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Chapter No.

AN ACT

Relating to workers' compensation and to assigned risk pools; relating to the Alaska Insurance Guaranty Association; establishing the Task Force on Workers' Compensation; amending Rule 45, Alaska Rules of Civil Procedure; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

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2 Guaranty Association; establishing the Task Force on Workers' Compensation; amending
3 Rule 45, Alaska Rules of Civil Procedure; and providing for an effective date.

4

5 * **Section 1.** AS 21.24.130 is amended by adding a new subsection to read:

6 (f) If an insurer is found to be insolvent by a proceeding under AS 21.78 or by
7 a court of competent jurisdiction in another state, the director shall take control of the
8 insurer's deposit made under AS 21.09.090(b). The deposit assets shall be released, at
9 the discretion of the director, to the Alaska Insurance Guaranty Association
10 (AS 21.80) to reimburse for a valid loss and loss expense claim payment made by the
11 association that is within the purpose of the deposit. The director shall pay the
12 remaining deposit assets to the receiver, conservator, rehabilitator, or liquidator of the
13 insurer, or to another properly designated official who succeeds to the management

1 and control of the insurer's assets, after the director determines that all loss and loss
2 expense liabilities have been paid that were incurred on the insurer's policies written in
3 this state for which the deposit was required.

4 * **Sec. 2.** AS 21.39.155(a) is amended to read:

5 (a) The director may require insurers, except a reciprocal insurer formed [BY
6 AND INSURING ONLY A GROUP OF MUNICIPALITIES OR NONPROFIT
7 PUBLIC UTILITIES] under AS 21.75 [OR A RECIPROCAL INSURER FORMED
8 UNDER AS 21.75 TO PROVIDE MARINE INSURANCE], as a condition of writing
9 a line of insurance dealing with medical malpractice or workers' compensation, to
10 participate in an assigned risk pool if the director finds that mandatory carrier
11 participation is in the public interest.

12 * **Sec. 3.** AS 23.30 is amended by adding a new section to read:

13 **Sec. 23.30.001. Intent of the legislature and construction of chapter.** It is
14 the intent of the legislature that

15 (1) this chapter be interpreted so as to ensure the quick, efficient, fair,
16 and predictable delivery of indemnity and medical benefits to injured workers at a
17 reasonable cost to the employers who are subject to the provisions of this chapter;

18 (2) workers' compensation cases shall be decided on their merits
19 except where otherwise provided by statute;

20 (3) this chapter may not be construed by the courts in favor of a party;

21 (4) hearings in workers' compensation cases shall be impartial and fair
22 to all parties and that all parties shall be afforded due process and an opportunity to be
23 heard and for their arguments and evidence to be fairly considered.

24 * **Sec. 4.** AS 23.30.005(a) is amended to read:

25 (a) The Alaska Workers' Compensation Board consists of a southern panel of
26 three members sitting for the first judicial district, **two** [A] northern **panels** [PANEL]
27 of three members sitting for the second and fourth judicial districts, **five** [FOUR]
28 southcentral panels of three members each sitting for the third judicial district, and one
29 panel of three members that may sit in any judicial district. Each panel must include
30 the commissioner of labor and workforce development or **a hearing officer**
31 **designated to represent** [THE DESIGNATED REPRESENTATIVE OF] the

1 commissioner, a representative of industry, and a representative of labor. The latter
2 two members of each panel shall be appointed by the governor and are subject to
3 confirmation by a majority of the members of the legislature in joint session. **The**
4 **board shall by regulation provide procedures to avoid conflicts and the**
5 **appearance of impropriety in hearings.**

6 * **Sec. 5.** AS 23.30.005(b) is amended to read:

7 (b) The commissioner shall act as **chair** [CHAIRMAN] and executive officer
8 of the board and **chair** [CHAIRMAN] of each panel. **The commissioner may**
9 **designate a representative to act for the commissioner as chair and executive**
10 **officer of the board. The commissioner may designate hearing officers to serve as**
11 **chairs of panels for hearing claims** [IF THE COMMISSIONER DESIGNATES A
12 REPRESENTATIVE TO ACT FOR THE COMMISSIONER, THE
13 REPRESENTATIVE SHALL SERVE IN THAT CAPACITY ON THE BOARD
14 AND ON EACH PANEL].

15 * **Sec. 6.** AS 23.30.005(h) is amended to read:

16 (h) The department shall adopt rules for all panels, and procedures for the
17 periodic selection, retention, and removal of both rehabilitation specialists and
18 physicians under AS 23.30.041 and 23.30.095, and shall adopt regulations to carry out
19 the provisions of this chapter. **The department may by regulation provide for**
20 **procedural, discovery, or stipulated matters to be heard and decided by the**
21 **commissioner or a hearing officer designated to represent the commissioner**
22 **rather than a panel. If a procedural, discovery, or stipulated matter is heard and**
23 **decided by the commissioner or a hearing officer designated to represent the**
24 **commissioner, the action taken is considered the action of the full board on that**
25 **aspect of the claim.** Process and procedure under this chapter shall be as summary
26 and simple as possible. The department, the board or a member of it may for the
27 purposes of this chapter subpoena witnesses, administer or cause to be administered
28 oaths, and may examine or cause to have examined the parts of the books and records
29 of the parties to a proceeding that relate to questions in dispute. The superior court, on
30 application of the department, the board or any members of it, shall enforce the
31 attendance and testimony of witnesses and the production and examination of books,

1 papers, and records.

2 * **Sec. 7.** AS 23.30.005 is amended by adding a new subsection to read:

3 (m) The board may by regulation delegate authority to the director to assist the
4 board in administering and enforcing this chapter.

