

**CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 112( )**

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

BY

Offered:  
Referred:

**Sponsor(s): SENATOR GIESSEL**

**A BILL****FOR AN ACT ENTITLED**

1 "An Act relating to employer-required drug testing; relating to the Alaska Workers'  
2 Compensation Board; relating to the payment of workers' compensation or benefits;  
3 relating to compensable injuries; relating to the treatment or care of employees; relating  
4 to use of evidence-based treatment guidelines; relating to prescribing or dispensing a  
5 controlled substance to an employee for a compensable injury; relating to the filing of  
6 claims for workers' compensation benefits or petitions for other relief; relating to the  
7 burden of proof and credibility of witnesses in workers' compensation matters; relating  
8 to attorney fees; relating to the filing of a verified annual report; and excluding  
9 independent contractors from workers' compensation coverage."

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

11 \* **Section 1.** AS 23.10.620 is amended by adding a new subsection to read:

12 (g) In addition to the tests required under (c) and (d) of this section, an

1 employer may require an employee to undergo drug testing under AS 23.30.096(b)(3)  
2 if the employee has been prescribed a controlled substance described in  
3 AS 17.30.200(a) by a physician under AS 23.30.096.

4 \* **Sec. 2.** AS 23.30.010(a) is repealed and reenacted to read:

5 (a) The employer shall pay compensation or furnish benefits required by this  
6 chapter if the employee suffers an accidental compensable injury or death arising out  
7 of work performed in the course and the scope of employment. The injury, its  
8 occupational cause, and any resulting manifestations or disability must be established  
9 to a reasonable degree of medical certainty, based on relevant objective medical  
10 evidence, and the accidental compensable injury must be the major contributing cause  
11 of any resulting condition, disability, or need for medical treatment. In cases involving  
12 occupational disease or repetitive exposure, both causation and sufficient exposure to  
13 support causation must be proven by clear and convincing evidence. Under this  
14 chapter, pain or other subjective complaints are not compensable in the absence of  
15 objective relevant medical evidence that correlate to the subjective complaints of the  
16 injured employee and are confirmed by physical examination findings or diagnostic  
17 testing. The causal relationship between a compensable accident and injuries or  
18 conditions that are not readily observable must be established through medical  
19 evidence by physical examination findings or diagnostic testing.

20 \* **Sec. 3.** AS 23.30.095(a) is amended to read:

21 (a) The employer shall furnish medical, surgical, and other attendance or  
22 treatment, nurse and hospital service, medicine, crutches, and apparatus for the injury  
23 in accordance with evidence-based treatment guidelines based on the most recent  
24 version of the American College of Occupational and Environmental Medicine's  
25 Occupational Medicine Practice Guidelines published by Reed Group. If medical  
26 treatment outside the evidence-based treatment guidelines is recommended to the  
27 employee, the employer or insurer may request that the board appoint a third  
28 party to conduct an independent utilization review and make recommendations  
29 to the board on the treatment recommended for the employee. If medical  
30 treatment is recommended after two years from the date of injury to the  
31 employee, the employee may not be afforded the presumption of compensability

