

HB

504

HAFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: April 4, 2002

FURTHER REFERRALS:

Date of Committee Action: 4/11/02

The FINANCE Committee considered:

HB 504

HOUSE BILL NO. 504

MINIMUM WAGE FOR WORKERS IN FISHERIES

"An Act relating to the wages of people working in the fisheries business."

Recommends it be replaced with CS HB 504 (FIN) [] Same Title [] New Title
 For Senate Bills with new title: [] Technical Title [] New Title: HCR _____

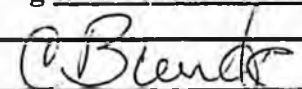

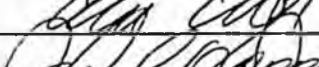
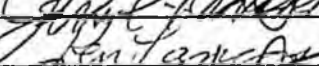



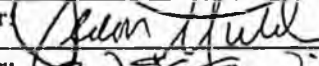
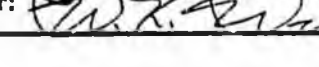
- [] attach amendments
- [] add new referral to _____ Committee
- [] Letter of Intent _____ Committee

List of Abbrev. for Depts.:

- ADM
- CED
- COR
- CRT
- EED
- DEC
- DFG
- GOV
- HSS
- LAA
- LAW
- LWF
- MVA
- DNR
- DPS
- REV
- DOT
- UA

NEW FISCAL NOTES				
*For Chief Clerk's Office Use Only				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
HFC / DOL				✓

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Bunde	✓			
	Whitaker		✓		
	CROFT		✓		
	STARRS		✓		
	Lancaster			✓	
	Hudson	✓			
	FOSTER	X			
Chair: 	Mulder	✓			
Chair: 	Williams	✓			

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSHB 504 (FIN)
(H) Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Labor & Workforce Dev.
Title: Minimum Wage for Workers in Fisheries BRU: Labor Standards & Safety
Sponsor: House Rules Component: Wage & Hour
Requester: _____ Component Number: 345

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
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 EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

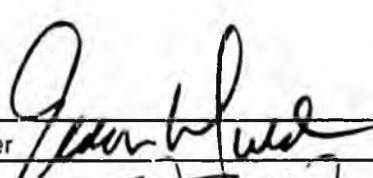

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Representative Eldon Mulder  Phone 465-2647/465-3424
Co-Chair
Representative Bill Williams  Date _____
Co-Chair

CS FOR HOUSE BILL NO. 504(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to the wages of people working in the fisheries business."**

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

3 *** Section 1.** AS 23.10 is amended by adding a new section to read:

4 **Sec. 23.10.072. Wages for fisheries businesses.** An employer who engages
5 in a fisheries business, as that term is defined in AS 43.75.290, may deduct an amount
6 that is reasonable and without profit to the employer each paid day worked from the
7 applicable minimum wage paid to an employee working in the fisheries business for
8 the combined cost of board and lodging the employer furnishes to the employee. A
9 deduction up to \$15 each day for combined room and board shall be presumed to be a
10 reasonable amount without profit to the employer. The department shall allow a
11 deduction higher than \$15 each day for combined room and board if the employer
12 demonstrates to the department that the cost to the employee is reasonable and without
13 profit to the employer. A deduction made under this section may be made only if it is
14 based on a negotiated union agreement or a written agreement with the employee
15 entered into at the time of hire that specifies the daily rate of deductions for room and

1

board.

22-LS15951S
Craver
4/10/02

Adopted 4/10/02

CS FOR HOUSE BILL NO. 504()

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the wages of people working in the fisheries business; and providing
2 for an effective date."

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

4 * Section 1. AS 23.10 is amended by adding a new section to read:

5 Sec. 23.10.072. Wages for fisheries businesses. An employer who engages
6 in a fisheries business, as that term is defined in AS 43.75.290, may deduct an amount
7 that is reasonable and without profit to the employer each ~~day~~ ^{PAID DAY WORKED} from the applicable
8 minimum wage paid to an employee working in the fisheries business for the
9 combined cost of board and lodging the employer furnishes to the employee. A
10 deduction up to \$15 each day for combined room and board shall be presumed to be a
11 reasonable amount without profit to the employer. The department shall allow a
12 deduction higher than \$15 each day for combined room and board if the employer
13 demonstrates to the department that the cost to the employee is reasonable and without
14 profit to the employer. A deduction made under this section may be made only if it is

1 based on a negotiated union agreement or a written agreement with the employee
2 entered into at the time of hire that specifies the daily rate of deductions for room and
3 board.