5 * **Sec. 8.** AS 23.30 is amended by adding new sections to read:

6 **Sec. 23.30.007. Workers' Compensation Appeals Commission.** (a) There
7 is established in the Department of Labor and Workforce Development the Workers'
8 Compensation Appeals Commission. The commission has jurisdiction to hear appeals
9 from final decisions and orders of the board under this chapter. Jurisdiction of the
10 commission is limited to administrative appeals arising under this chapter.

11 (b) The commission consists of five members appointed by the governor and
12 confirmed by a majority of the members of the legislature in joint session. The
13 members shall be appointed as follows:

14 (1) a member appointed as chair who meets the requirements of (c)(2)
15 of this section;

16 (2) two members who meet the qualifications in (c)(1) of this section
17 and, because of their employment or affiliations, may be classified as a representative
18 of employees covered by this chapter;

19 (3) two members who meet the qualifications in (c)(1) of this section
20 and, because of their employment or affiliations, may be classified as a representative
21 of employers covered by this chapter.

22 (c) To be eligible for appointment under this section,

23 (1) a member must

24 (A) be a citizen of the United States;

25 (B) be a resident of the state for the five years preceding the
26 appointment;

27 (C) have not been convicted of either a

28 (i) felony; or

29 (ii) misdemeanor related to workers' compensation; and

30 (D) have served for a total of not less than 18 months as a
31 member of the Alaska Workers' Compensation Board;

1 (2) the chair must

2 (A) meet the criteria specified in (1) of this subsection, except
3 for the requirement in (1)(D) of this subsection;

4 (B) be licensed to practice law in this state and be a member in
5 good standing with the Alaska Bar Association; and

6 (C) have engaged in the active practice of law for at least five
7 years with experience in workers' compensation in this state.

8 (d) An individual seeking appointment as a member or as chair shall submit an
9 application to the chief administrative law judge appointed under AS 44.64.010. The
10 application must show that the applicant meets requirements in (c) of this section that
11 are applicable to the position for which the application is submitted. For each vacant
12 position, other than the chair, the chief administrative law judge shall select not less
13 than two eligible individuals and submit the names of those individuals to the
14 governor. For the chair, the chief administrative law judge shall select not less than
15 three for submission to the governor.

16 (e) The term of service on the commission is five years. A member may be
17 reappointed so long as the reappointment complies with the provisions of this section,
18 including the application and appointment process described in (d) of this section.

19 (f) A vacancy arising in the commission shall be filled by appointment by the
20 governor and confirmed by a majority of the members of the legislature in joint
21 session. Except as provided in AS 39.05.080(4), an appointee selected to fill a
22 vacancy shall hold office for the unexpired term of the member whose vacancy is
23 filled. A vacancy in the commission does not impair the authority of a quorum of
24 members to exercise all the powers and perform all the duties of the commission.

25 (g) A member may act and receive compensation under this section from the
26 date of appointment until confirmation or rejection by the legislature.

27 (h) The chair of the commission is in the exempt service under AS 39.25.110
28 and shall receive a monthly salary that is not less than Step A nor more than Step F of
29 Range 27 of the salary schedule in AS 39.27.011(a) for Anchorage, Alaska.

30 (i) An appeal to the commission shall be heard and decided by a three-member
31 panel of the commission. An appeal panel shall consist of the chair of the commission

1 and two members of the commission assigned by the chair, one member classified as
2 representing employees, and one member classified as representing employers. At
3 other meetings to conduct commission business, the number of commission members
4 classified as representing employees must equal the number of commission members
5 classified as representing employers. The chair of the commission and two
6 representative members of the commission, one classified as representing employees
7 and one classified as representing employers, constitute a quorum.

8 (j) A member of the commission may be removed from office by the governor
9 for good cause. To be removed for cause, a member of the commission shall be given
10 a copy of the charges and afforded an opportunity to be heard in person or by counsel
11 in the member's own defense upon not less than 10 days' notice. If the member is
12 removed for cause, the governor shall file with the lieutenant governor a complete
13 statement of all charges made against the member, the governor's findings on the
14 charges, and the record of any proceedings. In this subsection, "good cause" includes

- 15 (1) misconduct in office or violation of AS 39.52;
16 (2) conviction of a felony;
17 (3) conviction of a misdemeanor related to workers' compensation;
18 (4) inability to serve, neglect of duty, incompetence, unjustified failure
19 to handle the caseload assigned, or similar nonfeasance of office; and
20 (5) failure to continue to meet the requirements of this section relating
21 to qualification for office.

22 (k) Representative members are entitled to compensation in the amount of
23 \$400 a day for each day spent in actual hearing of appeals or on authorized official
24 business incidental to their duties, and to transportation and per diem as provided by
25 law. Compensation shall be paid pro rata for each portion of a day spent in actual
26 hearing of appeals or on authorized official business.

27 (l) A member of the commission may not hear an appeal under this chapter if

- 28 (1) a party is an employee or was, in the past seven years, an employee
29 of the commission member or of a business that employs the commission member;
30 this paragraph does not apply to the chair of the commission when the State of Alaska
31 is or was the employer of a party;

1 (2) a party is a member or was, in the past seven years, a member of
2 the same union or employee association as the commission member;

3 (3) a party has a contractual relationship with the commission member,
4 a business that employs the commission member, or a union or employee association
5 of which the commission member is a member;

6 (4) the commission member is unable to be fair, impartial, and
7 unbiased toward the appeal participants; or

8 (5) participation in the appeal is a violation of AS 39.52.

9 (m) If the chair of the commission is unable to hear an appeal for reasons of
10 absence or illness in excess of 10 days, or for reasons set out in (l) of this section, the
11 chief administrative law judge appointed under AS 44.64.010 shall appoint a person
12 who meets the qualifications of this section to serve as chair to hear the appeal as chair
13 pro tempore. The person shall receive the compensation provided in (k) of this
14 section. Appointment of a chair pro tempore does not require legislative confirmation.

