



## **PROPOSED CHANGES TO HB 79**

### **1. Title Changes**

- a) What: Modifies the title paragraph of the bill.
- b) Why: To reflect the proposed changes made.

### **2. Sec. 9: Persons Liable for Civil Penalties for Failure to Insure**

- a) What: Adds a person “actively in charge of the operations of the business entity” or a person that has “the authority to insure the business entity” as persons liable for penalties for an employer’s failure to insure.
- b) Why: Closes a loophole inadvertently opened with the language of HB 79. Proposed change makes sure that if a business entity has eleven members, all with less than ten percent ownership interest, that a person is still accountable for uninsured injuries and penalties for failing to insure. The “actively in charge of the operations of the business entity” or a person that has “the authority to insure the business entity” language currently exists in AS 23.30.075 with regards to criminal penalties and corporate liability for compensable claims. The proposed changes to HB 79 extend this to more types of business entities and apply it to civil penalties as well.

### **3. Sec. 11: Division’s Investigation and Civil Penalty Assessment**

- a) What: Adds language clarifying the Division’s civil penalty assessment must be based on substantial evidence and that the civil penalty assessment is based on payroll which includes payments that would be considered wages if the employer had not misclassified its employees.
- b) Why: Makes sure the Division’s investigation is supported by evidence and clarifies that an employer’s civil penalty is based on the amount it would have paid had it insured as required by law, including properly classifying its employees.

### **4. Sec. 13: Civil Penalty Assessment Appeal**

- a) What: This is not a substantive change. Makes a technical revision clarifying the civil penalty assessment appeal process.
- b) Why: Previous HB 79 language was a bit unclear. This rewords the provision to make it clearer.

### **5. Sec. 16: Preauthorization**

- a) What: Adds language clarifying the preauthorization request’s estimated fee may not exceed the maximum allowable under Alaska law.
- b) Why: To clarify that the preauthorization request’s estimated fee is subject to the Alaska medical fee schedule just like any other workers’ compensation medical bill.

**6. Sec. 18: Hearing Scheduling**

- a) What: Removes the language allowing parties to agree to reschedule a hearing and allows a party to request a change based on good cause.
- b) Why: Having the parties to control the hearing scheduling process has led to inefficiencies. The board should control the scheduling of its hearings, subject to a party's request to move a hearing based on good cause.

**7. Sec. 19: Self-Representation**

- a) What: Simplifies the self-representation language.
- b) Why: Previous HB 79 language was a bit unclear. This rewords the provision to make it clearer.

**8. Sec. 23: Reporting Change in Compensation**

- a) What: Adds language stating the division will provide notice to an employee when an employer has terminated or changed compensation.
- b) Why: This clarifies how an employee will be notified that an employer has terminated or changed compensation payments.

**9. Sec. 24: Reporting Denials**

- a) What: Adds language stating the division will provide notice to an employee when an employer has denied benefits.
- b) Why: This clarifies how an employee will be notified that an employer has denied benefits.

**10. Sec. 25: Penalty for Failure to Timely Preauthorize**

- a) What: Clarifies the penalty for untimely payment is 25 percent of the amount in the preauthorization request.
- b) Why: Previous HB 79 language was a bit unclear. This rewords the provision to make it clearer.

**11. Sec. 27: Methods of Paying Benefits**

- a) What: Repeals the section addressing how benefits are paid.
- b) Why: This section is no longer needed now that other methods of payment are allowed in addition to payment by check. Instead of listing all the types of ways benefits may be paid (by check, electronic funds transfer, direct deposit, etc.) it is cleaner to repeal this provision.

**12. Sec. 28: Filing Liens**

- a) What: Revises language to allow the Benefits Guaranty Fund to file a lien within one year of its knowledge of an employee's injury or death.
- b) Why: The Fund may not become aware of the injury or death when it occurs. The change would allow the Fund one year from its knowledge of the injury or death to file a lien.

**13. Sec. 30: Independent Contractor Definition**

- a) What: Refines the independent contractor definition.
- b) Why: These revisions ensure that true independent contractors can continue to operate as independent contractors.

**14. Sec. 36: Persons Liable for Criminal Penalties for Failure to Pay Compensation**

- a) What: Adds a person “actively in charge of the operations of the business entity” or a person that has “the authority to insure the business entity” as persons liable for criminal penalties for failure to pay compensation.
- b) Why: Closes a loophole inadvertently opened with the language of HB 79. Proposed change makes sure that if a business entity has eleven members, all with less than ten percent ownership interest, that a person is still accountable for an employer’s failure to secure the payment of compensation. Current AS 23.30.255 provides a corporation’s president, secretary, and treasurer are criminally liable for failing to pay compensation. However, the president, secretary and treasurer may not be the persons who are responsible for securing workers’ compensation insurance and paying benefits. The proposed change clarifies that liability extends not only to a business entity’s members, partners, or corporate executive officers who have at least a 10 percent ownership interest but also to those who are actively in charge of the operations of the business entity, or have the authority to insure the business entity or apply for a certificate of self-insurance.

**15. Sec. Sec. 37: Persons Liable for Criminal Penalties for Transferring Assets**

- a) What: Adds a person “actively in charge of the operations of the business entity” or a person that has “the authority to insure the business entity” as persons liable for criminal penalties for knowingly transferring assets with the intent to avoid the payment of compensation.
- c) Why: Closes a loophole inadvertently opened with the language of HB 79. Proposed change makes sure that if a business entity has eleven members, all with less than ten percent ownership interest, that a person is still accountable for an employer’s knowing transfer of assets with the intent to avoid the payment of compensation. Current AS 23.30.255 provides a corporation’s president, secretary, and treasurer are criminally liable for knowingly transferring assets with the intent to avoid the payment of compensation. However, the president, secretary and treasurer may not be the persons who are responsible. The proposed change clarifies that liability extends not only to a business entity’s members, partners, or corporate executive officers who have at least a 10 percent ownership interest but also to those who are actively in charge of the operations of the business entity, or have the authority to insure the business entity or apply for a certificate of self-insurance.

**16. Sec. 39: Definition of “Employee”**

- a) What: Removes “in the service of” and inserts “employed by” in the definition of employee.
- b) Why: “In the service of” is a bit unclear. This rewords the provision to make it clearer.