4 * **Sec. 2.** This Act takes effect immediately under AS 01.10.070(c).

withdrawn

AMENDMENT #1a

OFFERED IN THE HOUSE
TO: CSHB 504(L&C)

BY REPRESENTATIVE DAVIES

- 1 Page 1, line 6, following "deduct":
- 2 Insert "up to \$10 each day"
- 3
- 4 Page 1, lines 7 - 8:
- 5 Delete "the reasonable cost or fair value"
- 6 Insert "for the combined cost"

passed 5-4

22-LS1595(O.3
Craver
4/9/02

AMENDMENT #2

OFFERED IN THE HOUSE
TO: CSHB 504(L&C)

BY REPRESENTATIVE DAVIES

- 1 Page 1, lines 1 - 2:
- 2 Delete "; and providing for an effective date"
- 3
- 4 P 2, line 3:
- 5 Delete all material.

Withdrawn

22-LS1595 O.4
Craver
4/9/02

AMENDMENT #3

OFFERED IN THE HOUSE
TO: CSHB 504(L&C)

BY REPRESENTATIVE DAVIES

1 Page 1, line 12:

2 Delete the second occurrence of "and"

3

4 Page 2, line 2, following "employees":

5 Insert " ; and

6 (3) the employee is offered not less than four hours of paid work on
7 each day for which the deduction is made"

AMENDMENT #4 *find*

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIES

TO: CSHB 504(L&C)

1 Page 1, line 12:

2 Delete the second occurrence of "and"

3

4 Page 2, line 2, following "employees":

5 Insert "; and

6 (3) alternative public board and lodging facilities are accessible to the
7 work site and the employee has declined to use those facilities"

Existing Statutory Language

HB 287 Statutory Language

AS 16.10.300

Set policy to promote rehabilitation of state's fisheries, development of predominantly resident fishery, and continued maintenance of commercial fishing gear and vessels through long term low interest loans.

Changes policy to providing loans to fishermen whose financing needs are not adequately served by private lending sources.

AS 16.10.310

Defines powers of the department and who qualifies for loans.

Repealed and reacted in AS 16.10.311.

Had to have a crew member or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 for the year immediately preceding the date of application and any other two years past five years, and who actively participated in the fishery during those periods.

Must be a state resident for two continuous years immediately preceding loan application to qualify for a loan or an assumption of a loan.

Must not have other occupational opportunities available because of lack of training or employment opportunities in area of residence or must be economically dependent on commercial fishing for livelihood and for whom commercial fishing has been a traditional way of life.

Retains lack of training and traditional lifestyle language.

Allows department to designate agents and delegate powers to them.

Eliminates designation of agents and powers.

Ability to adopt regulations

Leaves ability to adopt regulations.

Establishes amortization plans for repayment of loans which may include extensions for poor fishing seasons or adverse market conditions for Alaska products.

Retains amortization language.

Allows department to enter into agreements with private lending agencies, other state agencies or agencies of the federal government.

Limits the department to entering agreements with other state agencies or agencies of the federal government.

Can enter into agreements with other agencies or organizations to create an outreach program to make loans in rural areas.

Limits outreach program agreements to state agencies.

Existing Statutory Language

HB 287 Statutory Language

Sets qualification for assumption of loan on two year continuous residence immediately preceding application for assumption of loan and provides that denial of assumption can not be based on lack of training or traditional lifestyle.

Sets prequalify loan fee not to exceed \$200.

Allows department to charge and collect the fees established under subsection,

Allows for a refinancing charge of 1/2 percent of the debt obligation to be paid with the first refinancing payment.

(d) Sets \$300,000 limit on refinance debt obligations.

Provides that the department will consider the individual commercial fisherman's income from all sources in determining his ability to repay the loan.

Provides that department can loan to individual to satisfy past tax obligations only if past and current tax returns have been filed and a payment agreement has been executed with the federal government. This loan is a one time only and is limited to \$30,000.

Retains assumption of loan criteria.

Sets prequalify loan fee not to exceed \$50.

Doesn't change ability to charge and collect fees.

Retains refinancing charge at existing level.

Silent until limited to a maximum of two \$35 000 loans to each borrower.

Retains language as is.

Only change is increase in loan to \$35,000.

AS 16.10.315

Directs department to allocate 10 percent of money appropriated for loans for loans of \$35,000 or less.

Repeals provision.

Existing Statutory Language

AS 16.10.320

Sets limitation on loans:

Not to exceed 15 years except for extensions.

Sets interest not to exceed 10 1/2 percent.

Limits loan balance to \$300,000 for those commercial fisherman with lack of opportunity or traditional dependence.

Loans for commercial fisherman without special circumstances are limited to \$100,000.

Refinancing of loans cannot exceed \$300,000.

A loan for an entry permit may be made for 100% of appraised value of collateral if commercial fisherman has three years experience in fisheries to which permit applies.

Requires first priority lien and appropriate security agreement.

May not exceed 90% of appraised value of collateral.

May not be made to someone with past due child support.

Eliminates requirement for first priority lien for loans guaranteed by the Federal Ship Financing Act of 1972.

