated damages and attorney fees for minimum wage and overtime compensation claims)

TO: Representative Eldon Mulder

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1 applies the exceptions enacted in section 3 of the bill to the general rule established in the statute that employers who violate the overtime wage or minimum wage requirements are liable for liquidated damages in the amount of the unpaid minimum wage or overtime compensation.

Sec. 2 permits the court to award attorney fees to the prevailing party, as determined by court rule, rather than only providing for attorney fees for a prevailing plaintiff.

Sec. 3 adds new provisions to permit the court to decline to award liquidated damages or to award an amount less than the amount required under AS 23.10-110(a), which is amended by sec. 1 of this bill. The court may do so if the employer shows to the satisfaction of the court that the employer acted in good faith and that the employer had reasonable grounds for believing that it was not violating the minimum wage or overtime requirements. This waiver does not apply to an action brought by the Commissioner of Labor.

Under subsection (e), the commissioner is permitted to supervise the payment of unpaid minimum wage or overtime claims including settlements. Under Sec. 4(a), this subsection applies to agreements entered into on or after the effective date of the Act.

Representative Eldon Mulder

February 18, 1994

Page 2

Subsection (f) permits an employee to waive the right to liquidated damages in a written settlement agreement with the employer. Under Sec. 4(b), this applies to written agreements entered into on or after the effective date of the Act.

Sec. 4 addresses how to apply the provisions of the Act. As noted in the discussion above, Sec. 4(a) and (b) apply the settlement provisions to agreements entered into on or after the date the Act takes effect. Under Sec. 4(c), to the extent constitutionally permitted, the rest of the Act applies to actions in which a final judgement has not been entered on the date the Act takes effect.

TBC:gc

94-137.glc

BILL NO: House Bill No. 459

DATE: February 21, 1994

TITLE: Damages And Atty Fees For Unpaid Wages

CONTACT: Arbe Williams
465-2700

House Bill No. 459 would substantially alter the punitive penalties that currently exist for violations of the Alaska Wage and Hour Act. Section 3 would provide for a "good faith" exception to penalties except where actions are brought by the Commissioner of Labor. In addition, the commissioner and private parties would be authorized to negotiate a settlement that excludes part or all of the liquidated damages. Section 4 would apply the amendments to the Act to cases currently in litigation in the courts.

The interest to address liquidated damages is the result of a recent Alaska Supreme Court case involving Kinney Shoes wherein the Court found that individual settlement agreements that did not include liquidated damages were void. This has resulted, for all parties to such disputes, including the Department of Labor, in the mandatory inclusion of liquidated damages in any settlements reached. Prior to the Kinney Shoes decision parties could, and did, waive some or all liquidated damages if convinced that it was appropriate and in the best interest of the settlement. If a claim could not be settled administratively and court action was required, liquidated damages were automatically awarded if the case came to trial and the plaintiff prevailed.

The liquidated damage penalty created in AS 23.10.110 has been determined by the courts to be a punitive penalty designed to deter employers from violating the minimum wage and overtime obligations imposed by state law. This bill would eliminate automatic liquidated damages. The bill attempts to provide an exception for those cases brought by the Department of Labor but the department is advised that the courts would not look at those cases differently. A "good faith" effort does not require that the employer act to inform oneself of the law. Without an effective and guaranteed deterrent, employers will chance getting caught in violation of the laws because the odds would be good that the worst that will happen is that they will be forced to pay the wages they were liable to pay in the first place.

Before the Kinney decision, the department, and private parties, had the ability to negotiate settlements that included some portion of the liquidated damages using the certainty that a court would award 100% liquidated damages as leverage for settlement. Thus, settlement did not rely on an overburdened court system for relief in each and every case. Less than 1% of the department's claims ended up in court and fewer actually came to trial. In addition, there were no complaints with the process until the Kinney Shoe case removed the parties' ability to settle for less than 100% of damages.

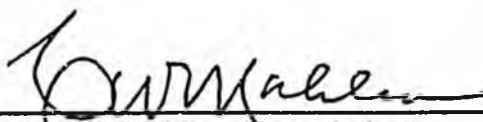
The Department of Labor supports encouraging the settlement of wage claims outside the court system and would propose to amend House Bill No. 459 to define "good faith" to include affirmative action taken by the employer to comply with state law. This amendment would

POSITION PAPER/Department of Labor

encourage compliance with the Alaska Wage and Hour Act, would provide an incentive to settle wage claims, and would reduce the burden on the courts to enforce the state's laws.