1       under AS 23.30.120(a), but [PERIOD WHICH THE NATURE OF THE INJURY  
2       OR THE PROCESS OF RECOVERY REQUIRES, NOT EXCEEDING TWO  
3       YEARS FROM AND AFTER THE DATE OF INJURY TO THE EMPLOYEE.  
4       HOWEVER, IF THE CONDITION REQUIRING THE TREATMENT,  
5       APPARATUS, OR MEDICINE IS A LATENT ONE, THE TWO-YEAR PERIOD  
6       RUNS FROM THE TIME THE EMPLOYEE HAS KNOWLEDGE OF THE  
7       NATURE OF THE EMPLOYEE'S DISABILITY AND ITS RELATIONSHIP TO  
8       THE EMPLOYMENT AND AFTER DISABLEMENT. IT SHALL BE  
9       ADDITIONALLY PROVIDED THAT, IF CONTINUED TREATMENT OR CARE  
10      OR BOTH BEYOND THE TWO-YEAR PERIOD IS INDICATED,] the injured  
11      employee has the right of review by the board. The board may authorize continued  
12      treatment or care or both, as the process of recovery may require. When medical care  
13      is required, the injured employee may designate a licensed physician to provide all  
14      medical and related benefits. Designation by the employer or insurer of an  
15      attending physician does not constitute the employer's or insurer's right to an  
16      employer independent medical examination under (e) of this section. The  
17      employee may not make more than one change in the employee's choice of attending  
18      physician without the written consent of the employer. Referral to a specialist by the  
19      employee's attending physician is not considered a change in physicians, but a  
20      referral to a specialist by the employee's attending physician within the same  
21      specialty is considered a change in physician. Upon procuring the services of a  
22      physician, the injured employee shall give proper notification of the selection to the  
23      employer within a reasonable time after first being treated. Notice of a change in the  
24      attending physician shall be given before the change. Continued authorization must  
25      be provided for

- 26                    (1) prosthetic devices, braces, and supports;
- 27                    (2) non-narcotic prescription medications;
- 28                    (3) narcotic prescription medications necessary to allow the  
29                    employee to continue to work or participate in vocational rehabilitation;
- 30                    (4) services necessary to monitor the status, replacement, or repair  
31                    of prosthetic devices, braces, and supports or to prescribe prescription

1                   medications under (2) or (3) of this subsection; and

2                   (5) life-preserving modalities similar to insulin therapy, dialysis,  
3                   and transfusions, if related to the claimed injury or exposure.

4 \* **Sec. 4.** AS 23.30.095(d) is amended to read:

5                   (d) If, at any time during the period the employee unreasonably refuses to  
6                   submit to medical or surgical treatment or appropriate diagnostic tests, the board  
7                   may by order suspend the payment of further compensation while the refusal  
8                   continues, and no compensation may be paid at any time during the period of  
9                   suspension, unless the circumstances justified the refusal.

10 \* **Sec. 5.** AS 23.30.095(e) is amended to read:

11                   (e) The employee shall, after an injury, at reasonable times during the  
12                   continuance of the disability, if requested by the employer or when ordered by the  
13                   board, submit to an examination by a physician, [OR] surgeon, or mental health  
14                   provider of the employer's choice authorized to practice medicine under the laws of  
15                   the jurisdiction in which the examination occurs, furnished and paid for by the  
16                   employer. The employer may not make more than one change in the employer's choice  
17                   of a physician or surgeon without the written consent of the employee. Referral to a  
18                   specialist by the employer's physician is not considered a change in physicians. An  
19                   examination requested by the employer not less than 14 days after injury, and every 60  
20                   days thereafter, shall be presumed to be reasonable, and the employee shall submit to  
21                   the examination without further request or order by the board. Unless medically  
22                   appropriate, the physician shall use existing diagnostic data to complete the  
23                   examination. Facts relative to the injury or claim communicated to or otherwise  
24                   learned by a physician or surgeon who may have attended or examined the employee,  
25                   or who may have been present at an examination are not privileged, either in the  
26                   hearings provided for in this chapter or an action to recover damages against an  
27                   employer who is subject to the compensation provisions of this chapter. If an  
28                   employee refuses to submit to an examination provided for in this section, the  
29                   employee's rights to compensation shall be suspended until the obstruction or refusal  
30                   ceases, and the employee's compensation during the period of suspension may, in the  
31                   discretion of the board or the court determining an action brought for the recovery of

1                   damages under this chapter, be forfeited. The board in any case of death may require  
2                   an autopsy at the expense of the party requesting the autopsy. An autopsy may not be  
3                   held without notice first being given to the widow or widower or next of kin if they  
4                   reside in the state or their whereabouts can be reasonably ascertained, of the time and  
5                   place of the autopsy and reasonable time and opportunity given the widow or widower  
6                   or next of kin to have a representative present to witness the autopsy. If adequate  
7                   notice is not given, the findings from the autopsy may be suppressed on motion made  
8                   to the board or to the superior court, as the case may be.