All principal and interest collected through liquidation by foreclosure or other process shall be paid into the commercial fishing revolving loan fund.

HB 287 Statutory Language

Sets limitation on loans:

The original loan cannot be written for a term of more than 15 years. Modifications are still permitted.

Sets interest not to be below 6.5% and not to exceed 10 1/2 percent.

Limits each loan to \$35,000. There is a limit of two loans per individual.

Repeals language.

Repeals language.

Repeals language.

No change

May not exceed 80% of value as determined by department.

No change.

Deletes language.

Repealed through silence on subject.

Existing Statutory Language	HB 287 Statutory Language
<p>Provides for joint loans for two or more fisherman qualified and working jointly as a corporation, partnership, joint venture or otherwise.</p>	<p>Change of reference to new qualification statute under AS 16.10.311(a).</p>
<p><u>AS 16.10.325</u> Provides for a person to act as a guarantor if borrower has insufficient collateral and provides that the loan agreement "shall" specifically describe the property to be used as collateral.</p>	<p>Provides for guarantor and amends that the loan agreement "must" specifically describe the property to be used as collateral.</p>
<p><u>AS 16.10.333</u> Permits loans for purchase of Alaska limited entry permits upon certification by the commission that the person is qualified.</p>	<p>Change of reference to new qualification statute under AS 16.10.311.</p>
<p><u>AS 16.10.335</u> Provides specific requirements for notice of default. Also provides provisions for responsibility of borrower to keep legal address on file and current, allows for a 60 day waiver with cause, and terminates debtors interest in limited entry permit when holder applies for bankruptcy or has permit terminated.</p>	<p>Requirements do not change. There was an elimination of reference to AS 16.10.310(a)(4).</p>
<p><u>AS 16.10.337</u> Provides that the board has first right of refusal if a permit is subject to a buy-back program at a price equal to the amount outstanding plus any costs incurred in administering the loan. If the commission does not exercise right to buy back in 30 days or if the permit is not subject to buy back, the department must follow certain public notice procedures for the sale of the permit. The debtor may repurchase the permit at anytime up to the sale of the permit.</p>	<p>No change.</p>

Existing Statutory Language

HB 287 Statutory Language

AS 16.10.338

If a limited entry permit is used as collateral for a loan for repair, restoration, upgrading, construction or purchase of a boat, and the borrower defaults, the borrower must notify the commissioner and get his acceptance of the sale of the vessel, apply the proceeds to the loan and renegotiate any unpaid balance to avoid immediate loss of permit.

No change other than cite clean up for AS 16.10.311.

AS 16.10.339

Provides that department shall adopt regulations.

Section Repealed because authority for adoption of regulations was given in AS 16.10.311(a)(2) of bill under Powers of the Department.

AS 16.10.340

Created the commercial revolving loan fund, provides that the legislature may use money in the fund to make appropriations for cost of administering the loan program, and provides that excess funds can be used to carry purpose of the Fisheries Enhancement Loan Program which provides loans for hatchery planning, construction and operation.

Deletes language allowing the commissioner to use excess funds for the Fisheries Enhancement Loan Program.

Adds language that the commissioner shall administer the fund.

Establishes a special account for the foreclosure expense account, requires an annual report, and provides that the legislature appropriate excess funds for public purpose.

Existing Statutory Language

HB 287 Statutory Language

AS 16.10.345

Not in existing Law.

Requires the department to administer all loans made prior to the effective date of the new statutes for the Commercial Fishing Loan Act according to the existing terms of the loan. For example, a loan as of September 1, 2002 has a balance of 60 months of payment, the department will collect it in a duration of not more than sixty months.

No modifications can be made to these loans. If the department sells the loan, the sale will be based on the original terms of the loan and there will be no modifications such as increased interest rate or payments.

Loans secured by limited entry permit and assets acquired by the department that are limited entry permits can only be sold to the Commercial Fishing and Agriculture Bank or successor institution authorized to make loans secured by a limited entry permit.

Provides for a reasonable agency fee to be negotiated for banks, credit unions and CFAB when appointed as an agent for the administration and collection of loans

AS 16.10.353

Allows the commissioner to release information about a borrower's loan if the borrower has signed a waiver of confidentiality.

Allows borrowers obtaining loans after June 28, 1991 to specify who may receive confidential information.

Only change is elimination of June 28, 1991 date.

Existing Statutory Language

HB 287 Statutory Language

AS 16.10.355

Directs department to dispose of property acquired by default or foreclosure and to dispose of it in a manner that serves the states' best interests. Provides for amortization of payment of disposal through sale but prohibits the lease of property.

Clarifies this pertains to loans made under former provisions of AS 16.10.

Uncodified Law

Not is existing law.

Clarifies the borrowers right to protection from any modifications being made to the terms of the loan because of the sale of the loan to another financial institution.