15 (n) Each member of the commission, before entering upon the duties of office,
16 shall take and subscribe to the oath prescribed for principal officers of the state. A
17 member of the commission, during tenure, may not

18 (1) hold or campaign for elective office;

19 (2) be an officer of a political party, political committee, or group;

20 (3) permit the member's name to be used, or make any contributions
21 whatsoever, in support of or in opposition to a candidate or proposition or question
22 that appears on any ballot in the state including but not limited to that of a
23 municipality; however, contributions may be made to a candidate for the office of
24 President of the United States;

25 (4) participate in any way in an election campaign or participate in or
26 contribute to any political party; or

27 (5) lobby, employ, or assist a lobbyist.

28 (o) The offices of the commission shall be physically separate from the offices
29 of the division.

30 (p) Notwithstanding (e) of this section, the terms of the individuals initially
31 appointed to the commission shall be as follows:

- (1) the chair, five years;
- (2) one member, four years;
- (3) one member, three years;
- (4) one member, two years;
- (5) one member, one year.

Sec. 23.30.008. Powers and duties of the commission. (a) The commission shall be the exclusive and final authority for the hearing and determination of all questions of law and fact arising under this chapter in those matters that have been appealed to the commission, except for an appeal to the Alaska Supreme Court. The commission does not have jurisdiction in any case that does not arise under this chapter or in any criminal case. On any matter taken to the commission, the decision of the commission is final and conclusive, unless appealed to the Alaska Supreme Court, and shall stand in lieu of the order of the board from which the appeal was taken. Unless reversed by the Alaska Supreme Court, decisions of the commission have the force of legal precedent.

(b) The commission, in its administrative capacity, shall maintain, index, and make available for public inspection the final administrative decisions and orders of the commission and of the board. The chair of the commission may review and circulate among the other members of the relevant commission appeal panel the drafts of the panel's formal decisions and decisions upon reconsideration. The drafts are confidential documents and are not subject to disclosure.

(c) The chair of the commission shall draft and propose, and the commission in its administrative capacity may adopt, regulations implementing the commission's authority and duties under this chapter, including rules of procedure and evidence for proceedings before the commission under this chapter. The provisions of AS 44.62 (Administrative Procedure Act) apply to the adoption of regulations by the commission.

(d) In an appeal, the commission shall award a successful party reasonable costs and, if the party is represented by an attorney, attorney fees that the commission determines to be fully compensatory and reasonable. However, the commission may not make an award of attorney fees against an injured worker unless the commission

1 finds that the worker's position on appeal was frivolous or unreasonable or the appeal
2 was taken in bad faith.

3 (e) The commission, in its administrative capacity, may adopt and alter an
4 official seal and do all things necessary, convenient, or desirable to carry out the
5 powers expressly granted or necessarily implied in this chapter.

6 **Sec. 23.30.009. Powers and duties of the chair of the commission.** (a) The
7 chair of the commission shall exercise general supervision over the office of the
8 commission and over appeals and shall direct the administrative functions of the
9 commission. The chair of the commission shall serve as the executive officer of the
10 commission and shall have authority in all administrative matters relating to the
11 members. The chair may

12 (1) employ and supervise commission staff and appoint a commission
13 clerk;

14 (2) establish and implement a time management system for the
15 commission members and staff and manage the calendar of appeals;

16 (3) assign the work of the commission members and staff so that
17 appeals are resolved as expeditiously and competently as possible;

18 (4) advise and cooperate with the board to develop appropriate
19 procedures for maintenance and transfer of hearing files and the preservation and
20 transfer of records on appeal; and

21 (5) prepare an annual budget of the commission.

22 (b) The chair of the commission shall preside over hearings and arguments on
23 appeals. The chair of the commission shall ensure that all functions of the commission
24 are performed with due regard for the rights of all parties and consistent with the
25 orderly and prompt resolution of appeals. The chair of the commission shall rule on
26 questions of procedure and advise the representative members of the commission on
27 matters of law.

28 (c) The chair of the commission shall, not later than March 15 of each year,
29 make available to the public and file with the lieutenant governor a report regarding
30 the commission for the prior calendar year, including data regarding time periods
31 between initial receipt and final decisions on appeals.

1 (d) The chair of the commission shall devote full time to the duties of the chair
2 of the commission and may not engage in any other employment or business. The
3 chair of the commission may not hold any other office or position under the United
4 States, this state, any municipality or political subdivision of this state, or any tribal
5 government or corporation. The chair of the commission may not hold office or
6 position in a partisan political organization or party.

7 * **Sec. 9.** AS 23.30.010 is repealed and reenacted to read:

8 **Sec. 23.30.010. Coverage.** (a) Except as provided in (b) of this section,
9 compensation or benefits are payable under this chapter for disability or death or the
10 need for medical treatment of an employee if the disability or death of the employee or
11 the employee's need for medical treatment arose out of and in the course of the
12 employment. To establish a presumption under AS 23.30.120(a)(1) that the disability
13 or death or the need for medical treatment arose out of and in the course of the
14 employment, the employee must establish a causal link between the employment and
15 the disability or death or the need for medical treatment. A presumption may be
16 rebutted by a demonstration of substantial evidence that the death or disability or the
17 need for medical treatment did not arise out of and in the course of the employment.
18 When determining whether or not the death or disability or need for medical treatment
19 arose out of and in the course of the employment, the board must evaluate the relative
20 contribution of different causes of the disability or death or the need for medical
21 treatment. Compensation or benefits under this chapter are payable for the disability
22 or death or the need for medical treatment if, in relation to other causes, the
23 employment is the substantial cause of the disability or death or need for medical
24 treatment.

25 (b) Compensation and benefits under this chapter are not payable for mental
26 injury caused by mental stress, unless it is established that (1) the work stress was
27 extraordinary and unusual in comparison to pressures and tensions experienced by
28 individuals in a comparable work environment; and (2) the work stress was the
29 predominant cause of the mental injury. The amount of work stress shall be measured
30 by actual events. A mental injury is not considered to arise out of and in the course of
31 employment if it results from a disciplinary action, work evaluation, job transfer,

1 layoff, demotion, termination, or similar action taken in good faith by the employer.

