

SB

261

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SB 261

Revision Date: _____
 Title: Unemployment Compensation
 Sponsor: Senate Labor & Commerce
 Requestor: Senate Labor & Commerce

Department Affected: Labor
 BRU: Employment Security
 Component: Employment/Unemployment Services
 COMPONENT SERIAL NO. 1807

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
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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CHANGE IN 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 (FY96) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

The bill makes several changes to the unemployment insurance provisions in the Alaska Employment Service Act. In addition to several technical amendments, the bill addresses federal income tax withholding, confidentiality of records, contributions and collections, benefit overpayments, finality of determinations and appeals. The tax withholding provision is a federal conformity requirement which will allow voluntary withholding of benefits to cover a claimant's federal income taxes. The other changes clarify ambiguities in the law and increase the efficiency and accuracy of claim adjudication and collection of amounts due to the unemployment compensation fund. The costs associated with these changes will be accommodated within existing expenditure authorization.

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 Division Employment Security Date: 2/12/96
 Approved by Commissioner Tom Cashen, Commissioner
 Agency Department of Labor Date: 2/12/96

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

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SENATE COMMITTEE REPORT

DATE: 3/8/96

DATE TURNED INTO OFFICE: 3-22-96

The Judiciary Committee considered SB 261

Relating to employment security records.

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

Senate Bill:

- same title
- new title
- House Bill:
- same title
- technical change
- new: SCR# _____

SIGNING DO PAYS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Like Miller</i>	<input checked="" type="checkbox"/>				
<i>As Adams</i>	<input checked="" type="checkbox"/>				
CHAIR: <i>Chris Taylor</i>	<input checked="" type="checkbox"/>				

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

<i>labor</i>	<i>2/12</i>	<input checked="" type="checkbox"/>	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

ALASKA STATE LEGISLATURE



Senator Tim Kelly, Chair
Senator John Torgerson, Vice Chair
Senator Mike Miller
Senator Jim Duncan
Senator Judy Salo

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SENATE LABOR AND COMMERCE COMMITTEE

Sponsor Statement

SB 261

"An Act relating to the release of employment security records; relating to an injunction or an employer's security for delinquent unemployment insurance contributions..."

SB 261 was requested by the Department of Labor and makes several changes to the Employment Security Act in six major areas: (1) federal income tax withholding; (2) confidentiality of records; (3) contributions and collection; (4) benefit overpayments; (5) finality of determinations; (6) appeals. SB 261 also contains a few minor cleanup provisions and technical amendments.

The six major changes are outlined here:

Income Tax Withholding. One important change brings the Employment Security Act into conformity with a new federal provision that requires states to allow claimants to have income withheld from their benefits to cover their federal income tax liability.

Confidentiality of Records. Proposed changes to current law would allow the Department of Labor to provide additional specific unemployment insurance information to other entities under strict disclosure guidelines. This information exchange will support and enhance the department's own programs, as well as assisting other state programs. The information would be used only to protect the unemployment compensation fund, enhance employment, training, and labor market information programs, and assist state eligibility verification and collection functions. These changes do not rescind public disclosure prohibitions already in statute. They are intended only to increase efficiency of state government while retaining current privacy safeguards.

Contributions and Collections. Two provisions would provide important tools for collecting delinquent contributions. First, the department would be authorized to require a deposit or bond from an employer who is at least two quarters delinquent in making contributions to the unemployment compensation fund. SB 261 would also allow the Department to enjoin a delinquent employer from operating. Additionally, the bill allows the Department to notify employing units of their contractor's or subcontractor's liability for contributions to the unemployment compensation fund. This information will help employers to meet their obligation to require contribution bonds of their subcontractors before making contract payments.

Benefit Overpayments. The standard for waiving unemployment insurance overpayments would be changed from "great hardship" to "equity and good conscience." The new standard would allow the Department to consider other factors, such as the degree of good faith in claiming benefits. The bill would also permit the Department to write off uncollectible overpayments after two years. Practice has shown that most recoverable overpayments are collected within two years.

Finality of Determinations. The Department would be given authority to correct any determination during the benefit year of an unemployment claim. This change will increase the accuracy of claim adjudication.

Appeals. A proposed amendment would provide a uniform 30-day time period for filing appeals from any determination made by the department. The current 15-day period probably impacts rural parties unfairly and may not allow enough time to review and consider an appeal. A longer period will still allow for prompt disposition of claims and assessments.

The bill would clarify the legal effect of appeal decisions. It would make it clear that findings of fact and conclusions of law in unemployment hearings are not binding in another proceeding. This change to current law will prevent excessive litigation by parties based on the effects of the Departments rulings in later civil litigation. This change should keep unemployment hearings speedy, informal, and inexpensive.

Both the 30-day appeal period and the provision restricting the scope of department decisions address concerns of a recent legislative audit of the unemployment insurance appeals process.

