

CS FOR HOUSE BILL NO. 419(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 4/13/00

Referred: Rules

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the weekly rate of compensation and minimum and maximum
2 compensation rates for workers' compensation; specifying components of a workers'
3 compensation reemployment plan; relating to the liability of an employer for
4 workers' compensation coverage for a subcontractor; adjusting workers'
5 compensation benefits for permanent partial impairment, for reemployment plans,
6 for rehabilitation benefits, for widows, widowers, and orphans, and for funerals;
7 relating to permanent total disability of an employee receiving rehabilitation
8 benefits; relating to calculation of gross weekly earnings for workers' compensation
9 benefits for seasonal and temporary workers and for workers with overtime or
10 premium pay; setting time limits for requesting a hearing on claims for workers'
11 compensation, for selecting a rehabilitation specialist, and for payment of medical
12 bills; relating to termination and to waiver of rehabilitation benefits, obtaining

1 medical releases, and resolving discovery disputes relating to workers'
 2 compensation; setting an interest rate for late payments of workers' compensation;
 3 providing for updating the workers' compensation medical fee schedule; and
 4 providing for an effective date."

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

6 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
 7 to read:

8 INTENT. It is the intent of the legislature that

9 (1) AS 23.30 be interpreted so as to ensure the quick, efficient, fair, and
 10 predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost
 11 to the employers who are subject to the provisions of AS 23.30;

12 (2) AS 23.30 not be construed by the courts in favor of any party;

13 (3) workers' compensation cases be decided on the merits, except when
 14 otherwise provided by statute;

15 (4) increases in benefits be tied to the state average weekly wage so as to more
 16 fairly compensate injured workers and that the benefit rate in effect at the time of injury remain
 17 the benefit rate for the life of the claim without regard to any changes that may occur in the
 18 state average weekly wage subsequent to the year of injury;

19 (5) AS 23.30.041 be amended to clarify existing language and to mandate
 20 compliance by the board, the reemployment administrator, and the parties with the deadlines in
 21 AS 23.30.041;

22 (6) vocational rehabilitation clearly be a voluntary process that allows claimants
 23 to waive their rights to receive reemployment benefits;

24 (7) claimants be entitled to permanent impairment benefits and reduced
 25 compensation while involved in the reemployment process so as to encourage injured workers
 26 to complete that process as quickly as possible and return to the workplace in an expeditious
 27 and efficient manner;

28 (8) claimants provide releases of information that allow employers and insurers
 29 and their agents to obtain promptly information needed to investigate and adjust claims;

30 (9) medical information relevant to a claim be discoverable and be promptly

1 provided; and

2 (10) the discovery process be improved to encourage the quick and efficient
3 resolution of discovery disputes under AS 23.30.

4 * **Sec. 2.** AS 23.30.041(g) is amended to read:

5 (g) Within 15 [10] days after the employee receives the administrator's
6 notification of eligibility for benefits, an employee who desires to use these benefits
7 shall give written notice to the employer of the employee's selection of a rehabilitation
8 specialist who shall provide a complete reemployment benefits plan. **Failure to give**
9 **notice required by this subsection constitutes noncooperation under (n) of this**
10 **section.** If the employer disagrees with the employee's choice of rehabilitation specialist
11 to develop the plan and the disagreement cannot be resolved, then the administrator shall
12 assign a rehabilitation specialist. The employer and employee each have one right of
13 refusal of a rehabilitation specialist.

14 * **Sec. 3.** AS 23.30.041(h) is amended to read:

15 (h) Within 90 days after the rehabilitation specialist's selection under (g) of this
16 section, the reemployment plan must be formulated and approved. **The reemployment**
17 **plan must require continuous participation by the employee and must maximize the**
18 **usage of the employee's transferrable skills.** The reemployment plan must include at
19 least the following:

