

**HOUSE BILL NO. 307**

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

**BY REPRESENTATIVE LEDOUX**

**Introduced: 2/10/16**

**Referred: Labor and Commerce**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to workers' compensation; and providing for an effective date."**

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

3 **\* Section 1.** AS 23.30.070(a) is amended to read:

4 (a) Within 10 days from the date the employer has knowledge of an injury or  
5 death or from the date the employer has knowledge of a disease or infection, alleged  
6 by the employee or on behalf of the employee to have arisen out of and in the course  
7 of the employment, the employer shall **file with** [SEND TO] the division a report  
8 setting out

9 (1) the name, address, and business of the employer;

10 (2) the name, address, and occupation of the employee;

11 (3) the cause and nature of the alleged injury or death;

12 (4) the year, month, day, and hour when and the particular locality  
13 where the alleged injury or death occurred; and

14 (5) the other information that the division may require.

15 **\* Sec. 2.** AS 23.30.070(b) is amended to read:

1 (b) Additional reports with respect to the injury and to the condition of the  
 2 employee shall be **filed** [SENT] by the employer **with** [TO] the division at the times  
 3 and in the manner that the director prescribes.

4 \* **Sec. 3.** AS 23.30.070(d) is amended to read:

5 (d) **Filing of the report in a manner prescribed by the director with**  
 6 [MAILING OF THE REPORT AND A COPY TO] the division [IN A STAMPED  
 7 ENVELOPE], within the time prescribed in (a) or (b) of this section, is **in** compliance  
 8 with this section.

9 \* **Sec. 4.** AS 23.30.070(f) is amended to read:

10 (f) An employer who fails or refuses to **file** [SEND] a report required of the  
 11 employer by this section or who fails or refuses to **file** [SEND] the report required by  
 12 (a) of this section within the time required shall, if so required by the board, pay the  
 13 employee or the legal representative of the employee or other person entitled to  
 14 compensation by reason of the employee's injury or death an additional award equal to  
 15 20 percent of the amounts that were unpaid when due. The award shall be against  
 16 either the employer or the insurance carrier, or both.

17 \* **Sec. 5.** AS 23.30.075(b) is amended to read:

18 (b) If an employer fails to insure and keep insured employees subject to this  
 19 chapter or fails to obtain a certificate of self-insurance from the division, upon  
 20 conviction, the court shall impose a fine of \$10,000 and may impose a sentence of  
 21 imprisonment for not more than one year. If an employer is a corporation, **limited**  
 22 **liability company, or limited liability partnership,** all persons who, at the time of  
 23 the injury or death, had authority to insure the **business entity** [CORPORATION] or  
 24 apply for a certificate of self-insurance, and the **persons** [PERSON] actively in charge  
 25 of the business **entity** [OF THE CORPORATION] shall be subject to the penalties  
 26 prescribed in this subsection and shall be personally, jointly, and severally liable  
 27 together with the **business entity** [CORPORATION] for the payment of all  
 28 compensation or other benefits, **including civil penalties and benefit guaranty fund**  
 29 **payments,** for which the **business entity** [CORPORATION] is liable under this  
 30 chapter if the **business entity** [CORPORATION] at that time is not insured or  
 31 qualified as a self-insurer.

1 \* **Sec. 6.** AS 23.30.080(e) is amended to read:

2 (e) If a representative of the department investigates an employer's failure to  
 3 file the evidence of compliance required by AS 23.30.085 and, after investigation,  
 4 there is substantial evidence that the employer failed to insure or provide security as  
 5 required by AS 23.30.075, the representative shall inform the employer. The  
 6 representative may request the director to issue a stop order prohibiting the use of  
 7 employee labor by the employer until the employer insures or provides security as  
 8 required by AS 23.30.075. The director may issue a stop order, without a hearing,  
 9 based on the representative's investigation. The director shall dissolve a stop order  
 10 issued under this subsection upon receipt of substantial evidence that the employer is  
 11 insured or has provided security as required by AS 23.30.075(a). If an employer fails  
 12 to comply with a stop order issued under this subsection, the division may [PETITION  
 13 THE BOARD TO] assess a civil penalty [. THE BOARD MAY ASSESS A CIVIL  
 14 PENALTY] of \$1,000 a day. An employer who is assessed a penalty under this  
 15 subsection may not obtain a public contract with the state or a political subdivision of  
 16 the state for the three years following violation of the stop order.

