

SB

193

1-LS1263\K
Cramer
4/7/00

HOUSE CS FOR CS FOR SENATE BILL NO. 193(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR PEARCE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the payment of wages and claims for the payment of wages;
2 and amending Rule 82, Alaska Rules of Civil Procedure, and Rule 508, Alaska
3 Rules of Appellate Procedure."

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

5 * Section 1. AS 22.15.040(a) is amended to read:

6 (a) Except as otherwise provided in this subsection, when [WHEN] a claim
7 for relief does not exceed \$7,500, exclusive of costs, interest, and attorney fees, and
8 request is so made, the district judge or magistrate shall hear the action as a small
9 claim unless important or unusual points of law are involved or the state is a
10 defendant. The Department of Labor and Workforce Development may bring an
11 action as a small claim under this subsection for the payment of wages under
12 AS 23.05.220 in an amount not to exceed \$20,000, exclusive of costs, interest, and
13 attorney fees. The supreme court shall prescribe the procedural rules and standard
14 forms to assure simplicity and the expeditious handling of small claims.

1 * Sec. 2. AS 22.15.120(a) is amended to read:

2 (a) A magistrate shall preside only in cases and proceedings under
3 AS 22.15.040, 22.15.100, and 22.15.110, and as follows:

4 (1) for the recovery of money or damages only when the amount
5 claimed, exclusive of costs, interest, and attorney fees, does not exceed \$7,500;

6 (2) for the recovery of specific personal property when the value of the
7 property claimed and the damages for the detention do not exceed \$7,500;

8 (3) for the recovery of a penalty or forfeiture, whether given by statute
9 or arising out of contract, not exceeding \$7,500;

10 (4) to give judgment without action upon the confession of the
11 defendant for any of the cases specified in this section, except for a penalty or
12 forfeiture imposed by statute;

13 (5) to give judgment of conviction upon a plea of guilty or no contest
14 by the defendant in a criminal proceeding within the jurisdiction of the district court;

15 (6) to hear, try, and enter judgments in all cases involving
16 misdemeanors that are not minor offenses if the defendant consents in writing that the
17 magistrate may try the case;

18 (7) to hear, try, and enter judgments in all cases involving minor
19 offenses and violations of ordinances of political subdivisions;

20 (8) for the extradition of fugitives as authorized under AS 12.70;

21 (9) to provide post-conviction relief under the Alaska Rules of Criminal
22 Procedure for any of the cases specified in (5), (6), or (7) of this subsection if the
23 conviction occurred in the district court; or

24 (10) to hear, try, and enter judgments in actions for the payment
25 of wages brought by the Department of Labor and Workforce Development as
26 provided in AS 22.15.040(a) [REPEALED].

27 * Sec. 3. AS 23.05.140(b) is amended to read:

28 (b) If the employment is terminated, [REGARDLESS OF THE CAUSE OF
29 TERMINATION,] all wages, salaries, or other compensation for labor or services
30 become due immediately and shall be paid within the time required by this
31 subsection [THREE WORKING DAYS AFTER THE TERMINATION] at the place

1 where the employee is usually paid or at a location agreed upon by the employer and
2 employee. If the employment is terminated by the employer, regardless of the
3 cause for the termination, payment is due within three working days after the
4 termination. If the employment is terminated by the employee, payment is due
5 at the next regular pay day that is at least three days after the employer received
6 notice of the employee's termination of services.

7 * Sec. 4. AS 23.05.140(d) is amended to read:

8 (d) If an employer violates (b) of this section by failing to pay within the time
9 required by that subsection [THREE WORKING DAYS OF TERMINATION], the
10 employer may be required to pay the employee a penalty in the amount of the
11 employee's regular wage, salary, or other compensation from the time of demand to
12 the time of payment, or for 90 working days, whichever is the lesser amount.

13 * Sec. 5. AS 23.05.140 is amended by adding new subsections to read:

14 (e) In an action brought by the department under this section, an employer
15 found liable for failing to pay wages within the time required by (b) of this section
16 shall be required to pay the penalty set out in (d) of this section. The amount of the
17 penalty shall be calculated based on the employee's straight time rate of pay for an
18 eight-hour day.

19 (f) In an action brought for unpaid overtime under AS 23.10.060 that results
20 in an award of liquidated damages under AS 23.10.110, the provisions of (d) of this
21 section do not apply unless the action was brought by the department under (e) of this
22 section.