- 20 (1) a determination of the occupational goal in the labor market;
- 21 (2) an inventory of the employee's technical skills, **transferrable skills,**
22 physical and intellectual capacities, academic achievement, emotional condition, and
23 family support;
- 24 (3) a plan to acquire the occupational skills to be employable;
- 25 (4) the cost estimate of the reemployment plan, including provider fees;
26 **and** [;] the **cost** [AMOUNT] of tuition, books, tools, and supplies, [;] transportation, [;]
27 temporary lodging, [;] or job modification devices;
- 28 (5) the estimated length of time that the plan will take;
- 29 (6) the date **that** the plan will commence;
- 30 (7) the estimated time of medical stability as predicted by **a treating**
31 **physician or by a physician who has examined the employee at the request of the**
32 **employer or the board, or by referral of the treating** physician;

- 1 (8) a detailed description and plan schedule; and
 2 (9) a finding by the rehabilitation specialist that the inventory under (2)
 3 of this subsection indicates that the employee can be reasonably expected to
 4 satisfactorily complete the plan and perform in a new occupation within the time and
 5 cost limitations of the plan.

6 * **Sec. 4.** AS 23.30.041(k) is amended to read:

7 (k) Benefits related to the reemployment plan may not extend past two years
 8 from date of plan approval or acceptance, whichever date occurs first, at which time the
 9 benefits expire. If an employee reaches medical stability before completion of the plan,
 10 temporary total disability benefits shall cease and permanent impairment benefits shall
 11 then be paid at the employee's temporary total disability rate. If the employee's
 12 permanent impairment benefits are exhausted before the completion or termination of
 13 the reemployment plan, the employer shall provide **compensation** [WAGES] equal to
 14 **70** [60] percent of the employee's spendable weekly wages, but not to exceed **105**
 15 **percent of the average weekly wage** [\$525], until the completion or termination of the
 16 plan, **except that any compensation paid under this subsection is reduced by wages**
 17 **earned by the employee while participating in the plan to the extent that the wages**
 18 **earned, when combined with the compensation paid under this subsection, exceed**
 19 **the employee's temporary total disability rate. If permanent partial disability**
 20 **benefits have been paid in a lump sum before the employee requested or was found**
 21 **eligible for reemployment benefits, payment of benefits under this subsection is**
 22 **suspended until permanent partial disability benefits would have ceased, had those**
 23 **benefits been paid at the employee's temporary total disability rate, notwithstanding**
 24 **the provisions of AS 23.30.155(j).** A permanent impairment benefit remaining unpaid
 25 upon the completion or termination of the plan shall be paid to the employee in a single
 26 lump sum. **An employee may not be considered permanently totally disabled so**
 27 **long as the employee is involved in the rehabilitation process under this chapter.**
 28 The fees of the rehabilitation specialist or rehabilitation professional shall be paid by the
 29 employer and may not be included in determining the cost of the reemployment plan.

30 * **Sec. 5.** AS 23.30.041(l) is amended to read:

31 (l) The cost of the reemployment plan incurred under this section shall be the
 32 responsibility of the employer, shall be paid on an expense incurred basis, and may not

1 exceed **\$13,300** [\$10,000].

2 * **Sec. 6.** AS 23.30.041(n) is amended to read:

3 (n) After the employee has elected to participate in reemployment benefits, if
4 the employer believes the employee has not cooperated, the employer may terminate
5 reemployment benefits on the date of noncooperation. Noncooperation means

6 **(1)** unreasonable failure to

7 **(A)** [(1)] keep appointments;

8 **(B)** [(2)] maintain passing grades;

9 **(C)** [(3)] attend designated programs;

10 **(D)** [(4)] maintain contact with the rehabilitation specialist;

11 **(E)** [(5)] cooperate with the rehabilitation specialist in developing
12 a reemployment plan and participating in activities relating to reemployability on
13 a full-time basis;

14 **(F)** [(6)] comply with the employee's responsibilities outlined in
15 the reemployment plan; or

16 **(G)** [(7)] participate in any planned reemployment activity as
17 determined by the administrator; **or**

18 **(2) failure to give written notice to the employer of the employee's**
19 **choice of rehabilitation specialists within 15 days after receiving notice of eligibility**
20 **for benefits from the administrator as required by (g) of this section.**

21 * **Sec. 7.** AS 23.30.041 is amended by adding a new subsection to read:

22 (r) Notwithstanding AS 23.30.012, after medical stability has been determined
23 and a physician has predicted that the employee may have a permanent impairment that
24 may cause the employee to have permanent physical capacities that are less than the
25 physical demands of the employee's job at the time of injury, an employee may waive
26 any benefits or rights under this section, including an eligibility evaluation and benefits
27 related to a reemployment plan. To waive any benefits or rights under this section, an
28 employee must file a statement under oath with the board to notify the parties of the
29 waiver and to specify the scope of benefits or rights that the employee seeks to waive.
30 The statement must be on a form prescribed or approved by the board. The board shall
31 serve the notice of waiver on all parties to the claim within 10 days after filing. The
32 waiver is effective upon service to the party. A waiver effective under this subsection

1 discharges the liability of the employer for the benefits or rights contained in this
2 section. The waiver may not be modified under AS 23.30.130.

3 * **Sec. 8.** AS 23.30.045(a) is amended to read:

4 (a) An employer is liable for and shall secure the payment to employees of the
5 compensation payable under AS 23.30.041, 23.30.050, 23.30.095, 23.30.145, and
6 23.30.180 - 23.30.215. If the employer is a subcontractor,

7 (1) the contractor is liable for and shall secure the payment of the
8 compensation to employees of the subcontractor unless the subcontractor secures the
9 payment; and

10 (2) the contractor is not liable for and is not required to secure
11 payment of compensation to the subcontractor, if the subcontractor does not have
12 any employees.

13 * **Sec. 9.** AS 23.30.095(f) is amended to read:

14 (f) All fees and other charges for medical treatment or service shall be subject
15 to regulation by the board but may not exceed usual, customary, and reasonable fees for
16 the treatment or service in the community in which it is rendered, as determined by the
17 board. An employee may not be required to pay a fee or charge for medical treatment
18 or service. The board shall adopt updated usual, customary, and reasonable
19 medical fee schedules at least once each year.

20 * **Sec. 10.** AS 23.30.095 is amended by adding new subsections to read:

21 (l) An employer shall pay an employee's bills for medical treatment under this
22 chapter, excluding prescription charges or transportation for medical treatment, within
23 30 days after the date that the employer receives the health care provider's bill or a
24 completed report, whichever is later.

25 (m) Unless the employer controverts a charge, an employer shall reimburse an
26 employee's prescription charges under this chapter within 30 days after the employer
27 received the health care provider's completed report and an itemization of the
28 prescription charges for the employee. Unless the employer controverts a charge, an
29 employer shall reimburse any transportation expenses for medical treatment under this
30 chapter within 30 days after the employer received the health care provider's completed
31 report and an itemization of the dates, destination, and transportation expenses for each
32 date of travel for medical treatment. If the employer does not plan to make or does not

1 make payment or reimbursement in full as required by this subsection, the employer
 2 shall notify in writing the employee and the employee's health care provider that
 3 payment will not be timely made and the reasons for the nonpayment. The notification
 4 must be provided on or before the date that payment is due under this subsection or (1)
 5 of this section.

6 * **Sec. 11.** AS 23.30.105(a) is amended to read:

7 (a) The right to compensation for disability under this chapter is barred unless
 8 a claim for it is filed within two years after the employee has knowledge of the nature
 9 of the employee's disability and its relation to the employment and after disablement.
 10 However, the maximum time for filing the claim in any event other than arising out of
 11 an occupational disease shall be four years from the date of injury, and the right to
 12 compensation for death is barred unless a claim therefor is filed within one year after
 13 the death, except that if payment of compensation has been made without an award on
 14 account of the injury or death, a claim may be filed within two years after the date of
 15 the last payment of benefits under **AS 23.30.041, 23.30.180** [AS 23.30.180], 23.30.185,
 16 23.30.190, 23.30.200, or 23.30.215. It is additionally provided that, in the case of latent
 17 defects pertinent to and causing compensable disability, the injured employee has full
 18 right to claim as shall be determined by the board, time limitations notwithstanding.