17 \* **Sec. 7.** AS 23.30.080(f) is amended to read:

18 (f) If an employer fails to insure or provide security as required by  
 19 AS 23.30.075, the division may [PETITION THE BOARD TO] assess a civil penalty  
 20 of up to **a maximum of three times the workers' compensation premium the**  
 21 **employer would have paid if the employer had insured** [\$1,000 FOR EACH  
 22 EMPLOYEE FOR EACH DAY AN EMPLOYEE IS EMPLOYED WHILE THE  
 23 EMPLOYER FAILED TO INSURE] or **provided** [PROVIDE] the security required  
 24 by AS 23.30.075. **Notwithstanding AS 23.30.250(a), if an employer misclassifies**  
 25 **employees as provided in (j) of this section, the division may assess a civil penalty**  
 26 **of up to a maximum of three times the workers' compensation premium the**  
 27 **employer would have paid if the employer had properly classified the employees.**  
 28 **The division shall base the amount of the civil penalty on the employer's payroll**  
 29 **and the assigned risk rates approved and published by the division of insurance**  
 30 **in effect at the time the employer was uninsured or underinsured because of**  
 31 **misclassification of employees. When calculating the civil penalty for failure to**

1 insure or for underinsuring, the division shall apply aggravating and mitigating  
 2 factors prescribed by regulation. An employer that willfully fails, under  
 3 AS 23.05.090, to furnish to the department records required to be kept under  
 4 AS 23.05.080 and by the Internal Revenue Service is subject to a penalty of  
 5 \$1,000 for each seven-day period of noncompliance. The division may (1) enter a  
 6 place of employment during regular hours of employment and, in cooperation  
 7 with the employer, or someone designated by the employer, collect facts and  
 8 statistics pertinent to the employment and classification of workers; and (2) for  
 9 the purpose of examination, have access to and copy from any book, account,  
 10 record, payroll, paper, or document relating to the employment of workers. The  
 11 failure of an employer to file evidence of compliance as required by AS 23.30.085  
 12 creates a rebuttable presumption that the employer failed to insure or provide security  
 13 as required by AS 23.30.075.

14 \* **Sec. 8.** AS 23.30.080(g) is amended to read:

15 (g) If an employer fails to pay a civil penalty [ORDER ISSUED] under [(d),]  
 16 (e) [,] or (f) of this section within **30** [SEVEN] days after the date of service of **notice**  
 17 **on** [THE ORDER UPON] the employer, the director may declare the employer in  
 18 default. The director shall file a certified copy of the penalty order and declaration of  
 19 default with the clerk of the superior court. The court shall, upon the filing of the copy  
 20 of the order and declaration, enter judgment for the amount declared in default if it is  
 21 in accordance with law. Anytime after a declaration of default, the attorney general  
 22 shall, when requested to do so by the director, take appropriate action to ensure  
 23 collection of the defaulted payment. Review of the judgment may be had as provided  
 24 under the Alaska Rules of Civil Procedure. Final proceedings to execute the judgment  
 25 may be had by writ of execution.

26 \* **Sec. 9.** AS 23.30.080 is amended by adding new subsections to read:

27 (h) An employer may appeal a civil penalty assessed by the division under (e)  
 28 or (f) of this section by requesting a hearing under AS 23.30.110 within 30 days after  
 29 the date of service of notice of the civil penalty on the employer. If an employer who  
 30 is issued a civil penalty fails to request a hearing within the prescribed time, the right  
 31 to hearing is waived and the civil penalty is not subject to judicial review.

1 (i) The division or board may not suspend payment of civil penalties assessed  
2 under this section. The division or board may accept a payment plan for payment of  
3 civil penalties assessed under this section. Under the terms of the payment plan,  
4 interest shall accrue at the rate specified in AS 09.30.070(a).

5 (j) An employer misclassifies an employee under this chapter if the employer

6 (1) falsifies or misrepresents employee job duties;

7 (2) misrepresents oneself or an employee as an independent contractor,  
8 as provided in (k) of this section;

9 (3) conceals some or all compensation paid in currency, negotiable  
10 instruments, or in kind for work performed;

11 (4) fails to report workers' compensation insurance policy information  
12 as required under AS 23.30.085 by listing the individual name of each business leasing  
13 employees under an employee leasing contract;

14 (5) adds individuals as partners in partnerships, limited liability  
15 members in limited liability companies, or directors or officers of corporations without  
16 a minimum of 10 percent ownership interest documented with the Department of  
17 Commerce, Community, and Economic Development, without sharing in profits or  
18 losses, and without decision-making authority.