23 * Sec. 6. AS 23.05.220(c) is amended to read:

24 (c) The department may not accept an assignment of a claim in excess of the
25 amount set out in AS 22.15.040 as the maximum amount, exclusive of costs, interest,
26 and attorney fees, for the jurisdiction of the district court to hear an action for the
27 payment of wages as a small claim.

28 * Sec. 7. AS 23.05 is amended by adding a new section to read:

29 Sec. 23.05.235. Attorney fee awards. (a) If the plaintiff prevails in an action
30 for wages under AS 23.05.140 - 23.05.260, the court shall award reasonable attorney
31 fees to the plaintiff unless the defendant shows by clear and convincing evidence that

1 the act or omission giving rise to the action was made in good faith and that the
2 defendant had reasonable grounds for believing that the act or omission was not in
3 violation of AS 23.05.140 - 23.05.260, in which case

4 (1) the court may award attorney fees to the plaintiff in accordance
5 with court rules; or

6 (2) if the defendant would be entitled to attorney fees if the action were
7 subject to the standards under court rule offers of judgment, the court may not award
8 attorney fees to either the plaintiff or the defendant.

9 (b) Failure to inquire into Alaska law is not consistent with a claim of good
10 faith under this section.

11 * Sec. 8. AS 24.05.235, added by sec. 7 of this Act, has the effect of changing Rule 82,
12 Alaska Rules of Civil Procedure, and Rule 508, Alaska Rules of Appellate Procedure, by
13 changing the circumstances under which the court may award attorney fees in certain cases.

SB 193

Subject: SB 193**Date:** Thu, 09 Mar 2000 09:00:23 -0900**From:** "J. R. (Randy) Carr" <Randy_Carr@labor.state.ak.us>**Organization:** Alaska Department of Labor and Workforce Development**To:** Dwight L Perkins <dwright_perkins@labor.state.ak.us>,
Alan W Dwyer <alan_dwyr@labor.state.ak.us>

Under current law both penalties apply. AS23.05.240(d) waiting time penalties and 23.10.110 Liquidated damages for unpaid minimum wage or OT.

Defense attorneys requested some slack in cases where the only issue is an OT claim for an employee who was mistakenly misclassified as exempt from OT. Such cases involve only OT wages, no minimum wage or unpaid regular wages. As a compromise we agreed to the language in (f) which removes liability for waiting time penalties in a case where the only issue is OT and liquidated damages are awarded by the court.

As a practical matter, the courts generally waive the waiting time penalties in such cases now, but the defense attorney would like to see that codified. He has no problem with double penalties where the offense involves a minimum wage violation or a failure to pay regular wages.

ROBERT W. LANDAU
ATTORNEY AT LAW, ARBITRATOR & MEDIATOR
2525 BLUEBERRY ROAD, SUITE 103
ANCHORAGE, ALASKA 99503

(907) 272-2266
FAX (907) 272-1077

February 4, 2000

Senator Drue Pearce
State Capitol
Juneau, AK 99801

Representative Andrew Halcro
State Capitol
Juneau, AK 99801

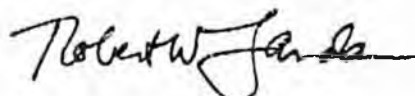
Re: SB 193 / HB 276
Wage and Hour Claim Limit

Dear Senator Pearce and Representative Halcro:

I am actively involved in the area of labor and employment law as an attorney, arbitrator and mediator. I am writing in support of the above bills which would raise the jurisdictional amount limit for wage and hour claims brought by the Department of Labor in small claims court from \$7,500 to \$20,000. I believe that raising the wage claim limit would allow the Department to seek relief for a greater number of employees who otherwise would not be able to obtain legal representation because of the relatively small size of their claims. In addition, I believe that the Department should be provided with sufficient resources and staffing to adequately pursue the greater number of wage claims it is being asked to handle. Without adequate funding, the goal of these bills would be nothing more than an empty promise.

Thank you for your consideration of these comments.