19 * **Sec. 12.** AS 23.30.107(a) is amended to read:

20 (a) Upon **written** request, an employee shall provide written authority to the
 21 employer, carrier, rehabilitation specialist, or reemployment benefits administrator to
 22 obtain medical and rehabilitation information relative to the employee's injury. **The**
 23 **request must include notice of the employee's right to file a petition for a protective**
 24 **order with the board and must be served by certified mail to the employee's**
 25 **address on the notice of injury or by hand delivery to the employee. This**
 26 **subsection may not be construed to authorize an employer, carrier, rehabilitation**
 27 **specialist, or reemployment benefits administrator to request medical or other**
 28 **information that is not applicable to the employee's injury.**

29 * **Sec. 13.** AS 23.30 is amended by adding a new section to read:

30 **Sec. 23.30.108. Prehearings on discovery matters; objections to requests for**
 31 **release of information; sanctions for noncompliance.** (a) If an employee objects to
 32 a request for written authority under AS 23.30.107, the employee must file a petition

1 with the board seeking a protective order within 14 days after service of the request.
2 If the employee fails to file a petition and fails to deliver the written authority as
3 required by AS 23.30.107 within 14 days after service of the request, the employee's
4 rights to benefits under this chapter are suspended until the written authority is delivered.

5 (b) If a petition seeking a protective order is filed, the board shall set a
6 prehearing within 21 days after the filing date of the petition. At a prehearing conducted
7 by the board's designee, the board's designee has the authority to resolve disputes
8 concerning the written authority. If the board or the board's designee orders delivery
9 of the written authority and if the employee refuses to deliver it within 10 days after
10 being ordered to do so, the employee's rights to benefits under this chapter are
11 suspended until the written authority is delivered. During any period of suspension
12 under this subsection, the employee's benefits under this chapter are forfeited unless the
13 board, or the court determining an action brought for the recovery of damages under this
14 chapter, determines that good cause existed for the refusal to provide the written
15 authority.

16 (c) At a prehearing on discovery matters conducted by the board's designee, the
17 board's designee shall direct parties to sign releases or produce documents, or both, if
18 the parties present releases or documents that are likely to lead to admissible evidence
19 relative to an employee's injury. If a party refuses to comply with an order by the
20 board's designee or the board concerning discovery matters, the board may impose
21 appropriate sanctions in addition to any forfeiture of benefits, including dismissing the
22 party's claim, petition, or defense. If a discovery dispute comes before the board for
23 review of a determination by the board's designee, the board may not consider any
24 evidence or argument that was not presented to the board's designee, but shall determine
25 the issue solely on the basis of the written record. The decision by the board on a
26 discovery dispute shall be made within 30 days. The board shall uphold the designee's
27 decision except when the board's designee's determination is an abuse of discretion.

28 * **Sec. 14.** AS 23.30.110 is amended by adding a new subsection to read:

29 (h) The filing of a hearing request under (c) of this section suspends the running
30 of the two-year time period specified in (c) of this section. However, if the employee
31 subsequently requests a continuance of the hearing and the request is approved by the
32 board, the granting of the continuance renders the request for hearing inoperative, and

1 the two-year time period specified in (c) of this section continues to run again from the
 2 date of the board's notice to the employee of the board's granting of the continuance and
 3 of its effect. If the employee fails to again request a hearing before the conclusion of
 4 the two-year time period in (c) of this section, the claim is denied.

5 * **Sec. 15.** AS 23.30.155 is amended by adding a new subsection to read:

6 (p) An employer shall pay interest on compensation that is not paid when due.
 7 Interest required under this subsection accrues at the rate specified in AS 09.30.070(a)
 8 that is in effect on the date the compensation is due.

