



# LAWS OF ALASKA

1976

Source

FCCS CSHB 591

Chapter No.

183

## AN ACT

Relating to the employment of Alaska residents; and providing for an effective date.

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

\* Section 1. AS 36.10.125 is amended by adding a new subsection to read:

(b) A private person is entitled to bring action in the superior court to enforce the provisions of this chapter if he gives at least 20 days notice before filing the action to the commissioner of labor that he intends to bring action under this subsection, the specific violation complained of, and the name of the person accused of the violation. In an action brought under this subsection the court may, in its discretion, order denial of state revenue sharing or public school foundation money, forfeiture of office or position, or injunctive or other relief. If the court finds for the plaintiff in an action brought under this subsection, it may award the plaintiff an amount equal to the actual costs and attorney fees he incurred.

\* Sec. 2. AS 38.40.030(a) is amended to read:

(a) In order to create, protect and preserve the right of Alaska residents to employment, the commissioner of natural resources shall incorporate into all oil and gas leases, easements or right-of-way permits for oil or gas pipeline purposes, unitization agreements, or any renegotiation of any of the preceding to which the state is a party, provisions requiring the lessee to comply with applicable laws and regulations with regard to the employment of Alaska residents, a provision requiring the employment of qualified Alaska residents, a provision prohibiting discrimination against Alaska residents and, when in the determination of the commissioner of natural resources it is practicable, a

provision requiring compliance with the Alaska Plan, all in accordance with the provisions of this chapter.

- \* Sec. 3. AS 38.40.030(b) is repealed and re-enacted to read:

(b) All employment falling within the purview of sec. 50 of this chapter shall be filled by Alaska residents if they are qualified and available. The commissioner of labor, whose decision is final as to residency, shall determine the resident status of individuals for purposes of this chapter and issue a certificate to persons determined to be residents of the state. The commissioner may issue exemptions from this chapter to the employer for those individuals he shall determine to be administrative, management, or professional employees of the employer.

- \* Sec. 4. AS 38.40.030(d) is repealed and re-enacted to read:

(d) The Department of Labor shall adopt regulations necessary to implement the provisions of this chapter.

- \* Sec. 5. AS 38.40.040(a) is amended to read:

(a) An employer obligated to meet resident employment requirements under this chapter shall comply with those reporting provisions which the commissioner of labor determines are reasonably necessary to carry out the purposes and intent of this chapter.

- \* Sec. 6. AS 38.40.040(b) is repealed and re-enacted to read:

(b) The Department of Labor shall prepare a list of certified Alaska residents and, upon request, shall make it available to an employer subject to this chapter, and to any employment or dispatching agency, union, or other similar entity.

- \* Sec. 7. AS 38.40.060 is repealed and re-enacted to read:

Sec. 38.40.060. HEARINGS AND INVESTIGATIONS. (a) The Departments of Labor and Natural Resources shall promulgate appropriate regulations to implement the provisions of this chapter. It is the employer's responsibility to initially determine and adjudge the work qualifications of the prospective employee. A qualified Alaska resident who has been rejected for or terminated from employment by an employer subject to this chapter may, within 15 days from the rejection or termination, file a written request for a hearing before the Department of Labor to determine if the employer is in compliance with the provisions of this chapter. The department shall investigate, set a date for and hold a hearing within 30 days after receipt of the request, unless the person applying requests a longer period of time.

(b) The Department of Labor may, on its own motion, conduct appropriate investigations and hearings to determine compliance with the provisions of this chapter.

(c) The commissioner of labor, acting on a complaint or his own motion, upon finding wilful noncompliance by an employer with the provisions of this chapter, may certify that finding to the Department of Natural Resources.

(d) Hearings and investigations conducted under this section are not subject to the Administrative Procedure Act (AS 44.62), but are subject to judicial review under sec. 70(a) of this chapter if appealed within 30 days.

\* Sec. 8. AS 38.40.070 is repealed and reenacted to read:

Sec. 38.40.070. PENALTIES. (a) Upon finding that a qualified Alaska resident has been rejected for or terminated from employment, in violation of this chapter, the Department of Labor may require the employer to pay the qualified Alaska resident triple the wages he lost, or any damages or expenses actually incurred as a result of the wrongful action if they exceed the triple wages assessed. The imposition or withholding of any payment or penalty under this section may be appealed to the superior court. The superior court shall hear these matters de novo.

(b) The Department of Natural Resources, upon receipt of a certification of wilful noncompliance of an employer by the commissioner of labor and after appropriate investigations and hearings, may impose the following penalties:

(1) increase rent or other forms of compensation received by the state by a factor of no more than 10 but in no event to exceed \$100,000;

(2) require that all or any portion of project operations be halted;

(3) stop payment on any or all existing contracts between that person and the state; or

(4) remove, for an appropriate period of time, the eligibility of the person to contract with the state or any of its political subdivisions.

(c) Notwithstanding (a) of this section, no penalty may be imposed against a lessee because of noncompliance with the provisions of this chapter by a supplier of the lessee's contractor or subcontractor if the lessee has received and retained a certificate from the supplier certifying that the supplier is in compliance with the provisions of this chapter. However, no certificate from the supplier is a bar to the imposition of a penalty against a lessee unless the certificate was made (1) upon oath or affirmation, (2) on forms prepared by the commissioner of labor furnished to the lessee before the date of the supplier's noncompliance, and the lessee has furnished a copy of the certificate to the commissioner of labor together with additional information the commissioner may require, and (3) by a supplier who is not himself a contractor or subcontractor of the lessee.

(d) The commissioner of labor may, by regulation, designate the intervals within which certificates of suppliers must be furnished under this section in order to constitute a bar against the imposition of penalties.

\* Sec. 9. AS 38.40.080 is amended to read:

Sec. 38.40.080. INJUNCTIVE RELIEF. The Department of Labor or the Department of Natural Resources, in addition to

the imposition of any penalties under sec. 70 of this chapter, may seek injunctive relief against an employer not in compliance with the provisions of this chapter. Either department may seek injunctive relief to enforce penalties which it has imposed under sec. 70 of this chapter.

\* Sec. 10. AS 38.40.090 is repealed and re-enacted to read:

Sec. 38.40.090. DEFINITIONS. In this chapter

(1) "resident" means a person who

(A) except for brief intervals, military service, attendance at an educational or training institution, or for absences for good cause, is physically present in the state for a period of one year immediately before the time his status is determined;

(B) maintains a place of residence in the state;

(C) has established residency for voting purposes in the state;

(D) has not, within the period of required residency, claimed residency in another state; and

(E) shows by all attending circumstances that his intent is to make Alaska his permanent residence;

(2) "qualified" means capable, through education, training, or experience, of performing the duties and satisfying the usual terms and conditions of the employment, if those duties, terms and conditions meet the reasonable standards of the industry as required of other employees performing the same type of work in the industry;

(3) "wilful noncompliance" means intentionally, knowingly, or purposely, without justifiable excuse, not giving preference to qualified Alaska residents in employment covered by this chapter;

(4) "noncompliance" means not giving preference to qualified Alaska residents in employment covered by this chapter.

\* Sec. 11. This Act takes effect immediately in accordance with AS 01.10.070(c).