In addition, the Department would propose that the inclusion of Section 4 be reconsidered. This section affects those claimants whose cases are currently before the courts but have not been decided; those employees would be treated differently than those who filed during the same period but whose cases have been decided. All employees should be assured that they are provided equal protection under the law.

APPROVED:



Charles W. Mahlen, Commissioner

DATE: 2/22/94

POSITION PAPER/Department of Labor

DAVIS WRIGHT TREMAINE

Law Offices

SUITE 1450 • 550 WEST 7TH AVENUE • ANCHORAGE, ALASKA 99501
(907) 557-5310

FROM: Parry Grover, Davis Wright Tremaine
DATE: February 2, 1994
RE: Analysis of proposed House Bill relating to liquidated damages and attorney fees for minimum wage and overtime compensation claims

This bill corrects two serious shortcomings with respect to the liquidated damages provision of the Alaska Wage & Hour Act (AWHA), AS 23.10.110(a):

1. It restores to the Commissioner of the Alaska Department of Labor the authority to settle minimum wage and overtime claims without assessing liquidated damages, and it authorizes settlements outside court; and
2. It grants the courts discretion in private AWHA litigation to award partial or no liquidated damages if the employer proves he acted in good faith and reasonably.

Neither action has been legally permissible since the Alaska Supreme Court's decision in McKeown v. Kinney Shoe Corp., 820 P.2d 1068 (Alaska 1991).

The policy underlying AWHA is to require employers who fail to pay their employees minimum wages or overtime compensation the unpaid minimum wages or overtime compensation which are due, and an equal amount as liquidated damages. This policy is drawn from the federal Fair Labor Standards Act (FLSA) which contains similar liquidated damages provisions.

Unlike the FLSA, however, AS 23.10.110(a) has been interpreted by the Alaska Supreme Court as mandating payment of liquidated damages in every case, regardless of whether the employer acted reasonably and in good faith. The FLSA allows the court to waive liquidated damages in whole or in part if the employer makes that showing. Moreover, prior to Kinney Shoe, the Commissioner felt he had authority in appropriate cases to settle claims without requiring payment of liquidated damages. Since that decision, the Commissioner has been required to recover liquidated damages in every case.

This bill does not remove the liquidated damages provision in AWHA. Rather, it restores the Commissioner's pre-Kinney Shoe settlement authority, and it grants the courts power to waive

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BACK - UP

liquidated damages in cases where federal law allows that discretion.

The following analysis of Sections 3 and 4 of the bill summarizes how this bill corrects AWA:

Subsection 3(d). This provision incorporates the FLSA standard under which a court may decline to award liquidated damages where the employer proves it acted reasonably and in good faith. See 29 U.S. Code § 260. Subsection (d) applies only to private AWA litigation. It does not affect the Commissioner's enforcement and settlement powers.

For example, an employer might incorrectly believe an employee is exempt from overtime compensation because of advice from the Department of Labor given under a good faith misunderstanding of certain facts. After trial, the court would require the employer to pay the overtime compensation, but could decide to award partial or no liquidated damages depending on circumstances of the case. It will be the employer's burden to persuade the court not to award liquidated damages.

Subsection 3(e). This provision was requested by the Commissioner. It likewise is drawn from the FLSA, 29 U.S. Code § 216, and is intended to restore the Commissioner's pre-Kinney Shoe authority to settle AWA cases without requiring payment of liquidated damages. If the Commissioner finds it necessary to sue the employer in court and prevails at trial, an award of full liquidated damages is required under AS 23.10.110(a). Employers thus will have a powerful inducement to accept reasonable settlement proposals advanced by the Commissioner.

Subsection 3(f). This provision allows AWA settlements made outside of court which expressly waive liquidated damages to be respected judicially. The Kinney Shoe court held that private settlements are void. The court's decision has had the effect, albeit perhaps unintended, of increasing resort to litigation. There is language in the decision which strongly suggests that only those settlements approved by a court are valid. It is poor public policy to encourage litigation and to discourage private settlements of claims.

Section 4. This effective date provision distinguishes between private AWA litigation and enforcement of AWA by the Commissioner. Restoration of the Commissioner's settlement authority (Subsection 3(e)) and authority for private AWA settlements (Subsection 3(f)) are tied to the effective date of the Act. The good faith and reasonable grounds defense to liquidated damages will become available in pending private court proceedings which have not gone to final judgment prior to the effective date of the Act, and to future actions.