9                   \* **Sec. 6.** AS 23.30.095(o) is amended to read:

10                   (o) Notwithstanding (a) of this section, an employer is not liable for palliative  
11                   care after the date of medical stability unless the palliative care is consistent with the  
12                   evidence-based treatment guidelines established in (a) of this section  
13                   [REASONABLE] and necessary [(1)] to enable the employee to continue in the  
14                   employee's employment at the time of treatment [, (2) TO ENABLE THE  
15                   EMPLOYEE TO CONTINUE TO PARTICIPATE IN AN APPROVED  
16                   REEMPLOYMENT PLAN, OR (3) TO RELIEVE CHRONIC DEBILITATING  
17                   PAIN]. A claim for palliative care is not valid and enforceable unless it is  
18                   accompanied by a certification of the attending physician that the palliative care meets  
19                   the requirements of this subsection. A claim for palliative care is subject to the  
20                   requirements of (c) - (n) of this section. [IF A CLAIM FOR PALLIATIVE CARE IS  
21                   CONTROVERTED BY THE EMPLOYER, THE BOARD MAY REQUIRE AN  
22                   EVALUATION UNDER (k) OF THIS SECTION REGARDING THE DISPUTED  
23                   PALLIATIVE CARE.] A claim for palliative care may be heard by the board under  
24                   AS 23.30.110.

25                   \* **Sec. 7.** AS 23.30.095 is amended by adding new subsections to read:

26                   (p) An entity that provides durable medical equipment, prosthetics, orthotics,  
27                   or supplies to an employee must be accredited by an accreditation organization  
28                   approved by the federal Centers for Medicare and Medicaid Services. If a medical  
29                   provider provides durable medical equipment, prosthetics, orthotics, or supplies  
30                   ancillary to the employee's visit, reimbursement or payment by the employer or  
31                   insurer may not exceed 10 percent of the cost of the durable medical equipment,

1                   prosthetics, orthotics, or supplies.

2                   (q) If prescription drugs are dispensed by a medical provider as part of the  
3                   medical treatment provided to an employee, the employer or insurer may only be  
4                   required to pay the lesser of the

5                   (1) reimbursement amount specified under the schedule of fees  
6                   adopted by the director;

7                   (2) reimbursement amount for prescription drugs obtained by mail  
8                   order; or

9                   (3) cost of the prescription if obtained at a pharmacy.

10                  \* **Sec. 8.** AS 23.30 is amended by adding a new section to read:

11                  **Sec. 23.30.096. Controlled substances.** (a) Within two business days after  
12                  prescribing or dispensing a supply of 30 or more days of a controlled substance  
13                  described in AS 17.30.200(a) to an employee for a compensable injury, a physician  
14                  shall submit a report on a form prescribed by the board to the employee's employer.

15                  (b) A physician shall include in a report required under (a) of this section

16                   (1) the employee's prescription information, including the

17                   (A) date of the prescription;

18                   (B) name of the controlled substance;

19                   (C) quantity and strength of the controlled substance dispensed;

20                   (D) off-label use of a narcotic, opium-based controlled  
21                  substance, or other controlled substance described in AS 17.30.200(a)  
22                  prescribed to the employee;

23                   (E) use of a narcotic or opium-based controlled substance or  
24                  the prescription of a combination of narcotics or opium-based controlled  
25                  substances at or exceeding a 120 milligram morphine equivalent dose a day;  
26                  and

27                   (F) prescription of a long-acting or controlled-release opioid for  
28                  acute pain;

29                  (2) the justification for the use of the controlled substance and a  
30                  treatment plan that includes a description of measures that the physician will  
31                  implement to monitor and prevent the development of abuse, dependence, addiction,

1 or diversion by the employee; and

2 (3) a medication agreement, a plan for subsequent follow-up visits,  
3 random drug testing, and documentation that the medication regime is providing relief  
4 that is demonstrated by clinically meaningful improvement in function.