Other Minor Changes. Additional changes would allow an insured worker to continue receiving unemployment while attending the funeral of an immediate family member; require a worker to file a compensable claim for the week immediately before jury duty or attendance at a funeral in order to receive an eligibility exemption for those reasons; exempt extended benefit claimants from the work search requirement while attending an approved training course; correct the definition of "waiting week" in the Employment Security Act; and clarify the treatment of "cafeteria plan" payments under the wage definition in the Act.

SECTION BY SECTION ANALYSIS
SENATE BILL NO. 261

Section 1 amends AS 23.20.110(a) in the following two areas:

- a. Employer access to information. A clarifying amendment gives employing units access to confidential information necessary to protect their rights under the Employment Security Act. This change would make it clear that both claimants and employing units have the right to information necessary to present or contest any claim or determination under the Act.

- b. Information shared with AHRIC-sponsored programs. The Alaska Human Resource Investment Council now has responsibility for coordinating all state employment and training programs under AS 44.19. This amendment would allow sharing of employment security information necessary to carry out the council's mandate.

Sec. 2 amends AS 23.20.110(d) to allow the department to charge persons for the cost of providing information. This change is consistent with an amendment proposed in section 3 of the bill which allows sharing of confidential information with authorized persons and agencies.

Sec. 3 amends AS 23.20.110 by adding subsections (1)-(n) to allow the department to provide unemployment insurance information to other persons and entities under strict disclosure guidelines. The information would be used only to protect the unemployment compensation fund and assist state eligibility verification and collection functions. These changes do not rescind the public disclosure prohibitions in AS 23.20.110; they would increase

efficiency of state government while retaining current privacy safeguards. Specific changes:

- a. Eligibility verification and collection. New AS 23.20.110(1) would allow the department to share information as necessary to verify the eligibility of applicants for state benefits, assist in the collection of fines and judgements, and collect money owed the unemployment compensation fund.

Proposed paragraph (1) would allow the department to release information for purposes such as verifying permanent fund dividend applications or determining public defender eligibility of criminal defendants. Under current law, the department must deny requests from the court system and other state agencies for residency, wage, and other information in departmental records.

Paragraph (2) would allow the department to release information to the Department of Law to verify the location and income of obligors. There is currently a large backlog of uncollected judgements, and this information would help the Department of Law determine probability of collection and focus collection efforts appropriately.

Paragraph (3) would allow the department to release information on persons or employing units that are delinquent in paying contributions or repaying benefit overpayments. Release would be restricted to information necessary for collection of the amounts due. The restriction would apply to the kind and amount of information released, as well as to the agencies or persons to whom the information would be released. Permitting disclosure would improve the department's ability to collect money owed the fund. The department is currently

prohibited, for example, from releasing the identity of even fraudulently overpaid claimants to a collection agency.

b. Information release agreement. New AS 23.20.110(m) would require an information release agreement between the department and the requestor prior to any release of information. The agreement would confirm the purposes for the information and the procedures for transmission, use, and safeguarding of the information. The statute already requires verification of a requestor's safeguarding procedures under federally-mandated disclosure provisions. This amendment would extend these requirements to any information release, and it would provide more consistent procedures for maintaining the confidentiality of the information.

c. Statistical reports. New AS 23.20.110(n) would allow the department to include firm name, address, industrial classification code, census code, and staff information in the department's labor market information reports. This would increase the usefulness of the reports, without revealing payroll or wage data.

Sec. 4 adds two new sections to the Employment Security Act, dealing with delinquent contributions. New AS 23.20.247 would give the department authority to require a bond or security from an employer whose contributions to the unemployment fund are more than two quarters delinquent. New AS 23.20.248 would allow the department to seek an injunction against a delinquent employer who refuses to post the bond. The injunction would not be sought until the employer had been given 30 days to post the bond or security. The department would have authority to waive the bond requirement after the delinquency was satisfied

The above provisions would be used when other collection remedies in the Act were not effective. For example, the delinquent account of an employer who operates on leased equipment and has no attachable assets is largely uncollectible using current procedures. In the past two years, the department has declared uncollectible 180 accounts, totalling \$454,213. About half these accounts had significant delinquent balances, and many were not collectible using currently available collection remedies.

Sec. 5 amends AS 23.20.265 to allow the department to notify employing units of their subcontractors' liability for contributions to the fund. Under current law an employing unit is liable for the fund obligations of its contractors or subcontractors, if it makes payment to them before they post a bond sufficient to cover contributions, penalties, and interest owed to the fund. Providing employing units with information on subcontractor liability will allow them verify compliance.

Sec. 6-9 amend the current appeal provisions to provide a uniform 30-day time period in which an employing unit may file an appeal from rate determinations and assessments made by the department. The current 15-day time period is unnecessarily short, considering the complexity of some of these cases. The 30-day appeal period was a recent legislative audit recommendation.