ARCTECH SERVICES


February 22, 1994

Representative Eldon Mulder
State Capitol, Rm. #116
Juneau, Alaska 99801-1182

Dear Representative Mulder,

I urge you to support House Bill 459. Passage of this legislation will allow the Department of Labor to settle wage and hour claims and allowing for a more fair and equitable settlement for the parties involved.

Sincerely,



M. Kathryn Thomas

OUR LADY OF COMPASSION CARE CENTER

4900 EAGLE STREET
ANCHORAGE, ALASKA 99503-7446
PHONE: (907) 562-2281



February 16, 1994

Members of The State House Labor and Commerce Committee:

Reps. Bill Hudson, Chairman
Joe Green, vice Chairman
Eldon Mulder
Brian Porter
Bill Williams
Joe Sitton
Jerry Mackie

I wanted to let you know that Our Lady of Compassion Care Center wholeheartedly supports the passage of HB 459. This legislation brings much needed reform to Alaska's wage and hour statute by once again allowing for negotiated settlements and allowing the State Department of Labor (DOL) and the Alaska Courts the flexibility to mitigate what are now mandatory liquidated damages provided the employer can prove his or her error was made in "good faith". The current law, as interpreted by the Alaska Supreme Court in its "Kenny Shoe" decision, strips the DOL of its previous flexibility with regard to settlements and liquidated damages, voids private settlements, and creates a "double or nothing" situation whereby the only options open to the employer are:

1. paying the costs of an outright victory in court, or
2. paying double whatever the claim is regardless of the circumstances.

The bill will not make it easy for employers to avoid paying overtime claims or liquidated damages. It will simply provide that in cases where employers can demonstrate they have made "honest mistakes" the Department or the Courts may take this into consideration when deciding whether and how much liquidated damages are awarded. The Fair Labor Standards Act, upon which the Alaska statute is based, provides the flexibility in federal law that HB 459 seeks to allow in state law. In addition, the states of California, Oregon, and Washington already have very similar provision on their books. I can think of no reason Alaska employers should be placed under a more burdensome standard than the thousands of businesses on the rest of the Pacific Coast. Please give HB 459 your support and move it out of the Labor and Commerce Committee as soon as possible. I look forward to working you to achieve final passage of this critically important legislation.

Sincerely,


Melissa A. Wright, Director Human Resources



February 16, 1994

Representative Bill Hudson, Chairman
House Labor and Commerce Committee
Room 101
State Capitol
Juneau, AK 99801-1182

Dear Chairman Hudson:

We strongly support the passage of HB 459. This legislation reforms Alaska's wage and hour statute by again allowing for negotiated settlements and allowing the State Department of Labor (DOL) and the Alaska Courts the flexibility to mitigate what are now mandatory liquidated damages, provided the employer can prove his or her error was made in "good faith."

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Please give HB 459 your support and move it out of the Labor and Commerce Committee as soon as possible. We look forward to working with you to accomplish the goals of this important legislation.

Sincerely,

WESTMARK HOTELS, INC.


Al Parrish
President

tkw

cc: Rep. Joe Green Rep. Eldon Mulder
Rep. Brian Porter Rep. Bill Williams
Rep. Joe Sitton Rep. Jerry Mackie

Carlisle

ENTERPRISES, INC.

900 Aurora Avenue • Fairbanks, Alaska 99701 • (907) 451-7155

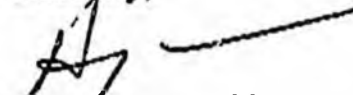
February 21, 1994

Rep. Eldon Mulder
Fax: 465-3518

Dear Eldon:

I wanted to let you know that I strongly support the passage of HB 459. We need the flexibility regarding liquidated damages that this bill allows. The present mandatory liquidated damages can actually hold up the resolution of claims, especially when an "error" has been made in good faith. Again I urge you to support passage of this bill.
Thanks.

Sincerely,



Harry McDonald
President

HM/jd

**CARR
GOTTSTEIN**

FOODS CO.