5 (c) The results of any drug test ordered under (b)(3) of this section must be  
6 included in the medical records of the employee.

7 (d) If a drug test under (b)(3) of this section reveals inconsistent results, the  
8 physician shall, within five business days after receiving the inconsistent results,  
9 provide a written report to the employer and the board setting out a treatment plan to  
10 address the inconsistent drug test results.

11 (e) This section does not apply to prescription medications prescribed by other  
12 physicians or administered to the employee while the employee is receiving inpatient  
13 hospital treatment.

14 (f) The employer or the board may require a physician to comply with this  
15 section, notwithstanding the existence of a prior award addressing medical  
16 maintenance benefits for prescription medications. An insurer or employer is not liable  
17 for bad faith or unfair claims processing under AS 21.36 for an act taken in  
18 compliance with or consistent with this section.

19 (g) If a physician fails to comply with this section,

20 (1) the employer is not liable for payment of the physician's services  
21 until the physician complies with this section; and

22 (2) the employer may request a change of physician after making a  
23 written request to the physician to comply with this section and identifying the area of  
24 noncompliance; if a change of physician is ordered and the order becomes final, the  
25 employee shall select a physician whose practice includes pain management and who  
26 agrees to comply with this section.

27 (h) In this section,

28 (1) "clinically meaningful improvement in function" means

29 (A) a clinically documented improvement in range of motion;

30 (B) an objective increase in the performance of activities of  
31 daily living; or

(C) a return to gainful employment.

(2) "inconsistent results" means

(A) the employee's reported medications or the parent drugs or metabolites are not detected; or

(B) controlled substances are detected that are not reported by the employee;

(3) "off-label use" means use of a prescription medication by a physician to treat a condition other than the use for which the drug was approved by the United States Food and Drug Administration.

\* **Sec. 9.** AS 23.30.097(d) is amended to read:

(d) Payment for medical treatment under this chapter, excluding prescription charges or transportation for medical treatment, is not due immediately or on demand. An employer shall pay an employee's bills for medical treatment under this chapter, excluding prescription charges or transportation for medical treatment, within 30 days after the date that the employer receives the provider's bill and [OR] a completed report as required by AS 23.30.095(c), regardless of whether the employer has earlier notice that medical treatment has been prescribed for the employee [WHICHEVER IS LATER].

\* **Sec. 10.** AS 23.30.097(g) is amended to read:

(g) Unless the employer controverts a charge, the employer shall reimburse an employee's prescription charges under this chapter within 30 days after the employer receives the employee's request for reimbursement, the health care provider's completed report, and an itemization of the prescription charges for the employee. Unless the employer controverts a charge, an employer shall reimburse any transportation expenses for medical treatment under this chapter within 30 days after the employer receives the health care provider's completed report and an itemization of the dates, destination, and transportation expenses for each date of travel for medical treatment. If the employer does not plan to make or does not make payment or reimbursement in full as required by this subsection, the employer shall notify the employee and the employee's health care provider in writing that payment will not be made timely and the reason for the nonpayment. The notification must be provided not

1 later than the date that the payment is due under this subsection.

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

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

17 \* **Sec. 12.** AS 23.30.107(b) is amended to read:

18 (b) Medical or rehabilitation records, and the employee's name, address, social  
19 security number, electronic mail address, and telephone number contained on any  
20 record, in an employee's file maintained by the division or held by the board or the  
21 commission are not public records subject to public inspection and copying under  
22 AS 40.25.100 - 40.25.295. This subsection does not prohibit

23 (1) the reemployment benefits administrator, the division, the board,  
24 the commission, or the department from releasing medical or rehabilitation records in  
25 an employee's file, without the employee's consent, to a [PHYSICIAN PROVIDING  
26 MEDICAL SERVICES UNDER AS 23.30.095(k) OR 23.30.110(g), A] party to a  
27 claim filed by the employee [,] or a governmental agency; or

28 (2) the quoting or discussing of medical or rehabilitation records  
29 contained in an employee's file during a hearing on a claim for compensation or in a  
30 decision or order of the board or commission.