Mr. Chairman Members of the committee

My Name is Barbara Huff Tuckness, I am the director of Government and Legislative affairs for Teamsters Local 959. I am here to day to speak against Hb 504. I do so on behalf of the approximate 7000 members that we represent around this state. Our mission is to organize the unorganized and represent all workers to assure fairness and dignity in the work environment. As our Secretary/Treasurer Jerry Hood has said many times over the years "What is negotiated today can be legislated away tomorrow with a stroke of a pen.

There are times when legislation is introduced that impacts workers and their rights and those unorganized are never heard. We believe this to be one of those times. We believe this bill to be one of the most blatant instruments of oppression to come before this legislature in a while.

As many of you are aware the fishing industry is a multi billion dollar industry. Many of the workers are from out of state or out of country for that matter. Simply because they do not live here should not be a reason to treat them with any less dignity and respect than say our slope workers who live in Company accommodations as well.

It has been said that this bill corrects an inequity in current regulation. Under current regulation if an employee is working in an area in the state, for example Ketichikan, which would have available housing an employer could charge for their room and board. In this situation the employee could choose to go else where. If there are not alternative living quarters than the employer cannot charge the employee. The employee has a choice if an alternative is available, if not the employer provides. Is this inequitable?

According to one fish procesors website information, most of the work available is called sliming or cleaning fish. The environment is wet, cold & drafty. Sliming and other processing jobs require standing in one spot doing the same task for 16 or more hours a day 7 days a week in peak season. There also are periods of time when no work is available and the employee must occupy their own time. Seafood processing is a very physically demanding job.

The living quarters for example on a processing plant hold 4 to 12 people per room. Recreation is limited and there is usually no shore time.

We are aware that this bill has been scheduled for the floor session today. We ask that during your deliberation of this bill in this committee, you ponder the public message you want to send. To reject this bill is to send a message to all workers in this state including those in the processing plants on and off shore, that all workers deserve to be treated with dignity and respect and compensated fairly, no matter how menial the work they perform. To quote President G W Bush "As we think what is possible, we must also think what is right."

To support this bill only brings to this state the old company town mentality.

We respectfully request a no vote on this bill.

Mr. Chairman Members of the committee

My Name is Barbara Huff Tuckness, I am the director of Government and Legislative affairs for Teamsters Local 959. I am here to day to speak against Hb 504. I do so on behalf of the approximate 7000 members that we represent around this state. Our mission is to organize the unorganized and represent all workers to assure fairness and dignity in the work environment. As our Secretary/Treasurer Jerry Hood has said many times over the years "What is negotiated today can be legislated away tomorrow with a stroke of a pen.

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To support this bill only brings to this state the old company town mentality.

We respectfully request a no vote on this bill.

ALASKA STATE LEGISLATURE

Representative Pete Kott, Chair
Representative Brian Porter
Representative Vic Kohring
Representative Carl Morgan
Representative Leslie McGuire
Representative Ethan Berkowitz
Representative Reggie Joule



Alaska State Capitol
Juneau, AK 99801-1182
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Fax: (907) 465-2819

House of Representatives Rules Committee

CS for HB 504 (Fin)

Sectional analysis

AS 23.10 – Alaska's Wage and Hour Act is amended by adding a new section dealing with wages paid to employees in a fisheries business.

Sec. 23.10.072. Wages for fisheries businesses.

An employer engaging in the fisheries business may deduct up to \$15 each day from the applicable minimum wage paid to an employee for the combined cost of board and lodging provided to the employee.

This deduction may be made *only if*

- It is based upon a negotiated union agreement or a written agreement between employer & employee, entered into at the time of hire that specifies the daily rate of deductions for room and board.

* as defined in AS 43.75.290, a "fisheries business" means a person who engages in processing fisheries resources for sale by freezing, cooking, salting, or other method and includes but is not limited to canneries, cold storages, freezer ships, and processing plants.

ALASKA STATE LEGISLATURE

Representative Pete Kott, Chair
 Representative Brian Porter
 Representative Vic Kohring
 Representative Carl Morgan
 Representative Lesli McGuire
 Representative Ethan Berkowitz
 Representative Reggie Joule



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House of Representatives Rules Committee

Sponsor Statement for HB 504

Since statehood when the Alaska Wage & Hour Act was adopted, it was commonly understood that some Alaskan businesses, such as fisheries, operate under unique circumstances. In response, for authorized occupations that customarily furnished board and lodging, The Act includes a mechanism for some flexibility in terms of the minimum wage.

AS 23.10.085 (c) provides that "the regulations may permit deductions by an employer from the minimum wage to employees for the reasonable cost as determined on an occupation basis, of furnishing board or lodging if board or lodging is customarily furnished by the employer and used by the employee."