6411 A Street Anchorage, Alaska 99518

Ph: (907) 561-1944

February 21, 1994

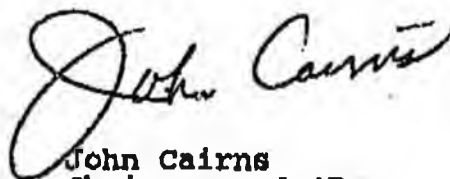
To All Members of The State House Labor and Commerce Committee

Reps: Bill Hudson (Chairman)
Joe Green (Vice Chairman)
Eldon Mulder
Brian Porter
Bill Williams
Joe Sitton
Jerry Mackie

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Please give HB 459 your support and move it out of the Labor and Commerce Committee as soon as possible. We look forward to working with you to achieve final passage of this critically important legislation.



John Cairns
Chairman and CEO



Sheraton Anchorage

HOTEL

February 17, 1994

Representative Bill Hudson, Chairman
House Labor and Commerce Committee
Room 101
State Capitol
Juneau, Alaska 99801-1182

Post-It™ brand fax transmittal memo 7671		# of pages	1
To	Chairman Bill Hudson	From	Forest J. Paulson
Co.		Co.	
Dept.		Phone #	
Fax #	465-6190	Fax #	274-9142

Dear Chairman Hudson:

We, here at the Sheraton Anchorage Hotel, strongly support the passage of HB 459 along with many others. We think it's important that you know of our feelings.

This legislation brings much needed reform to Alaska's wage an hour statute by once again allowing for negotiated settlements and allowing the State Department of Labor (DOL) and the Alaska Courts the flexibility to mitigate what are now mandatory liquidated damages, provided the employer can prove his or her error was made in "good faith".

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We are hoping that you will support HB 459, along with the Sheraton Anchorage Hotel, and look forward to working with you on this very important matter.

Sincerely,

Sheraton Anchorage Hotel

Forest J. Paulson
General Manager

FJP/mjd

Sheraton

401 EAST 5TH AVENUE, ANCHORAGE, AK 99501
PHONE (907) 276 8700 FAX (907) 276 7141

INTERNATIONAL HOTEL GROUP - ANCHORAGE, ALASKA

February 17, 1994

Representative Bill Hudson, Chairman
House Labor and Commerce Committee
Capitol Building
Juneau, Alaska

Subject: Statement of Support for House Bill 459

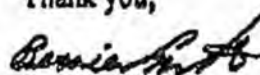
Dear Representative Hudson:

Tesoro Alaska Petroleum Company supports passage of HB 459. This bill will rectify an anomaly that currently exists between state law and the Fair Labor Standards Act. Current Alaska Wage and Hour law provides for mandatory liquidated damages when employers are found to have erred under state law, irrespective of the circumstances.

The proposed bill will not eliminate liquidated damages from future awards made under state Wage and Hour law. If passed, the new law would restore flexibility for the trier of facts when an employer has proven that its error was made in "good faith." A similar approach is used in the Federal Wage and Hour laws, as well as the comparable laws of California, Oregon, and Washington.

If you have any questions or, if we can be of assistance, please contact me. We hope HB 459 will be moved out of Committee soon and believe it's final passage will benefit the State.

Thank you,



Bernie Smith

cc: Representative Joe Green, (Vice Chairman)
Representative Eldon Mulder
Representative Brian Porter
Representative Bill Williams
Representative Joe Sitton
Representative Jerry Mackie

February 16, 1994

Representative Bill Hudson, Chairman
House Labor and Commerce Committee
Room 101
State Capitol
Juneau, AK 99801-1182

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Please give HB 459 your support and move it out of the Labor and Commerce Committee as soon as possible. We look forward to working with you to accomplish the goals of this important legislation.

Sincerely,

WESTMARK HOTELS, INC.


Al Parrish
President

tkw

cc: Rep. Joe Green Rep. Eldon Mulder
Rep. Brian Porter Rep. Bill Williams
Rep. Joe Sitton Rep. Jerry Mackle

OUR LADY OF COMPASSION CARE CENTER

600 CALIF STREET
ANCHORAGE ALASKA 99501-7440
PHONE (907) 561-2446
February 16, 1994



Members of The State House Labor and Commerce Committee:

- Reps. Bill Hudson, Chairman
- Joe Green, vice Chairman
- Eldon Mulder
- Brian Porter
- Bill Williams
- Joe Sitton
- Jerry Mackie

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Sincerely,
Leisa A. Wright
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Director Human Resources

cc: C. J. Bane