2 * **Sec. 10.** AS 23.30.012 is amended to read:

3 **Sec. 23.30.012. Agreements in regard to claims.** (a) At any time after
4 death, or after 30 days subsequent to the date of the injury, the employer and the
5 employee or the beneficiary or beneficiaries, as the case may be, have the right to
6 reach an agreement in regard to a claim for injury or death under this chapter [IN
7 ACCORDANCE WITH THE APPLICABLE SCHEDULE IN THIS CHAPTER], but
8 a memorandum of the agreement in a form prescribed by the **director** [BOARD] shall
9 be filed with the **division** [BOARD]. Otherwise, the agreement is void for any
10 purpose. Except as provided in (b) of this section, an agreement filed with the
11 division discharges the liability of the employer for the compensation,
12 notwithstanding the provisions of AS 23.30.130, 23.30.160, and 23.30.245, and is
13 enforceable as a compensation order.

14 (b) The agreement shall be reviewed by a panel of the board if the
15 claimant or beneficiary is not represented by an attorney licensed to practice in
16 this state, the beneficiary is a minor or incompetent, or the claimant is waiving
17 future medical benefits. If approved by the board, the agreement is enforceable the
18 same as an order or award of the board and discharges the liability of the employer for
19 the compensation notwithstanding the provisions of AS 23.30.130, 23.30.160, and
20 23.30.245. The agreement shall be approved by the board only when the terms
21 conform to the provisions of this chapter, and, if it involves or is likely to involve
22 permanent disability, the board may require an impartial medical examination and a
23 hearing in order to determine whether or not to approve the agreement. A [THE
24 BOARD MAY APPROVE] lump-sum settlement may be approved
25 [SETTLEMENTS] when it appears to be to the best interest of the employee or
26 beneficiary or beneficiaries.

27 * **Sec. 11.** AS 23.30.015(e) is amended to read:

28 (e) An amount recovered by the employer under an assignment, whether by
29 action or compromise, shall be distributed as follows:

30 (1) the employer shall retain an amount equal to

31 (A) the expenses incurred by the employer with respect to the

1 action or compromise, including a reasonable attorney fee determined by the
2 board;

3 (B) the cost of all benefits actually furnished by the employer
4 under this chapter;

5 (C) all amounts paid as compensation and second-injury fund
6 payments, and [,] if the employer is self-insured or uninsured, all service fees
7 paid under AS 23.05.067;

8 (D) the present value of all amounts payable later as
9 compensation, computed from a schedule prepared by the board, [;] and the
10 present value of the cost of all benefits to be furnished later under
11 AS 23.30.095 as estimated by the board; the amounts so computed and
12 estimated **shall** [TO] be retained by the employer as a trust fund to pay
13 compensation and the cost of benefits as they become due and to pay any
14 finally remaining excess sum to the person entitled to compensation or to the
15 representative; and

16 (2) the employer shall pay any excess to the person entitled to
17 compensation or to the representative of that person.

18 * **Sec. 12.** AS 23.30.015(j) is amended to read:

19 (j) Notice of the commencement of an action against a third party shall be
20 given to the **division** [BOARD] and to all interested parties within 30 days.

21 * **Sec. 13.** AS 23.30.025(a) is amended to read:

22 (a) An insurer may not enter into or issue a policy of insurance under this
23 chapter until its policy form has been submitted to and approved by the director of the
24 division of insurance. The director of the division of insurance may not approve the
25 policy form of an insurance company until the company files with it the certificate of
26 the director of the division of insurance showing that the company is authorized to
27 transact the business of workers' compensation insurance in the state. The filing of a
28 policy form by an insurance company with the **division of workers' compensation**
29 [BOARD] for approval constitutes, on the part of the company, a conclusive and
30 unqualified acceptance of the provisions of this chapter, and an agreement by it to be
31 bound by them.

1 * **Sec. 14.** AS 23.30.030(5) is amended to read:

2 (5) A termination of the policy by cancellation is not effective as to the
3 employees of the insured employer covered by it until 20 days after written notice of
4 the termination has been received by the **division** [BOARD]. If the employer has a
5 contract with the state or a home rule or other political subdivision of the state, and the
6 employer's policy is cancelled due to nonpayment of a premium, the termination of the
7 policy is not effective as to the employees of the insured employer covered by it until
8 20 days after written notice of the termination has been received by the contracting
9 agency, and the agency has the option of continuing the payments on behalf of the
10 employer in order to keep the policy in force. If, however, the employer has secured
11 insurance with another insurance carrier, cancellation is effective as of the date of the
12 new coverage.

13 * **Sec. 15.** AS 23.30.041(a) is amended to read:

14 (a) The **director** [BOARD] shall select and employ a reemployment benefits
15 administrator. The **director** [BOARD] may authorize the administrator to select and
16 employ additional staff. The administrator is in the partially exempt service under
17 AS 39.25.120.