19 (k) An employer may only classify an employee as an independent contractor  
20 under this chapter if the independent contractor

21 (1) maintains a properly licensed business, the success or profitability  
22 of which does not depend exclusively or primarily on the individual or entity for  
23 whom or for which the services are being performed;

24 (2) has a federal employer identification number issued by the Internal  
25 Revenue Service or who filed business or self-employment income tax returns with  
26 the Internal Revenue Service the previous tax year;

27 (3) has a contract to perform the services;

28 (4) maintains liability insurance or other insurance policies necessary  
29 to protect the employees, financial interests, and customers of the business;

30 (5) controls the methods, means, and progress of work;

31 (6) incurs most of the expenses for materials, tools, equipment, labor,

1 and other operational costs necessary for the business;

2 (7) is engaged in a trade, occupation, profession, or business to provide  
3 services that are not an integral part of the day-to-day operations of the business to  
4 which services are provided;

5 (8) has the opportunity for profit or loss based on the management of  
6 revenue and expenses associated with the services performed for the other individual  
7 or entity;

8 (9) does not work as a part of a team of individuals or entities on a  
9 singular task, such as painting a building or installing a roof, where the work  
10 performed by the individual cannot be clearly isolated from the work performed by  
11 other individuals or entities;

12 (10) hires, pays, and controls any employees or other workers required  
13 to perform the task for which the individual was hired; and

14 (11) maintains a business location separate from the location of the  
15 individual or entity for whom or for which the services are being performed.

16 \* **Sec. 10.** AS 23.30.082(a) is amended to read:

17 (a) The workers' compensation benefits guaranty fund is established in the  
18 general fund to carry out the purposes of this section. The fund is composed of civil  
19 penalty **and interest** payments made by employers under AS 23.30.080, **civil penalty**  
20 **payments made under AS 23.30.085**, income earned on investment of the money in  
21 the fund, money deposited in the fund by the department, and appropriations to the  
22 fund, if any. However, money appropriated to the fund does not lapse. Amounts in the  
23 fund may be appropriated for claims against the fund, for expenses directly related to  
24 fund operations and claims, and for legal expenses.

25 \* **Sec. 11.** AS 23.30.085 is amended to read:

26 **Sec. 23.30.085. Duty of employer, insurer, or adjuster to file evidence of**  
27 **compliance.** (a) **An employer, insurer, or adjuster that provides workers'**  
28 **compensation insurance to an** [AN] employer subject to this chapter [, UNLESS  
29 EXEMPTED,] shall initially file evidence of compliance with the insurance provisions  
30 of this chapter with the division, **within 30 days**, in the form prescribed by the  
31 director. The employer, **insurer, or adjuster** shall also give evidence of compliance

1 within **30** [10] days after the termination of the employer's insurance by expiration or  
 2 cancellation. These requirements do not apply to an employer who has certification  
 3 from the board of the employer's financial ability to pay compensation directly without  
 4 insurance.

5 (b) If an employer, **insurer, or adjuster** fails, refuses, or neglects to comply  
 6 with the provision of this section, the employer, **insurer, or adjuster** shall be subject  
 7 to **a civil penalty of \$100 a day for each day the employer, insurer, or adjuster is**  
 8 **late. Total penalties under this subsection may not exceed \$1,000 for each late**  
 9 **filing, and \$10,000 for each insurer or adjuster a year for late filings under this**  
 10 **section. If, during the preceding year, the insurer or adjuster filed at least 90**  
 11 **percent of the reports required under AS 23.30.155(c) and (m) on time, the**  
 12 **penalties for the insurer or adjuster shall be waived** [THE PENALTIES  
 13 PROVIDED IN AS 23.30.070 FOR FAILURE TO REPORT ACCIDENTS; BUT  
 14 NOTHING IN THIS SECTION MAY BE CONSTRUED TO AFFECT THE RIGHTS  
 15 CONFERRED UPON AN INJURED EMPLOYEE OR THE EMPLOYEE'S  
 16 BENEFICIARIES UNDER THIS CHAPTER].

17 \* **Sec. 12.** AS 23.30.165(a) is amended to read:

18 (a) **If an** [EACH] employee, **a** [AND] beneficiary, **or the benefits guaranty**  
 19 **fund established under AS 23.30.082 is** entitled to compensation **or penalty**  
 20 **payments** under the provisions of this chapter, **the person or the fund** has a lien for  
 21 the full amount of the compensation **or penalty payments** the person **or the fund** is  
 22 entitled to, including costs and disbursements of suit and attorney fees allowed, **on**  
 23 [UPON] all of the property in connection with the construction, preservation,  
 24 maintenance, or operation of which the work of the employee was being performed at  
 25 the time of the injury or death. For example: in the case of an employee injured or  
 26 killed while engaged in mining or in work connected with mining, the lien extends to  
 27 the entire mine and all property used in connection with it; and in the case of an  
 28 employee injured or killed while engaged in fishing or in the packing, canning, or  
 29 salting of fish, or other branch of the fish industry, the lien extends to the entire  
 30 packing, fishing, salting, or canning plant or establishment and all property used in  
 31 connection with it; and this is the case with other businesses, industries, works,