9 * **Sec. 16.** AS 23.30.175(a) is amended to read:

10 (a) The weekly rate of compensation for disability or death may not exceed **the**
 11 **maximum compensation rate, may not be less than 22 percent of the maximum**
 12 **compensation rate**, [\$700] and initially may not be less than \$110. However, if the
 13 board determines that the employee's spendable weekly wages are less than \$110 a week
 14 as computed under AS 23.30.220, or less than **22 percent of the maximum**
 15 **compensation rate** [\$154] a week in the case of an employee who has furnished
 16 documentary proof of the employee's wages, it shall issue an order adjusting the weekly
 17 rate of compensation to a rate equal to the employee's spendable weekly wages. If the
 18 employer can verify that the employee's spendable weekly wages are less than **22**
 19 **percent of the maximum compensation rate** [\$154], the employer may adjust the
 20 weekly rate of compensation to a rate equal to the employee's spendable weekly wages
 21 without an order of the board. If the employee's spendable weekly wages are greater
 22 than **22 percent of the maximum compensation rate** [\$154], but 80 percent of the
 23 employee's spendable weekly wages is less than **22 percent of the maximum**
 24 **compensation rate** [\$154], the employee's weekly rate of compensation shall be **22**
 25 **percent of the maximum compensation rate** [\$154]. Prior payments made in excess
 26 of the adjusted rate shall be deducted from the unpaid compensation in the manner the
 27 board determines. In any case, the employer shall pay timely compensation. **In this**
 28 **subsection, "maximum compensation rate" means 120 percent of the average**
 29 **weekly wage, calculated under (d) of this section, applicable on the date of injury**
 30 **of the employee.**

31 * **Sec. 17.** AS 23.30.175 is amended by adding a new subsection to read:

32 (d) By December 1 of each year, the commissioner shall determine the average

1 weekly wage in this state by dividing the average annual wage in this state for the
 2 preceding calendar year by 52. The resulting figure is the average weekly wage in this
 3 state applicable for the period beginning January 1 and ending December 31 of the
 4 following calendar year. The average annual wage calculation required under this
 5 subsection shall include the wages of all employees in the state, both public and private,
 6 who are covered by this chapter.

7 * **Sec. 18.** AS 23.30.190(a) is amended to read:

8 (a) In case of impairment partial in character but permanent in quality, and not
 9 resulting in permanent total disability, the compensation is **\$177,000** [\$135,000]
 10 multiplied by the employee's percentage of permanent impairment of the whole person.
 11 The percentage of permanent impairment of the whole person is the percentage of
 12 impairment to the particular body part, system, or function converted to the percentage
 13 of impairment to the whole person as provided under (b) of this section. The
 14 compensation is payable in a single lump sum, except as otherwise provided in
 15 AS 23.30.041, but the compensation may not be discounted for any present value
 16 considerations.

17 * **Sec. 19.** AS 23.30.215(a) is amended to read:

18 (a) If the injury causes death, the compensation is known as a death benefit and
 19 is payable in the following amounts to or for the benefit of the following persons:

20 (1) reasonable and necessary funeral expenses not exceeding **\$3,300**
 21 [\$2,500];

22 (2) if there is a widow or widower or a child or children of the deceased,
 23 the following percentages of the spendable weekly wages of the deceased:

24 (A) 80 percent for the widow or widower with no children;

25 (B) **50** [40] percent for the widow or widower with one child and
 26 40 percent for the child;

27 (C) **30** [25] percent for the widow or widower with two or more
 28 children and **70** [55] percent divided equally among the children;

29 (D) **100** [80] percent for an only child when there is no widow
 30 or widower;

31 (E) **100** [80] percent, divided equally, if there are two or more
 32 children and no widow or widower;

1 (3) if the widow or widower remarries, the widow or widower is entitled
 2 to be paid in one sum an amount equal to the compensation to which the widow or
 3 widower would otherwise be entitled in the two years commencing on the date of
 4 remarriage as full and final settlement of all sums due the widow or widower;

5 (4) if there is no widow or widower or child or children, then for the
 6 support of father, mother, grandchildren, brothers and sisters, if dependent upon the
 7 deceased at the time of injury, 42 percent of the spendable weekly wage of the deceased
 8 to such beneficiaries, share and share alike, not to exceed \$20,000 in the aggregate.