18 * **Sec. 16.** AS 23.30.041(b) is amended to read:

19 (b) The administrator shall
20 (1) enforce regulations adopted by the board to implement this section;
21 (2) recommend regulations for adoption by the board that establish
22 performance and reporting criteria for rehabilitation specialists;
23 (3) enforce the quality and effectiveness of reemployment benefits
24 provided for under this section;
25 (4) review on an annual basis the performance of rehabilitation
26 specialists to determine continued eligibility for delivery of rehabilitation services;
27 (5) submit to the department, on or before May 1 of each year, a report
28 of reemployment benefits provided under this section for the previous calendar year;
29 the report must include a general section, sections related to each rehabilitation
30 specialist employed under this section, and a statistical summary of all rehabilitation
31 cases, including

1 (A) the estimated and actual cost of each active rehabilitation
2 plan;

3 (B) the estimated and actual time of each rehabilitation plan;

4 (C) a status report on all individuals requesting, waiving,
5 beginning, completing, or terminating a reemployment benefits program
6 including

7 (i) reasons for denial, waiver, suspension, or
8 termination;

9 (ii) dates of completion and [A] return to work; and

10 (iii) other information required by the director
11 [DATE];

12 (D) the cost of reemployment benefits;

13 (E) status reports of all individuals who successfully
14 completed a reemployment plan that includes

15 (i) the plan's occupational goal and whether the
16 individual obtained work after completion in the planned or
17 another occupation; and

18 (ii) the individual's employment status six months,
19 one year, and two years after reemployment plan completion;

20 (6) maintain a list of rehabilitation specialists who meet the
21 qualifications established under this section;

22 (7) promote awareness among physicians, adjusters, injured workers,
23 employers, employees, attorneys, training providers, and rehabilitation specialists of
24 the reemployment program established in this subsection.

25 * **Sec. 17.** AS 23.30.041(c) is repealed and reenacted to read:

26 (c) An employee and an employer may stipulate to the employee's eligibility
27 for reemployment benefits at any time. If an employee suffers a compensable injury
28 and, as a result of the injury, the employee is totally unable, for 45 consecutive days,
29 to return to the employee's employment at the time of injury, the administrator shall
30 notify the employee of the employee's rights under this section within 14 days after the
31 45th day. If the employee is totally unable to return to the employee's employment for

1 60 consecutive days as a result of the injury, the employee or employer may request an
2 eligibility evaluation. The administrator may approve the request if the employee's
3 injury may permanently preclude the employee's return to the employee's occupation
4 at the time of the injury. If the employee is totally unable to return to the employee's
5 employment at the time of the injury for 90 consecutive days as a result of the injury,
6 the administrator shall, without a request, order an eligibility evaluation unless a
7 stipulation of eligibility was submitted. If the administrator approves a request or
8 orders an evaluation, the administrator shall, on a rotating and geographic basis, select
9 a rehabilitation specialist from the list maintained under (b)(6) of this section to
10 perform the eligibility evaluation. If the person that employs a rehabilitation specialist
11 selected by the administrator to perform an eligibility evaluation under this subsection
12 is performing any other work on the same workers' compensation claim involving the
13 injured employee, the administrator shall select a different rehabilitation specialist.

14 * **Sec. 18.** AS 23.30.041(f) is amended to read:

15 (f) An employee is not eligible for reemployment benefits if

16 (1) the employer offers employment within the employee's predicted
17 post-injury physical capacities at a wage equivalent to at least the state minimum wage
18 under AS 23.10.065 or 75 percent of the worker's gross hourly wages at the time of
19 injury, whichever is greater, and the employment prepares the employee to be
20 employable in other jobs that exist in the labor market;

21 (2) **the employee previously declined the development of a**
22 **reemployment benefits plan under (g) of this section, received a job dislocation**
23 **benefit under (g)(2) of this section, and returned to work in the same or similar**
24 **occupation in terms of physical demands required of the employee at the time of**
25 **the previous injury;**

26 (3) the employee has been previously rehabilitated in a former
27 worker's compensation claim and returned to work in the same or similar occupation
28 in terms of physical demands required of the employee at the time of the previous
29 injury; or

30 (4) [(3)] at the time of medical stability, no permanent impairment is
31 identified or expected.

1 * **Sec. 19.** AS 23.30.041(g) is amended to read:

2 (g) Within **30** [15] days after the employee receives the administrator's
3 notification of eligibility for benefits, an employee [WHO DESIRES TO USE THESE
4 BENEFITS] shall **file a statement under oath with the board, on a form**
5 **prescribed or approved by the board, to notify the administrator and the**
6 **employer of the employee's election to either use the reemployment benefits or to**
7 **accept a job dislocation benefit under (2) of this subsection. The notice of the**
8 **election is effective upon service to the administrator and the employer. The**
9 **following apply to an election under this subsection:**

10 **(1) an employee who elects to use the reemployment benefits also**
11 **shall notify the** [GIVE WRITTEN NOTICE TO THE] employer of the employee's
12 selection of a rehabilitation specialist who shall provide a complete reemployment
13 benefits plan; **failure** [. FAILURE] to give notice **of selection of a rehabilitation**
14 **specialist** required by this **paragraph** [SUBSECTION] constitutes noncooperation
15 under (n) of this section; **if** [. IF] the employer disagrees with the employee's choice
16 of rehabilitation specialist to develop the plan and the disagreement cannot be
17 resolved, then the administrator shall assign a rehabilitation specialist; **the** [. THE]
18 employer and employee each have one right of refusal of a rehabilitation specialist;

19 **(2) an employee who elects to accept a job dislocation benefit in**
20 **place of reemployment benefits and who has been given a permanent partial**
21 **impairment rating by a physician shall be paid**

22 **(A) \$5,000 if the employee's permanent partial impairment**
23 **rating is greater than zero and less than 15 percent;**

24 **(B) \$8,000 if the employee's permanent partial impairment**
25 **rating is 15 percent or greater but less than 30 percent; or**

26 **(C) \$13,500 if the employee's permanent partial**
27 **impairment rating is 30 percent or greater;**

28 **(3) the form provided by the division for election must specify that**
29 **the employee understands the scope of the benefits and rights being waived by**
30 **the election; the board shall serve a copy of the executed election form on the**
31 **administrator and the employer within 10 days after receiving the form from the**

employee; a waiver and election effective under this subsection discharges the employer's liability for the benefits or rights under this section that were not elected; a waiver may not be modified under AS 23.30.130; the administrator may not accept an election to accept a job dislocation benefit by an employee who has not signed a form that conspicuously notes the benefit being waived.