Sincerely,



Robert W. Landau

RL:hs

ALASKA STATE LEGISLATURE

HOUSE LABOR AND COMMERCE COMMITTEE

Representative Norman Rokeberg, Chairman
Representative Andrew Halcro, Vice-Chairman
Representative John Harris
Representative Lisa Murkowski
Representative Jerry Sanders
Representative Tom Brice
Representative Sharon Cissna



State Capitol
Juneau, AK 99801-1152
Telephone: (907) 465-4954
Fax: (907) 465-2040

FOR YOUR SENATE BILL 193 FILE

From Wednesday's meeting



COVER SHEET

Anchorage Legislative Information Office
Office - (907) 269-0111 Fax - (907) 269-0229

To: (H) L & C

Atten: Rep Rabeberg Fax: _____ Phone: _____

From: _____ Phone: _____

Instructions: Written (F) on SB 193

Sent: _____ Date: _____ Time: _____

Disposal of Original: Discard: _____ Hold for Pickup: _____

Number of Pages: _____ (counting cover sheet)

Transmitted by: _____

Legislature - U.I

Margaret Bauman

SB.193

I am here to testify in favor of legislation which would raise the amount of back wages for residents which the state can pursue through the court system. At present the Labor Department can only pursue amounts up to \$7,500 and my former employer owes me in excess of \$10,000. The employer, Business News Alaska, has refused to pay me any of the amount due since last July, although the company has acknowledged in writing that they owe me the money.

At the time I worked as the news editor for Business News Alaska, a monthly business publication in Anchorage, from October 1998 through June 1999, I was caring for an elderly parent at home. My mother was not in good health and required 24 hour care, so I needed a job I could do largely at home, except for hours when I had a caregiver or my mother was at day care. Business News Alaska hired everyone on a contract labor basis. I had no idea at the time that this practice was illegal, as the state Labor Department has twice since concluded. As the company became further and further behind in paying me the publisher, Kay Cashman, continued to hire other people and kept coming up with excuses for not paying up.

When we parted company last summer I asked for the money due to me in full within three working days. She said I was not an employee and she could pay me in the indefinite future. I inquired at the Labor Department, filed the proper paperwork for them to make a determination, as did Kay Cashman. The department spent a considerable amount of time studying the situation and concluded I was an employee. So did the Internal Revenue Service. Ms. Cashman and her publishing partner then appealed the Labor Department's decision. The hearing officer for the appeal also concluded I was an employee and the state is now studying all the records of Business News Alaska, because the company hired most people on a contract basis, with no benefits and no taxes paid.

Now Business News Alaska is appealing the matter to the commissioner level. It's a good thing the labor department took my case because even if I could afford an attorney to handle my side, I've been advised that given her track record, Cashman has no intention of paying me any of the money she acknowledges owing.

I have with me for the Legislature copies of records which I paid for myself from Motznik Computer Service, showing that Ms. Cashman

Raylene
Combs

has numerous debts outstanding, including a \$35,000 judgement against her through the state Superior Court. She has never paid a dime on that judgement either. To cover herself, she lists herself as publisher and her son and partner Raylene Combs as owners.

Changing state law to allow the Labor Department to pursue through the court system back wages would benefit Alaska residents like myself who have no other recourse. It would also put companies like Business News Alaska on notice that this state will not tolerate employers who think they can operate outside of the law.

SB193 ~~that~~ would make Alaska a much fairer playing field for
Thank you very much. *employers who operate under the
law & are at a disadvantage when
other employers are allowed to
operate outside of the law.*

FAX COVER SHEET

DROP BOX

JUL 16 1999

TO: Margie

FAX: 522-4071

Pages (incl. Cover): 1

FROM: Kristin Southerland, Administrative Manager

Here's the printout you asked for. I hope all is good. If you have any questions call me. Do you want me to mail your reimbursement check or do you want to pick it up?

Thanks,
Kristin

05/19/99

ALASKA BUSINESS & INDUSTRY NEWSPAPERS (LLC)

Unpaid Bills by Vendor

As of May 19, 1999

Type	Date	Num	Open Balance
Bill	10/8/97	AUG/S...	1,868.00
Bill	12/9/97	OCT/N...	881.20
Bill	4/15/99	MAR 99	2,500.00
Bill	4/15/99	APR 99	3,000.00
Bill	5/19/99	MAY 99	3,000.00

Total MARGARET BAUMAN

11,249.20

Alaska Business and Industry Newspapers, LLC

PO Box 233101

Anchorage, Alaska 99523-3101

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EXHIBIT 18

Page 1 of 1

The following liens / judgements
appear to still be open.