Sec. 10 allows the department to redetermine monetary or non-monetary unemployment insurance determinations within one year from the department's initial determination. The current provision allows the department to correct only a monetary determination. The amendment would allow the department to correct any determination resulting from inaccurate information or an error in computation, identity, or application of law. This change will improve the accuracy and fairness of the department's claim adjudication.

Sec. 11 amends AS 23.20.340(e) to provide a uniform 30-day appeal period for all benefit determinations under the Employment Security Act. The 30-day appeal period was a recommendation of a recently-completed legislative audit of the department's employment security appeals function. The current time period for filing appeals is 15 days from the date the department's decision is mailed to a claimant or other interested party. The 15-day period probably impacts rural parties disparately, due to mail delays, and it may not allow enough time to review and consider an appeal. A longer period would reduce this impact and still allow for prompt disposition of claims.

Sec. 12 amends the availability for work provision in AS 23.20.378 to allow an insured worker to receive benefits while attending the funeral of an immediate family member for a period no longer than seven days. Benefits would be paid only if the worker filed a compensable claim for the week before the funeral attendance. The proposed amendment would also extend this compensable claim requirement to any claimant seeking an availability exemption under AS 23.20.378.

Sec. 13 changes the standard for waiving unemployment insurance overpayments under AS 23.20.390(b) from the current "great hardship" standard to one of "equity and good conscience". The new standard would allow the department to consider other factors, such as the degree of good faith in claiming benefits, the exact cause of the overpayment, whether the claimant received only normal benefits or a duplicate payment, and the extent of the claimant's detrimental reliance on the award of benefits, in addition to financial hardship. The equity and good conscience standard is well-established in other jurisdictions, both federal and state, so there is ample precedent to guide the department in applying the standard.

Sec. 14 allows the department to declare uncollectible an overpayment that has not been repaid within two years and to remove it from the department's books. The current statute requires the department to carry overpayments for six years before they may be declared uncollectible.

Sec. 15 increases the appeal period for overpayment liability determinations to 30 days. This is consistent with the other appeal period changes made in the bill.

Sec. 16 adds a new section to the Employment Security Act to allow voluntary income tax withholding on unemployment insurance benefits. This change is necessary to bring the Act into conformity with Public Law 103-465, which requires states to allow claimants the option of withholding from their benefits to cover their federal income tax liability on those benefits.

Sec. 17 exempts extended benefit claimants from the work search requirement while attending an approved training course. These claimants are already exempted under federal law; this change simply brings the Act into full agreement with federal extended benefit law.

Sec. 18-19 amend the appeal provisions in AS 23.20.430-435 to provide a 30-day time period for filing an appeal from a decision of the appeal tribunal and to allow the department 30 days to initiate review of a decision of the appeal tribunal. These changes are consistent with the 30-day appeal period for tax and benefit determinations elsewhere in the bill.

Sec. 20 amends AS 23.20.455 to clarify the scope of the department's rulings in unemployment insurance cases. It restricts the scope of the department's declaration of legal principles to only those cases decided under the Employment

Security Act. This change is consistent with the amendment proposed in sec. 21 of the bill.

Sec. 21 adds a new section to the Employment Security Act to clarify the legal effect of appeal decisions. Under this provision, findings of fact and conclusions of law only have preclusive effect in proceedings before the department, and are not binding in another forum or proceeding. The purpose of the amendment is to prevent parties from excessively litigating issues based on the effect the department's rulings may have on later civil litigation. For example, under this provision a finding of fact or conclusion of law made by the department regarding whether an employee was terminated for misconduct could not be given preclusive effect in a subsequent civil lawsuit for wrongful discharge. The change is intended to help keep unemployment insurance hearings speedy, informal, and inexpensive.

Sec. 22 is a technical amendment that corrects the "waiting week" definition in AS 23.20.520(20). It simply adds another provision to the current incomplete list of disqualifying provisions which would disqualify a week for use as a "waiting week."

Sec. 23 amends the list of employee compensation payments in AS 23.20.530(b) which are not deemed "wages" and are therefore not subject to employment security contributions. It specifies that "cafeteria plan" payments are not considered wages so long as the payments would not be otherwise treated as wages under AS 23.20.530. For example, payments made to a cafeteria plan for retirement or medical expenses would not be considered wages, because those payments are excluded elsewhere in the definition of wages. On the other hand, payments made under the plan that an employee elects to take in the form of cash would still be considered wages. Cafeteria plans have been treated this way for some time for federal withholding and payroll tax purposes. The

Federal Unemployment Tax Act (FUTA) was amended in 1986 (Public Law 99-514) to make it clear that the cafeteria plan exemption applied to both FUTA and Federal Insurance Contributions Act (FICA) taxes. This change will bring Alaska and federal law into harmony on this point.

Sec. 24 provides an effective date of July 1, 1996.