31 \* **Sec. 13.** AS 23.30.110(e) is amended to read:

(e) The order rejecting the claim or making the award, referred to in this chapter as a compensation order, shall be filed in the office of the board, and a copy of it shall be sent [BY REGISTERED MAIL] to the claimant and [TO THE] employer **electronically or by registered mail to** [AT] the last known address of each.

\* **Sec. 14.** AS 23.30.120(a) is amended to read:

(a) In a proceeding for the enforcement of a claim for compensation under this chapter, once the employee has established a preliminary link between employment or employment injury and the resulting condition, disability, or need for medical treatment through objective relevant medical evidence, it is presumed [ , IN THE ABSENCE OF SUBSTANTIAL EVIDENCE TO THE CONTRARY,] that

(1) the claim comes within the provisions of this chapter;

(2) sufficient notice of the claim has been given;

(3) the injury was not proximately caused by the intoxication of the injured employee or proximately caused by the employee being under the influence of drugs unless the drugs were taken as prescribed by the employee's physician;

(4) the injury was not occasioned by the wilful intention of the injured employee to injure or kill self or another.

\* **Sec. 15.** AS 23.30.120 is amended by adding new subsections to read:

(d) An employee may not establish a preliminary link under (a) of this section solely by disproving other possible causes or explanations for how the injury, disease, resulting condition, disability, or need for medical treatment occurred.

(e) After the employee establishes a preliminary link, the presumption of compensability under (a) of this section may be rebutted by presentation of objective relevant medical evidence that it is more likely than not that the compensable injury is not, or is no longer, the major contributing cause of the condition, disability, or need for medical treatment, even if there is no clear alternative explanation or known cause of the compensable injury.

(f) Once the presumption has been rebutted under (e) of this section, the employee must prove the claim by clear and convincing objective relevant medical evidence.

\* **Sec. 16.** AS 23.30.122 is amended by adding new subsections to read:

(b) The board may not afford a physician's opinion more weight merely because the physician is the employee's treating physician. The board may not give less weight to an employer's medical evaluator merely because that physician has not seen the employee as frequently as the treating physician. The probative value of an employer's medical evaluator's opinion on causation, the extent of disability, impairment, ability to work, or need for medical treatment is evidence to be considered on a footing equal to all other proof in the case. The board shall consider the following factors in affording weight to a medical expert's opinion:

(1) whether the medical expert's opinion is based on objective medical evidence that meets the criteria of Rule 702, Federal Rules of Evidence, Rule 702, Alaska Rules of Evidence, and all United States Supreme Court and Alaska Supreme Court opinions applicable to those rules;

(2) whether the medical opinion is consistent with the medical record as a whole;

(3) how independent the medical expert's opinion is from inappropriate influences from the employee or employer;

(4) whether the medical expert is board certified in the medical expert's specialty and whether the opinion of the medical expert is within the medical expert's specialty; and

(5) the degree to which the medical expert presents an explanation and relevant evidence to support an opinion, particularly with review of prior medical reports, physical examinations, radiology, or other diagnostic or laboratory tests.

(c) Lay testimony may only be relied on to decide factual disputes that do not involve causation, degree of impairment, ability to work, physical capacities, or past and future medical treatment. In deciding medical issues on causation, degree of impairment, ability to work, physical capacities, or past and future medical treatment, the board may not rely on lay testimony.

\* Sec. 17. AS 23.30.145 is repealed and reenacted to read:

**Sec. 23.30.145. Attorney fees.** (a) Fees for legal services rendered with respect to a claim are not valid unless approved by the board. Except as provided under (b) of this section, attorney fees may not exceed the following percentage of the contested

1 amount of compensation benefits secured as a result of a claim filed by an attorney:

2 (1) 25 percent of the settlement amount between the parties;

3 (2) 30 percent of the amount awarded by the board after a hearing or  
4 upon appeal to the commission;

5 (3) 35 percent of the amount awarded after a successful appeal to the  
6 Alaska Supreme Court.