Because of a conventionally modest minimum wage, the fishery business had no reason to assert the statutory option laid out in AS 23.10.085. As a matter of course, fisheries businesses pay their workers at, or slightly above the minimum wage for their regular 8-hour day, plus overtime paid at time and a half. In addition to their earnings, in some areas of the state, fishery workers are customarily furnished room and board for the term of their employment.

For the past 40 years, that arrangement worked quite well for both the fishery employer and employee. However, with the minimum wage poised to increase by 26.5% and annual adjustments for the cost of living, Alaska's beleaguered fisheries industry faces unprecedented financial disaster on all fronts. This industry can no longer absorb the cost of board and lodging at no cost to the employee.

The Wage and Hour Act authorizes deductions by an employer from the minimum wage payable to employees for the reasonable cost for furnishing board or lodging that is customarily provided. The enabling regulations allow for deductions below the minimum wage, based upon a written agreement at the time of hire, for the reasonable cost without profit to the employer. However, the regulations, as written, do not treat seafood processing sites equally.

In order to insure that the fisheries business can rely on the intent of the Wage and Hour Act, the regulations need to be cleaned up and compiled into a new section of the statute.

HB 504 utilizes language from 8 AAC 15.160 (d) to provide:

- the fishery employer and employee to contract the hourly wage that may be lower than the a minimum wage in consideration for accommodations that are customarily provided to their employees.

Note: This is a limited exemption and not an exclusion from the minimum wage requirement. The employee is covered by all other protections of the Wage and Hour Act, such as overtime, record keeping and collective bargaining.

ALASKA STATE LEGISLATURE

Representative Peto Kott, Chair
Representative Brian Porter
Representative Vic Kohring
Representative Carl Morgan
Representative Leslie McGuire
Representative Ethan Berkowitz
Representative Reggie Joule



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House of Representatives
Rules Committee

HB 504

Sectional analysis

AS 23.10 – Alaska's Wage and Hour Act is amended by adding a new section dealing with wages paid to employees in a fisheries business.

Sec. 23.10.072. Wages for fisheries businesses.

An employer engaging in the fisheries business may deduct wages deduct the reasonable cost or fair value of board and lodging from their employee's wages. This deduction may be made *only if*

- It is based upon a negotiated union agreement or a written agreement between employer & employee, entered into at the time of hire that specifies the daily rate of deductions for room and board, and
- the cost to the employee for the use of the employer's board & lodging facilities is reasonable & without profit to the employer; and
- The board & lodging facilities are customarily furnished by the employer & used by the employees.

* as defined in AS 43.75.290, a "fisheries business" means a person who engages in processing fisheries resources for sale by freezing, cooking, salting, or other method and includes but is not limited to canneries, cold storages, freezer ships, and processing plants.

(3) require and subpoena from an employer a statement in writing, when the director or the representative considers it necessary, of hours worked by and the wages paid to person in the employ of the employer, and the commissioner may require the employer to make the statement under oath;

(4) question an employee in a place of employment during work hours with respect to the wages paid and the hours worked by the employees;

(5) compel the attendance of witnesses and the production of books, papers, and documents by subpoena when necessary for the purpose of a hearing or investigation provided for in AS 23.10.050 — 23.10.150. (§ 6(2) ch 171 SLA 1959)

Sec. 23.10.085. Scope of administrative regulations. (a) The director may adopt, amend, or rescind administrative regulations not inconsistent with the purposes and provisions of AS 23.10.050 — 23.10.150 that are necessary for the administration of AS 23.10.050 — 23.10.150.

(b) The regulations may, without limiting the generality of (a) of this section, define terms used in AS 23.10.050 — 23.10.150, and restrict or prohibit industrial homework or other acts or practices that the director finds appropriate to carry out the purpose of AS 23.10.050 — 23.10.150, or to prevent the circumvention or evasion of AS 23.10.050 — 23.10.150.

The regulations may prohibit deductions by an employer from the minimum wage payable under AS 23.10.050 — 23.10.150 to an employee for the reasonable cost determined by the director on an occupational basis of furnishing board of lodging and clothing is customarily furnished by the employer and used by the employee. (AS 23.10.050 — 23.10.150 SLA 1959)

NOTES TO DECISIONS

This section and AS 23.10.095 constitute a delegation of authority from the legislature to the agency to formulate policies, leaving to the agency's discretion the issue whether federal definitions of "regular rate of pay" and other terms can be applied consistently with AS 23.10.050 — 23.10.150. Dresser

Indus., Inc. v. Alaska Dept of Labor, 633 P.2d (Alaska 1981), cert. denied, 455 U.S. 1019, 102 S.Ct. 1716, 72 L. Ed. 2d 137 (1982).
Applied in Alaska Int'l Indus., Inc. v. Musarra, P.2d 1240 (Alaska 1979).