* **Sec. 20.** AS 23.30.041(k) is amended to read:

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

* **Sec. 21.** AS 23.30.041(n) is amended to read:

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

(1) unreasonable failure to

(A) keep appointments;

(B) maintain passing grades;

(C) attend designated programs;

(D) maintain contact with the rehabilitation specialist;

(E) cooperate with the rehabilitation specialist in developing a reemployment plan and participating in activities relating to reemployability on a full-time basis;

(F) comply with the employee's responsibilities outlined in the reemployment plan; or

(G) participate in any planned reemployment activity as determined by the administrator; or

(2) failure to give written notice to the employer of the employee's choice of rehabilitation specialists within **30** [15] days after receiving notice of eligibility for benefits from the administrator as required by (g) of this section.

* **Sec. 22.** AS 23.30.041(p) is amended to read:

(p) When the United States Department of Labor publishes a new edition, revision, or replacement for the "Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles" referred to in (e) of this section, the **director** [BOARD] shall, not later than 90 days after the last day of the month in which the new edition, revision, or replacement standard is published, hold an open meeting under AS 44.62.310 to select the **proposed** date on which the new edition, revision, or replacement standard will be implemented to make all eligibility determinations required under (e) of this section. The date selected by the **department** [BOARD] for implementing the new edition, revision, or replacement standard may not be later than 90 days after the last day of the month in which the new edition, revision, or replacement standard is published. After the meeting, the **director** [BOARD] shall issue a public notice announcing the date selected **by the**

1 **department**. The requirements of AS 44.62.010 - 44.62.300 do not apply to the
2 selection or announcement of the date under this subsection.

3 * **Sec. 23.** AS 23.30.041(q) is amended to read:

4 (q) Notwithstanding AS 23.30.012, after medical stability has been determined
5 and a physician has predicted that the employee may have a permanent impairment
6 that may cause the employee to have permanent physical capacities that are less than
7 the physical demands of the employee's job at the time of injury, an employee may
8 waive any benefits or rights under this section, including an eligibility evaluation and
9 benefits related to a reemployment plan. To waive any benefits or rights under this
10 section, an employee must file a statement under oath with the **division** [BOARD] to
11 notify the parties of the waiver and to specify the scope of benefits or rights that the
12 employee seeks to waive. The statement must be on a form prescribed or approved by
13 the **director** [BOARD]. The **division** [BOARD] shall serve the notice of waiver on
14 all parties to the claim within 10 days after filing. The waiver is effective upon service
15 to the party. A waiver effective under this subsection discharges the liability of the
16 employer for the benefits or rights contained in this section. The waiver may not be
17 modified under AS 23.30.130.

18 * **Sec. 24.** AS 23.30.065 is amended to read:

19 **Sec. 23.30.065. Employer's record of injuries.** An employer shall keep a
20 record **with** [IN] respect **to** [OF] an injury to an employee. The record must contain
21 the information of disease, other disability, or death **with** [IN] respect to an injury that
22 the **division** [BOARD] requires, and must be available to inspection by the **division**
23 [BOARD] or by a state authority at the times and under the conditions that the
24 **department** [BOARD] prescribes by regulation.

25 * **Sec. 25.** AS 23.30.070(a) is amended to read:

26 (a) Within 10 days from the date the employer has knowledge of an injury or
27 death or from the date the employer has knowledge of a disease or infection, alleged
28 by the employee or on behalf of the employee to have arisen out of and in the course
29 of the employment, the employer shall send to the **division** [BOARD] a report setting
30 out

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

- 1 (2) the name, address, and occupation of the employee;
2 (3) the cause and nature of the alleged injury or death;
3 (4) the year, month, day, and hour when and the particular locality
4 where the alleged injury or death occurred; and
5 (5) the other information that the **division** [BOARD] may require.

6 * **Sec. 26.** AS 23.30.070(b) is amended to read:

7 (b) Additional reports **with** [IN] respect to the injury and to the condition of
8 the employee shall be sent by the employer to the **division** [BOARD] at the times and
9 in the manner that the **director** [BOARD] prescribes.

10 * **Sec. 27.** AS 23.30.070(d) is amended to read:

11 (d) Mailing of the report and copy to the **division** [BOARD] in a stamped
12 envelope, within the time prescribed in (a) or (b) of this section, is compliance with
13 this section.

14 * **Sec. 28.** AS 23.30.075 is amended to read:

15 **Sec. 23.30.075. Employer's liability to pay.** (a) An employer under this
16 chapter, unless exempted, shall either insure and keep insured for the employer's
17 liability under this chapter in an insurance company or association duly authorized to
18 transact the business of workers' compensation insurance in this state, or shall furnish
19 the **division** [BOARD] satisfactory proof of the employer's financial ability to pay
20 directly the compensation provided for. If an employer elects to pay directly, the
21 board may, in its discretion, require the deposit of an acceptable security, indemnity,
22 or bond to secure the payment of compensation liabilities as they are incurred.

23 (b) If an employer fails to insure and keep insured employees subject to this
24 chapter or fails to obtain a certificate of self-insurance from the **division** [BOARD],
25 upon conviction, the court shall impose a fine of \$10,000 and may impose a sentence
26 of imprisonment for not more than one year. If an employer is a corporation, all
27 persons who, at the time of the injury or death, had authority to insure the corporation
28 or apply for a certificate of self-insurance, and the person actively in charge of the
29 business of the corporation shall be subject to the penalties prescribed in this
30 subsection and shall be personally, jointly, and severally liable together with the
31 corporation for the payment of all compensation or other benefits for which the

1 corporation is liable under this chapter if the corporation at that time is not insured or
2 qualified as a self-insurer.