7 (b) If a written offer to settle an issue pending before the board is made at least  
8 30 days before a hearing on the claim, for purposes of calculating the amount of  
9 attorney fees to be paid under (a) of this section, only the amount of benefits awarded  
10 to the employee above the amount specified in the offer to settle may be considered. If  
11 multiple issues are pending before the board, the offer to settle must address each issue  
12 and clearly state whether or not the offer on each issue is severable. Any written offer  
13 to settle must be kept confidential and not disclosed to the board until after the final  
14 decision on the merits of the case has been decided. After the final decision on the  
15 merits of the case has been issued, the parties shall file the offer to settle with the  
16 board so that the board can award appropriate attorney fees and costs.

17 (c) Attorney fees and costs may be paid in a lump sum on the present value of  
18 the settlement or adjudicated amount.

19 (d) In this section, "benefits secured" does not include medical benefits  
20 awarded three or more years after the date of injury.

21 \* **Sec. 18. AS 23.30.155(m)** is amended to read:

22 (m) On or before March 1 of each year, the insurer or adjuster shall file a  
23 verified annual report on a form prescribed by the director stating the total amount of  
24 all compensation by type, the number of claims received and the percentage  
25 controverted, medical and related benefits, vocational rehabilitation expenses, legal  
26 fees, including a separate total of fees paid to attorneys and fees paid for the other  
27 costs of litigation, and penalties paid on all claims during the preceding calendar year.  
28 If the annual report is timely and complete when received by the division and provides  
29 accurate information about each category of payments, the director shall review the  
30 timeliness of the insurer's or adjuster's reports filed during the preceding year under (c)  
31 of this section. If, during the preceding year, the insurer or adjuster filed at least 99

1 percent of the reports on time, the penalties assessed under (c) of this section shall be  
2 waived. If, during the preceding year, the insurer or adjuster filed at least 97 percent of  
3 the reports on time, 75 percent of the penalties assessed under (c) of this section shall  
4 be waived. If, during the preceding year, the insurer or adjuster filed 95 percent of the  
5 reports on time, 50 percent of the penalties assessed under (c) of this section shall be  
6 waived. If, during the preceding year, the insurer's or adjuster's reports have not been  
7 filed on time at least 95 percent of the time, none of the penalties assessed under (c) of  
8 this section shall be waived. The penalties that are not waived are due and payable  
9 when the insurer or adjuster receives notification from the director regarding the  
10 timeliness of the reports. If the annual report is not filed by March 1 of each year, the  
11 insurer or adjuster shall pay a civil penalty of \$100 for the first day the annual report is  
12 late and \$10 for each additional day the report is late. [IF THE ANNUAL REPORT IS  
13 INCOMPLETE WHEN FILED, THE INSURER OR ADJUSTER SHALL PAY A  
14 CIVIL PENALTY OF \$1,000.]

15 \* **Sec. 19.** AS 23.30.230(a) is amended to read:

16 (a) The following persons are not covered by this chapter:

17 (1) a part-time baby-sitter;

18 (2) a cleaning person;

19 (3) harvest help and similar part-time or transient help;

20 (4) a person employed as a sports official on a contractual basis and  
21 who officiates only at sports events in which the players are not compensated; in this  
22 paragraph, "sports official" includes an umpire, referee, judge, scorekeeper,  
23 timekeeper, organizer, or other person who is a neutral participant in a sports event;

24 (5) a person employed as an entertainer on a contractual basis;

25 (6) a commercial fisherman, as defined in AS 16.05.940;

26 (7) an individual who drives a taxicab whose compensation and written  
27 contractual arrangement is as described in AS 23.10.055(a)(13), unless the hours  
28 worked by the individual or the areas in which the individual may work are restricted  
29 except to comply with local ordinances;

30 (8) a participant in the Alaska temporary assistance program  
31 (AS 47.27) who is engaged in work activities required under AS 47.27.035 other than

subsidized or unsubsidized work or on-the-job training;