Sec. 23.10.090. Administrative procedures. Regulations adopted or hearings conducted under AS 23.10.050 — 23.10.150 shall be adopted or conducted and be subject to judicial review in accordance with AS 44.62 (Administrative Procedure Act). (§ 6(1) ch 171 SLA 1959)

NOTES TO DECISIONS

Cited in Dayhoff v. Temaco Helicopters, Inc., 772 P.2d 1085 (Alaska 1989).

Sec. 23.10.095. Adoption of federal regulations. The commissioner may adopt regulations and interpretations that are made by the administrator of the Wage and Hour Division of the federal Department of Labor and that are not inconsistent with AS 23.10.050 — 23.10.150. (§ 6(5) ch 171 SLA 1959)

NOTES TO DECISIONS

This section and AS 23.10.085 constitute a delegation of authority from the legislature to the agency to formulate policies, leaving to the agency's discretion the issue whether federal definitions of "regular rate of pay" and other terms can be applied

consistently with Alaska's Wage and Hour Act. Dresser Indus., Inc. v. Alaska Dept of Labor, P.2d 998 (Alaska 1981), cert. denied, 455 U.S. 1019, Ct. 1716, 72 L. Ed. 2d 137 (1982).

Sec. 23.10.100. Employer's records. (a) The commissioner shall require an employer to keep records of at least three years at the address, and occupation of each employee, and other payroll information for each employee, and other payroll information. (b) The commissioner or the employer's records at the commissioner or the representative's records, and the commissioner shall determine if the records forms the commissioner has

Public policy interest and burden of an employee produces sufficient evidence of the amount and extent of the work performed by the employee was improperly compensated to the employer to come forward with sufficient evidence to negate the reasonable inference drawn from the employee's evidence that the burden of proof in an action under the Wage and Hour Act is not binding on the court in a proceeding to determine

Sec. 23.10.105. Posting of records. AS 23.10.150 shall keep a copy of the records, posted in a conspicuous place where the employee is employed. An employer shall provide a copy of the records upon request without charge. (§ 8(1) ch 171 SLA 1959)

Sec. 23.10.110. Remedies available to an employee affected by an action to recover from an employer. (a) An employer is liable to an employee affected by an action to recover from an employer is liable to an employee for overtime compensation, as the amount of the claim plus an additional equal amount. (b) An action to recover from an employer is liable may be made by an agent or representative of the employee and for other employees similarly affected. The action shall be filed in the court in which the claim is made and shall be for more than the amount to which the employee is entitled. The commissioner may take an action to collect the claim.

(c) The court in an action brought under this section, reasonable attorney's fees and costs of actions brought under this section shall be awarded to the plaintiff, allow the commissioner to the Department of Labor and the filing fee or other costs of actions brought against the same employer. (d) In an action under (a) or (b) of this section, the court may award damages for unpaid wages and interest if the employer had reasonable notice of the violation of AS 23.10.060, the

To qualify for the exemption, all the requirements set out in ch. 5 of this title relating to the

For this section will not be less than 75 hours published under AS 23.10.065.

Minimum wages for full-time students under the Labor Standards Act of 1938, as implemented in 29 C.F.R. 519.1 — minimum subject to the provisions of AS 23.10.065.

§ 23.10.085

SEARCHING FOR PLACER

The exemption from AS 23.10.050 — 23.10.055(10) applies to those activities "mining" and does not apply once development of a known mineral source has begun.

§ 23.10.085

INDIVIDUALS UNDER 18

EMPLOYEES. The exemption from AS 23.10.055(11) does not apply to an individual normally within the industry employed in excess of 30 hours. (Eff. 12/9/78, Register 68; am 9/28/85, Register 95; am 4/29/99, Register 150)

§ 23.10.085

REGULATING THE NUMBER OF EMPLOYEES

AS 23.10.060(d)(1). In determining the number of employees for purposes of this section, a corporation who actively engages in mining operations will be counted regardless of whether it is a corporation. (Eff. 12/9/78, Register 68; am 9/28/85, Register 95; am 4/29/99, Register 150)

§ 23.10.085

MINING OPERATIONS.

(a) For purposes of this section, "mining season" means the cumulative number of days during which mining operations are carried on during a calendar year.

(b) The minimum payment for overtime under AS 23.10.065 in small mining operations is

available to the employer for an aggregate of 14 weeks, commencing on the first day the mine begins active operations in a calendar year. Periods during which the mine is not actively engaged in mining operations for reasons including assessment work and repair or construction of buildings or equipment are not part of the exemption period.

(c) Repealed 9/28/85.

(Eff. 12/9/78, Register 68; am 9/28/85, Register 95; am 4/29/99, Register 150)

Authority: AS 23.05.060

AS 23.10.060

AS 23.10.085

ARTICLE 4. REDUCTION OF WAGES.