PUBLIC INFORMATION ACCESS SYSTEM ---> STATEWIDE RECORDERS OFFICE FILE
 SERIAL #- 95-039827 OFFICE- ANCHORAGE DESCRIPT- ~~JUDGEMENT~~ 5672.87
 DATE- 08-25-95 TIME- 01:13 PM INDEX- LI BOOK- 02825 PAGE- 0626 FOR 0002
 # OF GRANTORS- 0002 GRANTEES- 0001 PARCELS- 0000 ASSOC. S/N-
 GRANTORS

CASHMAN KAY/ALASKA FLYING MAGAZINE/

GRANTEES

(AM) /

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 # OF GRANTORS- 0001 GRANTEES- 0001 PARCELS- 0000 ASSOC. S/N-

GRANTORS
 CASHMAN KAY H
 GRANTEES
 INTERNAL REVENUE SERVICE
 COMMENTS
 AMOUNT: 10,902.80

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OF GRANTORS- 0003 GRANTEES- 0003 PARCELS- 0000 ASSOC. S/N-

GRANTORS

CASHMAN KAY LASLAY/OCASAIN OF ALASKA/CASHMAN AND ASSOCIATES/

GRANTEES

GOLDEN DANIEL J JR/GOLDEN ENTERPRISES/GOLDEN INVESTMENTS/

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GRANTORS CASHMAN KAY LASLEY/
 GRANTEES (IRS)/

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 GRANTORS

GRANTEES CASHMAN KAY LASLEY/
 (IRS)/

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 # OF GRANTORS - 0003 GRANTEEES - 0003 PARCELS - 0000 ASSOC. S/N -
 GRANTORS

GRANTEES CASHMAN KAY LASLEY/OCASAIN OF ALASKA/CASHMAN AND ASSOCIATES/
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OF GRANTORS- 0002 GRANTEES- 0001 PARCELS- 0000 ASSOC. S/N- 88-1065-F
GRANTORS

GRANTEES LASLEY KAY/PACIFIC NORTHWEST PUB/
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CASHMAN KAY/LASLEY KAY/

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OF GRANTORS- 0001 GRANTEES- 0001 PARCELS- 0000 ASSOC. S/N-
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LASLEY KAY/

GRANTEES

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OF GRANTORS- 0002 GRANTEES- 0001 PARCELS- 0000 ASSOC. S/N-
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GRANTEES CASHMAN KAY H/LASLEY KAY/
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OF GRANTORS- 0003 GRANTEEES- 0001 PARCELS- 0000 ASSOC. S/N-
GRANTORS

LASLEY JIMMIE R/CASHMAN KAY/LASLEY KAY/

GRANTEEES

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GRANTORS
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GRANTEES
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OF GRANTORS- 0002 GRANTEES- 0001 PARCELS- 0000 ASSOC. S/N- 1883 479
GRANTORS
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 # OF GRANTORS- 0002 GRANTEES- 0001 PARCELS- 0000 ASSOC. S/N- 88-1065-F
 GRANTORS

GRANTEES LASLEY KAY/PACIFIC NORTHWEST PUB/
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 # OF GRANTORS- 0002 GRANTEES- 0001 PARCELS- 0000 ASSOC. S/N- 88-1065-F
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DATE- 03-06-96 TIME- 12:35 PM INDEX- TL BOOK- 02896 PAGE- 0206 FOR 0001
OF GRANTORS- 0001 GRANTEES- 0001 PARCELS- 0000 ASSOC. S/N- 2055975
GRANTORS
LASLEY KAY/
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(IRS)/
COMMENTS
LIEN AMOUNT \$17107.30/

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 DATE- 11-02-98 TIME- 11:22 AM INDEX- TL BOOK- 03356 PAGE- 0858 FOR 0001
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(907) 269-0200
Fax (907) 269-0204

During Session: (Jan. - May)
State Capitol
Juneau, Alaska 99801-1182
(907) 465-4993
Fax (907) 465-3872

Drue Pearce
President of the Senate

Sponsor Statement

SB 193

“An Act relating to the payment of wages and claims for the payment of wages”

The Department of Labor and Workforce Development (DLWD) was established to serve the interests of the employee through fair business practice. SB 193 will address complaints from the public regarding unethical employers who illegally withhold final wages from employees.

SB 193 increases the amount of past wages that employees are allowed to retain from \$7500 to \$20,000. SB 193 will update the law making it possible for attorneys and the DLWD to pursue small wage claims. In current statute AS 23.05.220(c), it is not feasible for private attorneys to take such cases on a contingency fee basis when the maximum cap is \$7500.

SB 193 would provide a source of assistance for this category of employee. It would serve the state's best interest to keep these cases in small claims rather than District or Superior Court in order to expedite resolution and lower costs to all parties.

This measure would serve as a tool to assist employees in their effort to acquire representation for wages not paid by their previous employer. SB 193 is a sensible bill that will strengthen Alaskan labor relations.