1 occupations, and employments. The division has a lien for the benefit of the  
 2 benefits guaranty fund for the full amount of civil penalties assessed against an  
 3 uninsured employer under AS 23.30.080 on all of the property in connection with  
 4 the construction, preservation, maintenance, or operation of the employer at the  
 5 time the employer was uninsured.

6 \* **Sec. 13.** AS 23.30.165(d) is amended to read:

7 (d) A person claiming a lien under this chapter shall, within one year after the  
 8 date of the injury from which the claim of compensation arises, record in the office of  
 9 the recorder of the recording district in which the property affected by the lien is  
 10 located a notice of lien signed and verified by the claimant, [OR] someone on behalf  
 11 of the claimant, and stating, in substance, the name of the person injured or killed out  
 12 of which injury or death the claim of compensation arises, the name of the employer  
 13 of the injured or deceased person at the time of the injury or death, a description of the  
 14 property affected or covered by the lien, and the name of the owner or reputed owner  
 15 of the property. The division claiming a lien under this chapter shall, within one  
 16 year after the date of a declaration of default under AS 23.30.080, record in the  
 17 office of the recorder of the recording district in which the property affected by  
 18 the lien is located a notice of lien signed and verified by the division, and stating,  
 19 in substance, the name of the employer that failed to pay a civil penalty or the  
 20 penalties under AS 23.30.080, a description of the property affected or covered  
 21 by the lien, and the name of the owner or reputed owner of the property.

22 \* **Sec. 14.** AS 23.30.165 is amended by adding a new subsection to read:

23 (f) In this section, "fund" means the benefits guaranty fund established under  
 24 AS 23.30.082.

25 \* **Sec. 15.** AS 23.30.240 is amended to read:

26 **Sec. 23.30.240. Officers of corporations, municipal corporations, and**  
 27 **nonprofit corporations and members of limited liability companies as employees.**

28 (a) Except as provided in (b) of this section, an executive officer

29 (1) [AN EXECUTIVE OFFICER] elected or appointed and  
 30 empowered in accordance with the charter and bylaws of a corporation **or a member**  
 31 **of a limited liability company organized under AS 10.50** [, OTHER THAN AN

1 OFFICIAL OF A MUNICIPAL CORPORATION OR A CHARITABLE,  
 2 RELIGIOUS, EDUCATIONAL, OR OTHER NONPROFIT CORPORATION,] is **not**  
 3 an employee of the corporation **or limited liability company** under this chapter **if the**  
 4 **executive officer or member owns at least 10 percent of the corporation or limited**  
 5 **liability company;**

6 (2) [. HOWEVER, AN EXECUTIVE OFFICER OF A  
 7 CORPORATION MAY WAIVE COVERAGE UNDER THIS CHAPTER, SUBJECT  
 8 TO THE APPROVAL OF THE DIRECTOR, NOTWITHSTANDING  
 9 AS 23.30.245(b). NOTWITHSTANDING ANY OTHER PROVISION OF THIS  
 10 CHAPTER, AN EXECUTIVE OFFICER] of a municipal corporation or of a  
 11 charitable, religious, educational, or other nonprofit corporation **is not an employee of**  
 12 **the corporation** [MAY BE BROUGHT WITHIN THE COVERAGE OF ITS  
 13 INSURANCE CONTRACT BY THE CORPORATION BY SPECIFICALLY  
 14 INCLUDING THE OFFICER IN THE CONTRACT OF INSURANCE. THE  
 15 ELECTION TO BRING AN EXECUTIVE OFFICER WITHIN THE COVERAGE  
 16 CONTINUES IN FORCE FOR THE PERIOD THE CONTRACT OF INSURANCE  
 17 IS IN EFFECT. DURING THAT PERIOD, AN EXECUTIVE OFFICER BROUGHT  
 18 WITHIN THE COVERAGE OF THE INSURANCE CONTRACT IS AN  
 19 EMPLOYEE OF THE CORPORATION] under this chapter.