(9) a person employed as a player or coach by a professional hockey team if the person is covered under a health care insurance plan provided by the professional hockey team, the coverage is applicable to both work-related and nonwork-related injuries, and the coverage provides medical and related benefits as required under this chapter, except that coverage may not be limited to two years from the date of injury as described under AS 23.30.095(a); in this paragraph, "health care insurance" has the meaning given in AS 21.12.050;

(10) a person working as a qualified real estate licensee who performs services under a written contract that provides that the person will not be treated as an employee for federal income tax or workers' compensation purposes; in this paragraph, "qualified real estate licensee" means a person who is required to be licensed under AS 08.88.161 and whose payment for services is directly related to sales or other output rather than the number of hours worked; [AND]

(11) a transportation network company driver who provides a prearranged ride or is otherwise logged onto the digital network of a transportation network company as a driver; **and**

**(12) a person employed as an independent contractor; a person is an independent contractor for the purposes of this chapter only if the person**

**(A) has an express contract to perform the services;**

(B) is free from direction and control over the means and providing services, subject only to the right of the individual or entity for which, the services are provided to specify the results, completion schedule, or range of work hours, or to work for compliance with contract plans and specifications, state, or municipal law;

(C) incurs most of the expenses for tools, labor, and other operational costs necessary to perform the services, except that materials and equipment may be supplied;

**(D) has an opportunity for profit and loss as a result of the services performed for the other individual or entity;**

**(E) is free to hire and fire employees to help perform the services for the contracted work;**

**(F) has all business, trade, or professional licenses required by federal, state, or municipal authorities for a business or individual engaging in the same type of services as the person;**

**(G) follows federal Internal Revenue Service requirements**

**(i) obtaining an employer identification number, if required;**

**(ii) filing business or self-employment tax returns for the previous tax year to report profit or income earned for the same type of services provided under the contract; or**

(iii) intending to file business or self-employment tax returns for the current tax year to report profit or income earned for the same type of services provided under the contract if the person's business was not operating in the previous tax year; and

**(H) meets at least two of the following criteria:**

(i) the person is responsible for the satisfactory completion of services that the person has contracted to perform and is subject to liability for a failure to complete the contracted work, or maintains liability insurance or other insurance policies necessary to protect the employees, financial interests, and customers of the person's business;

(ii) the person maintains a business location or a business mailing address separate from the location of the individual for whom, or the entity for which, the services are performed:

(iii) the person provides contracted services for two or more different customers within a 12-month period or engages in any kind of business advertising, solicitation, or other marketing efforts reasonably calculated to obtain new contracts to provide

### **similar services.**

\* **Sec. 20.** AS 23.30.395(2) is amended to read:

(2) "arising out of and in the course of employment" includes employer-required or supplied travel to and from a remote job site; activities performed at the direction or under the control of the employer; and employer-sanctioned activities at employer-provided facilities if the activities are the major contributing cause of the death, disease, or resulting condition, disability, or need for medical treatment; but excludes recreational league activities sponsored by the employer, unless participation is required as a condition of employment, and activities of a personal nature away from employer-provided facilities;

\* **Sec. 21.** AS 23.30.395(3) is amended to read:

(3) "attending physician" means one of the following designated by the employee under AS 23.30.095(a) or (b):

- (A) a licensed medical doctor;
- (B) a licensed doctor of osteopathy;
- (C) a licensed dentist or dental surgeon;
- (D) a licensed physician assistant acting under supervision of a licensed medical doctor or doctor of osteopathy;
- (E) a licensed advanced practice registered nurse; [OR]
- (F) a licensed chiropractor; or
- (G) a licensed optometrist;**

\* **Sec. 22.** AS 23.30.095(k), 23.30.110(g), 23.30.135(a), and 23.30.155(h) are repealed.

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

APPLICABILITY. Sections 2 - 22 of this Act apply to claims for injuries filed on or after the effective date of those sections.