3 * **Sec. 29.** AS 23.30.080(d) is amended to read:

4 (d) If an employer fails to insure or provide security as required by
5 AS 23.30.075, the board may issue a stop order **at the request of the division**
6 prohibiting the use of employee labor by the employer until the employer insures or
7 provides security as required by AS 23.30.075. The failure of an employer to file
8 evidence of compliance as required by AS 23.30.085 creates a rebuttable presumption
9 that the employer has failed to insure or provide security as required by AS 23.30.075.
10 If an employer fails to comply with a stop order issued under this section, the board
11 shall assess a civil penalty of \$1,000 **a** [PER] day. The employer may not obtain a
12 public contract with the state or a political subdivision of the state for three years
13 following the violation of the stop order.

14 * **Sec. 30.** AS 23.30.080 is amended by adding new subsections to read:

15 (e) If a representative of the department investigates an employer's failure to
16 file the evidence of compliance required by AS 23.30.085 and, after investigation,
17 there is substantial evidence that the employer failed to insure or provide security as
18 required by AS 23.30.075, the representative shall inform the employer. The
19 representative may request the director to issue a stop order prohibiting the use of
20 employee labor by the employer until the employer insures or provides security as
21 required by AS 23.30.075. The director may issue a stop order, without a hearing,
22 based on the representative's investigation. The director shall dissolve a stop order
23 issued under this subsection upon receipt of substantial evidence that the employer is
24 insured or has provided security as required by AS 23.30.075(a). If an employer fails
25 to comply with a stop order issued under this subsection, the division may petition the
26 board to assess a civil penalty. The board may assess a civil penalty of \$1,000 a day.
27 An employer who is assessed a penalty under this subsection may not obtain a public
28 contract with the state or a political subdivision of the state for the three years
29 following violation of the stop order.

30 (f) If an employer fails to insure or provide security as required by
31 AS 23.30.075, the division may petition the board to assess a civil penalty of up to

1 \$1,000 for each employee for each day an employee is employed while the employer
2 failed to insure or provide the security required by AS 23.30.075. The failure of an
3 employer to file evidence of compliance as required by AS 23.30.085 creates a
4 rebuttable presumption that the employer failed to insure or provide security as
5 required by AS 23.30.075.

6 (g) If an employer fails to pay a civil penalty order issued under (d), (e), or (f)
7 of this section within seven days after the date of service of the order upon the
8 employer, the director may declare the employer in default. The director shall file a
9 certified copy of the penalty order and declaration of default with the clerk of the
10 superior court. The court shall, upon the filing of the copy of the order and
11 declaration, enter judgment for the amount declared in default if it is in accordance
12 with law. Anytime after a declaration of default, the attorney general shall, when
13 requested to do so by the director, take appropriate action to ensure collection of the
14 defaulted payment. Review of the judgment may be had as provided under the Alaska
15 Rules of Civil Procedure. Final proceedings to execute the judgment may be had by
16 writ of execution.

17 * **Sec. 31.** AS 23.30 is amended by adding a new section to read:

18 **Sec. 23.30.082. Workers' compensation benefits guaranty fund.** (a) The
19 workers' compensation benefits guaranty fund is established in the general fund to
20 carry out the purposes of this section. The fund is composed of civil penalty payments
21 made by employers under AS 23.30.080, income earned on investment of the money
22 in the fund, money deposited in the fund by the department, and appropriations to the
23 fund, if any. However, money appropriated to the fund does not lapse. Amounts in
24 the fund may be appropriated for claims against the fund, for expenses directly related
25 to fund operations and claims, and for legal expenses.

26 (b) Every three months, the Department of Revenue shall provide the division
27 with a statement of the activities of, balances in, interest earned on, and interest
28 returned to the fund.

29 (c) Subject to the provisions of this section, an employee employed by an
30 employer who fails to meet the requirements of AS 23.30.075 and who fails to pay
31 compensation and benefits due to the employee under this chapter may file a claim for

1 payment by the fund. In order to be eligible for payment, the claim form must be filed
2 within the same time, and in the same manner, as a workers' compensation claim. The
3 fund may assert the same defenses as an insured employer under this chapter.

4 (d) If the fund pays benefits to an employee under this section, the fund shall
5 be subrogated to all of the rights of the employee to the amount paid, and the
6 employee shall assign all right, title, and interest in that portion of the employee's
7 workers' compensation claim and any recovery under AS 23.30.015 to the fund.
8 Money collected by the division on the claim or recovery shall be deposited in the
9 fund.

10 (e) If the money deposited in the fund is insufficient at a given time to satisfy
11 a duly authorized claim against the fund, the fund shall, when sufficient money has
12 been deposited in the fund and appropriated, satisfy unpaid claims in the order in
13 which the claims were originally filed, without interest.

14 (f) The division may contract under AS 36.30 (State Procurement Code) with
15 a person for the person to adjust claims against the fund. The contract may cover one
16 or more claims.

17 (g) In this section, "fund" means the workers' compensation benefits guaranty
18 fund.

19 * **Sec. 32.** AS 23.30.085(a) is amended to read:

20 (a) An employer subject to this chapter, unless exempted, shall initially file
21 evidence of compliance with the insurance provisions of this chapter with the **division**
22 [BOARD], in the form prescribed by **the director** [IT]. The employer shall also give
23 evidence of compliance within 10 days after the termination of the employer's
24 insurance by expiration or cancellation. These requirements do not apply to an
25 employer who has certification from the board of the employer's financial ability to
26 pay compensation directly without insurance.

27 * **Sec. 33.** AS 23.30.095(h) is amended to read:

28 (h) Upon the filing with the **division** [BOARD] by a party in interest of **a**
29 **claim** [AN APPLICATION] or other pleading, all parties to the proceeding must
30 immediately, or in any event within five days after service of the pleading, send to the
31 **division** [BOARD] the original signed reports of all physicians relating to the

proceedings **that** [WHICH] they may have in their possession or under their control, and copies of the reports shall be served by the party immediately on **any** [THE] adverse party. There is a continuing duty on **all** [THE] parties to [SO] file and serve all the reports during the pendency of the proceeding.