Section	Section
160. Deductions from an employee's wages	165. Purchase of uniform or equipment

8 AAC 15.160. DEDUCTIONS FROM AN EMPLOYEE'S WAGES.

(a) AS 23.10.085(c) does not limit the right of an employer and employee to enter into a written agreement to provide for deductions of monetary obligations of an employee. Requiring or inducing an employee to return or give up any part of the compensation to which the employee is entitled, whether by force, intimidation, or threat of dismissal from employment, or by any other manner, is prohibited. A written agreement for deductions payable to the employer or person acting in the employer's behalf or interest is not valid if it would have the effect of reducing an employee's wage rate below the statutory minimum wage or overtime rates, or if it would require an employee to reimburse the employer for any of the following:

- (1) customer checks returned due to insufficient funds or any other reason;
- (2) non-payment for goods or services as a result of theft or credit default;
- (3) cash or cash register shortages unless the employee admits, willingly and in writing, to having personally taken the specific amount of cash that is alleged to be missing;
- (4) lost, missing, or stolen property, unless the employee admits willingly and in writing, to having personally taken the specific property alleged to be lost, missing, or stolen; or
- (5) damage or breakage costs unless clearly due to willful conduct of the employee and the employee has acknowledged responsibility in writing.

(b) Nothing in (a) of this section prohibits deductions from earnings based on a written agreement, if the employer has been directed by the employee to pay a sum for the benefit of that employee to a creditor, donee, or other third party. Neither the employer nor any person acting

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47630

in the employer's behalf or interest may derive any profit or benefit from the transaction.

(c) Nothing in (a) of this section prohibits deductions from earnings based on a written agreement to reimburse an employer for transportation from the place of hire to the place of employment if the deduction does not

- (1) reduce the employee's wages below the statutory minimum; or
- (2) reduce the overtime compensation rate below one and one-half times the contractual rate of pay.

~~(d) Nothing in (a) of this section prohibits deductions from earnings based on a written agreement to reimburse an employer for the reasonable cost of repair of uniforms or equipment if the cost of repair of uniforms or equipment is determined by a representative public board and lodging facilities are determined to be reasonable and the employee's deduction does not exceed the amount of the employee's earnings for the pay period. The cost of repair of uniforms or equipment, as determined by the board, is reasonable and without profit to the employer.~~

(e) Unless the employer and the employee have executed a written agreement as described in (d) of this section, at the time of hire, the employer is prohibited from seeking to retroactively deduct the cost of board and lodging as an offset against wages due upon termination or wage deficiencies subject to collection by the department.

~~(f) The director will make the determination regarding the cost of board and lodging under (d)(3) of this section. The determination will be made in accordance with 25 C.F.R. 161.5 and 531.29.~~

(g) An employer may deduct an amount from the wages of an employee as a security deposit to ensure the return, in clean and in a state of good repair, of uniforms or equipment issued by the employer, if

- (1) the deduction is based on a written agreement;
- (2) the total deposit does not exceed the cost of the item; and
- (3) the deduction does not reduce the employee's wage below the statutory minimum, or reduce the employee's overtime compensation below one and one-half times the contractual rate of pay.

(h) An employer shall give each employee a statement of earnings and deductions for each pay period. The statement of earnings and deductions must contain

- (1) employee's rate of pay;
- (2) gross wages;
- (3) net wages;
- (4) the beginning and ending dates of the pay period and the weekly hours actually worked during the period;
- (5) repealed 9/28/85;

shall not derive any profit or benefit

prohibits deductions from earnings to reimburse an employer for transportation expenses incurred in the course of employment if the deduction

reduces wages below the statutory minimum; or the overtime compensation rate below one and one-half times the regular rate.

prohibits deductions from earnings, to reimburse an employer for the cost of board and lodging, if

board and lodging facilities are accessible to the employee and the employee has declined to use such facilities; the facilities of the employer are customarily available and used by the employees; and the facilities are available for the use of the employer's board and lodging facilities without profit to the employer.

If an employee has executed a written agreement under this section, at the time of hire, the employer may not retroactively deduct the cost of board and lodging from wages due upon termination or termination by the department.