9 * **Sec. 20.** AS 23.30.220(a) is amended to read:

10 (a) Computation of compensation under this chapter shall be on the basis of an
 11 employee's spendable weekly wage at the time of injury. An employee's spendable
 12 weekly wage is the employee's gross weekly earnings minus payroll tax deductions. An
 13 employee's gross weekly earnings shall be calculated as follows:

14 (1) if at the time of injury the employee's earnings are calculated by the
 15 week, the weekly amount is the employee's gross weekly earnings;

16 (2) if at the time of injury the employee's earnings are calculated by the
 17 month, the employee's gross weekly earnings are the monthly earnings multiplied by 12
 18 and divided by 52;

19 (3) if at the time of injury the employee's earnings are calculated by the
 20 year, the employee's gross weekly earnings are the yearly earnings divided by 52;

21 (4) if at the time of injury the

22 (A) employee's earnings are calculated by the day, hour, or by
 23 the output of the employee, the employee's gross weekly earnings are the
 24 employee's earnings most favorable to the employee computed by dividing by
 25 13 the employee's earnings, [NOT] including overtime or premium pay, earned
 26 during any period of 13 consecutive calendar weeks within the 52 weeks
 27 immediately preceding the injury;

28 (B) employee has been employed for less than 13 calendar weeks
 29 immediately preceding the injury, then, notwithstanding (1) - (3) of this
 30 subsection and (A) of this paragraph, the employee's gross weekly earnings are
 31 computed by determining the amount that the employee would have earned,
 32 [NOT] including overtime or premium pay, had the employee been employed by

1 the employer for 13 calendar weeks immediately preceding the injury and
2 dividing this sum by 13;

3 (5) if at the time of injury the employee's earnings have not been fixed
4 or cannot be ascertained, the employee's earnings for the purpose of calculating
5 compensation are the usual wage for similar services when the services are rendered by
6 paid employees;

7 (6) if at the time of injury the employment is exclusively seasonal or
8 temporary, then, notwithstanding (1) - (5) of this subsection, the gross weekly earnings
9 are 1/50 [1/50th] of the total wages that the employee has earned from all occupations
10 during the 12 calendar months [YEAR] immediately preceding the injury;

11 (7) when the employee is working under concurrent contracts with two
12 or more employers, the employee's earnings from all employers is considered as if
13 earned from the employer liable for compensation;

14 (8) if an employee when injured is a minor, an apprentice, or a trainee
15 in a formal training program, as determined by the board, whose wages under normal
16 conditions would increase during the period of disability, the projected increase may be
17 considered by the board in computing the gross weekly earnings of the employee;

18 (9) if the employee is injured while performing duties as a volunteer
19 ambulance attendant, volunteer police officer, or volunteer fire fighter, then,
20 notwithstanding (1) - (6) of this subsection, the gross weekly earnings for calculating
21 compensation shall be the minimum gross weekly earnings paid a full-time ambulance
22 attendant, police officer, or fire fighter employed in the political subdivision where the
23 injury occurred, or, if the political subdivision has no full-time ambulance attendants,
24 police officers, or fire fighters, at a reasonable figure previously set by the political
25 subdivision to make this determination, but in no case may the gross weekly earnings
26 for calculating compensation be less than the minimum wage computed on the basis of
27 40 hours work per week;

28 (10) if an employee is entitled to compensation under AS 23.30.180 and
29 the board determines that calculation of the employee's gross weekly earnings under (1) -
30 (7) of this subsection does not fairly reflect the employee's earnings during the period
31 of disability, the board shall determine gross weekly earnings by considering the nature
32 of the employee's work, work history, and resulting disability, but compensation

1 calculated under this paragraph may not exceed the employee's gross weekly earnings
2 at the time of injury.

3 * **Sec. 21.** The uncodified law of the State of Alaska is amended by adding a new section
4 to read:

5 TRANSITION: REGULATIONS. The agency affected by the changes made by this
6 Act may proceed to adopt regulations under AS 23.30.005 to implement the changes. The
7 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the
8 effective date of secs. 2 - 20 of this Act.

9 * **Sec. 22.** Section 21 of this Act takes effect immediately under AS 01.10.070(c).

10 * **Sec. 23.** Except as provided in sec. 22 of this Act, this Act takes effect July 1, 2000.