20 (b) **A corporation or** [EXCEPT AS PROVIDED IN THIS SUBSECTION, A  
 21 MEMBER OF A LIMITED LIABILITY COMPANY ORGANIZED UNDER  
 22 AS 10.50 IS NOT AN EMPLOYEE OF THE COMPANY UNDER THIS CHAPTER.  
 23 NOTWITHSTANDING ANY OTHER PROVISION OF THIS CHAPTER, A]  
 24 limited liability company may bring **an executive officer or** [A] member [OF THE  
 25 COMPANY] within the coverage of the **business entity's** [COMPANY'S] insurance  
 26 contract by specifically including the **executive officer or** member in the contract of  
 27 insurance. The election to bring the **executive officer or** member within the **business**  
 28 **entity's** [COMPANY'S] coverage continues in force for the period the contract of  
 29 insurance is in effect. During that period, **an executive officer or** [A] member brought  
 30 within the coverage of the insurance contract is an employee of the **business entity**  
 31 [COMPANY] under this chapter.

1 \* **Sec. 16.** AS 23.30.250(a) is amended to read:

2 (a) A person who (1) knowingly makes a false or misleading statement,  
3 representation, or submission, **or knowingly fails to report a material fact** related to  
4 a **payment, coverage, or other** benefit under this chapter; (2) knowingly assists,  
5 abets, solicits, or conspires in making a false or misleading submission affecting the  
6 payment, coverage, or other benefit under this chapter; (3) knowingly misclassifies  
7 employees or engages in deceptive leasing practices for the purpose of evading full  
8 payment of workers' compensation insurance premiums; or (4) employs or contracts  
9 with a person or firm to coerce or encourage an individual to file a fraudulent  
10 compensation claim is civilly liable to a person adversely affected by the conduct, is  
11 guilty of theft by deception as defined in AS 11.46.180, and may be punished as  
12 provided by AS 11.46.120 - 11.46.150.

13 \* **Sec. 17.** AS 23.30.250(b) is amended to read:

14 (b) If the board, after a hearing, finds that a person has obtained compensation,  
15 medical treatment, or another benefit provided under this chapter, or that a provider  
16 has received a payment, by knowingly making a false or misleading statement or  
17 representation **or knowingly failing to report a material fact** [FOR THE PURPOSE  
18 OF OBTAINING THAT BENEFIT], the board shall order that person to make full  
19 reimbursement of the cost of all benefits obtained. Upon entry of an order authorized  
20 under this subsection, the board shall also order that person to pay all reasonable costs  
21 and attorney fees incurred by the employer and the employer's carrier in obtaining an  
22 order under this section and in defending any claim made for benefits under this  
23 chapter. If a person fails to comply with an order of the board requiring reimbursement  
24 of compensation and payment of costs and attorney fees, the employer may declare the  
25 person in default and proceed to collect any sum due as provided under  
26 AS 23.30.170(b) and (c).

27 \* **Sec. 18.** AS 23.30.250 is amended by adding a new subsection to read:

28 (d) While receiving compensation provided under this chapter, an employee  
29 shall inform the employer or insurer of any employment, other than the work being  
30 performed for the employer, or receipt of other disability or unemployment benefits. If  
31 an employee does not disclose other employment or receipt of other disability or

1 unemployment benefits under this section and the employee knowingly receives  
 2 compensation under this chapter that the employee is not entitled to because of the  
 3 employment or receipt of other disability or unemployment benefits, the employee has  
 4 failed to report a material fact related to a benefit under this chapter. In this subsection,  
 5 "employment" means any type of work, whether paid or unpaid.

6 \* **Sec. 19.** AS 23.30.080(d) is repealed.

7 \* **Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to  
 8 read:

9 TRANSITIONAL PROVISIONS. This Act applies to

10 (1) the failure of a person to insure or provide security under AS 23.30 on or  
 11 after the effective date of this Act;

12 (2) the failure of a person to furnish records relating to a

13 (A) violation under AS 23.30 occurring on or after the effective date of  
 14 this Act; or

15 (B) penalty under AS 23.30 imposed on or after the effective date of  
 16 this Act for a violation under AS 23.30 occurring on or after the effective date of this  
 17 Act;

18 (3) a penalty imposed under AS 23.30 on or after the effective date of this Act  
 19 for a violation under AS 23.30 occurring on or after the effective date of this Act; and

20 (4) a penalty payment due under AS 23.30 on or after the effective date of this  
 21 Act for a violation under AS 23.30 occurring before, on, or after the effective date of this Act.

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

24 TRANSITION: REGULATIONS. The Department of Labor and Workforce  
 25 Development may adopt regulations to implement this Act. The regulations take effect under  
 26 AS 44.62 (Administrative Procedure Act), but not before the effective date of the law being  
 27 implemented.

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