The determination regarding the cost of board and lodging under this section. The determination will be made under AS 531.3 — 531.5 and 531.29 —

531.30. An amount from the wages of an employee shall ensure the return, in clean and in a new condition, of any uniform or equipment issued by the employer,

under a written agreement; shall not exceed the cost of the item; and shall not reduce the employee's wage below the minimum rate or the employee's overtime compensation below the contractual rate of pay. The employer shall provide each employee a statement of earnings and deductions for each pay period. The statement of earnings and

deductions shall be provided during the pay period and the statement shall be provided during the period;

- (6) repealed 9/28/85;
- (7) federal income tax deductions;
- (8) Federal Insurance Contribution Act deductions;
- (9) Alaska Employment Security Act contributions;
- (10) board and lodging costs;
- (11) advances; and
- (12) other authorized deductions. (Eff. 12/9/78, Register 68; amended 9/28/85, Register 95; amended 4/29/99, Register 150)

Authority: AS 23.05.060 AS 23.10.065 AS 23.10.095
 AS 23.10.060 AS 23.10.085

8 AAC 15.165. PURCHASE OF UNIFORM OR EQUIPMENT. An employer may not require an employee to purchase a uniform or equipment if

- (1) the uniform or equipment is required by the federal state, or local safety or health codes, or
- (2) the nature of the employer's business requires the use of either uniform or equipment and if the uniform or equipment
 - (A) is distinctive and advertises or is associated with the products or services of the employer; and
 - (B) cannot be worn or used during normal social activities of the employee. (Eff. 9/28/85, Register 95; amended 4/29/99, Register 150)

Authority: AS 23.05.060 AS 23.10.055 AS 23.10.095
 AS 23.10.065

ARTICLE 5. PROCEDURES RELATING TO VIOLATIONS, INVESTIGATIONS, OR HEARINGS.

Section 175. (Repealed)	Section 180. Investigations, conferences and persuasion
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8 AAC 15.175. ASSIGNMENT OF CLAIMS. Repealed 9/28/85.

8 AAC 15.180. INVESTIGATIONS, CONFERENCES AND PERSUASION. (a) The labor standards and safety division will investigate potential violations of AS 23.10.050 — 23.10.150 on its own motion.

(b) If, after an investigation, the division finds that probable cause exists for believing that a violation of AS 23.10.050 — 23.10.150 has occurred, it will attempt to correct the unlawful practice by conference and persuasion as follows:

- (1) the division will provide the employer believed to have violated AS 23.10.050 — 23.10.150 with a copy of the assignment or a description of the alleged violation and inform the employer of the results of its investigation; and

employer shall have on file an unexpired certificate issued and held pursuant to regulations of the Secretary of Labor certifying that such person is above the oppressive child-labor age. The Secretary of Labor shall provide by regulation or by order that the employment of employees between the ages of fourteen and sixteen years in occupations other than manufacturing and mining shall not be deemed to constitute oppressive child labor if and to the extent that the Secretary of Labor determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

(m)

"Wage" paid to any employee includes the reasonable cost, as determined by the Administrator, to the employer of furnishing such employee with board, **lodging**, or other facilities, if such board, **lodging** or other facilities are customarily furnished by such employer to his employees: Provided, That the cost of board, **lodging**, or other facilities shall not be included as a part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective-bargaining agreement applicable to the particular employee: Provided further, That the Secretary is authorized to determine the fair value of such board, **lodging**, or other facilities for defined classes of employees and in defined areas, based on average cost to the employer or to groups of employers similarly situated, or average value to groups of employees, or other appropriate measures of fair value. Such evaluations, where applicable and pertinent, shall be used in lieu of actual measure of cost in determining the wage paid to any employee. In determining the wage an employer is required to pay a tipped employee, the amount paid such employee by the employee's employer shall be an amount equal to -

(1)

the cash wage paid such employee which for purposes of such determination shall be not less than the cash wage required to be paid such an employee on August 20, 1996; and

(2)

an additional amount on account of the tips received by such employee which amount is equal to the difference between the wage specified in paragraph (1) and the wage in effect under section 206(a)(1) of this title.

The additional amount on account of tips may not exceed the value of the tips actually received by an employee. The preceding 2 sentences shall not apply with respect to any tipped employee unless such employee has been informed by the employer of the provisions of this subsection, and all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.

(n)

"Resale" shall not include the sale of goods to be used in residential or farm building construction, repair, or maintenance: Provided, That the sale is recognized as a bona fide retail sale in the industry.

(o) Hours Worked. -

In determining for the purposes of sections 206 and 207 of this title the hours for which an employee is employed, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday which was excluded from measured working time during the week involved by the express

22-LS1595P

Craver

4/8/02

adopted 4/9/02 new CS 410

CS FOR HOUSE BILL NO. 504(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): HOUSE RULES COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the wages of people working in the fisheries business; and providing
2 for an effective date."

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

4 * Section 1. AS 23.10 is amended by adding a new section to read:

5 Sec. 23.10.072. Wages for fisheries businesses. An employer who engages
6 in a fisheries business, as that term is defined in AS 43.75.290, may deduct up to \$15
7 each day from the applicable minimum wage paid to an employee working in the
8 fisheries business for the combined cost of board and lodging the employer furnishes
9 to the employee. A deduction made under this section may be made only if it is based
10 on a negotiated union agreement or a written agreement with the employee entered
11 into at the time of hire that specifies the daily rate of deductions for room and board.

12 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).