* **Sec. 34.** AS 23.30.095(j) is amended to read:

(j) The **commissioner shall** [BOARD MAY] appoint a medical services review committee [, OR CONTRACT WITH AN EXISTING ORGANIZATION IN THE STATE OR ANOTHER STATE,] to assist and advise **the department and** the board in matters involving the appropriateness, necessity, and cost of medical and related services provided under this chapter. **The medical services review committee shall consist of nine members to be appointed by the commissioner as follows:**

(1) one member who is a member of the Alaska State Medical Association;

(2) one member who is a member of the Alaska Chiropractic Society;

(3) one member who is a member of the Alaska State Hospital and Nursing Home Association;

(4) one member who is a health care provider, as defined in AS 09.55.560;

(5) four public members who are not within the definition of "health care provider" in AS 09.55.560; and

(6) one member who is the designee of the commissioner and who shall serve as chair.

* **Sec. 35.** AS 23.30.095 is amended by adding new subsections to read:

(n) A generic drug product must be used when dispensing a drug product to an employee under this chapter unless the prescribing physician provides justification in writing explaining the medical necessity for the name-brand drug product. The department, by regulation, shall establish a preferred drug list and a procedure for establishing medical necessity to depart from the list and to use a name-brand drug product. In this subsection, "generic drug product" has the meaning given the term "equivalent drug product" in AS 08.80.480.

1 (o) Notwithstanding (a) of this section, an employer is not liable for palliative
2 care after the date of medical stability unless the palliative care is reasonable and
3 necessary (1) to enable the employee to continue in the employee's employment at the
4 time of treatment, (2) to enable the employee to continue to participate in an approved
5 reemployment plan, or (3) to relieve chronic debilitating pain. A claim for palliative
6 care is not valid and enforceable unless it is accompanied by a certification of the
7 attending physician that the palliative care meets the requirements of this subsection.
8 A claim for palliative care is subject to the requirements of (c) - (n) of this section. If
9 a claim for palliative care is controverted by the employer, the board may require an
10 evaluation under (k) of this section regarding the disputed palliative care. A claim for
11 palliative care may be heard by the board under AS 23.30.110.

12 * **Sec. 36.** AS 23.30 is amended by adding a new section to article 2 to read:

13 **Sec. 23.30.097. Fees for medical treatment and services.** (a) All fees and
14 other charges for medical treatment or service are subject to regulation by the board
15 consistent with this section. A fee or other charge for medical treatment or service
16 may not exceed the lesser of

17 (1) the usual, customary, and reasonable fees for the treatment or
18 service in the community in which it is rendered, not to exceed the fees in the fee
19 schedule specified by the board in its published bulletin dated December 1, 2004;

20 (2) the fee or charge for the service when provided to the general
21 public; or

22 (3) the fee or charge negotiated by the provider and the employer
23 under (c) of this section.

24 (b) An employer or group of employers may establish a list of preferred
25 physicians and treatment service providers to provide medical, surgical, and other
26 attendance or treatment services to the employer's employees under this chapter;
27 however,

28 (1) the employee's right to chose the employee's attending physician
29 under AS 23.30.095(a) is not impaired;

30 (2) when given to the employee, the employer's preferred physician list
31 must clearly state that the list is voluntary, that the employee's choice is not restricted

1 to the list, that the employee's rights under this chapter are not impaired by choosing
2 an attending physician from the list, and that, if the employee chooses an attending
3 physician from the list, the employee may, in the manner provided in AS 23.30.095,
4 make one change of attending physician, from the list or otherwise; and

5 (3) establishment of a list of preferred physicians does not affect the
6 employer's choice of physician for an employer medical examination under
7 AS 23.30.095.

8 (c) An employer or group of employers may negotiate with physicians and
9 other treatment service providers under this chapter to obtain reduced fees and service
10 charges and may take the fees and charges into account when forming a list of
11 preferred physicians and providers. In no event may an employer or group of
12 employers attempt to influence the treatment, medical decisions, or ratings by the
13 physicians in the course of the negotiations of such a preferred physician and provider
14 fee plans.

15 (d) An employer shall pay an employee's bills for medical treatment under this
16 chapter, excluding prescription charges or transportation for medical treatment, within
17 30 days after the date that the employer receives the provider's bill or a completed
18 report as required by AS 23.30.095(c), whichever is later.

19 (e) A physician or other provider of treatment services under this chapter,
20 including hospital services, that submits a bill for medical treatment to the insurer or
21 self-insured employer shall also submit a copy of the bill to the employee to whom the
22 treatment was provided. An employee who notifies the insurer or self-insured
23 employer's adjuster in writing of an overcharge in the bill that was not previously
24 identified by the insurer or self-insured employer's adjuster shall be entitled to a
25 reward equal to 25 percent of the billing reduction or reimbursement achieved due to
26 the employee's report. This reward does not apply to overcharges of an amount under
27 \$100 if the insurer or self-insured employer's adjuster elects not to pursue correction
28 of the bill.

29 (f) An employee may not be required to pay a fee or charge for medical
30 treatment or service provided under this chapter.

31 (g) Unless the employer controverts a charge, the employer shall reimburse an

1 employee's prescription charges under this chapter within 30 days after the employer
2 receives the health care provider's completed report and an itemization of the
3 prescription charges for the employee. Unless the employer controverts a charge, an
4 employer shall reimburse any transportation expenses for medical treatment under this
5 chapter within 30 days after the employer receives the health care provider's
6 completed report and an itemization of the dates, destination, and transportation
7 expenses for each date of travel for medical treatment. If the employer does not plan
8 to make or does not make payment or reimbursement in full as required by this
9 subsection, the employer shall notify the employee and the employee's health care
10 provider in writing that payment will not be made timely and the reason for the
11 nonpayment. The notification must be provided not later than the date that the
12 payment is due under this subsection.

13 * **Sec. 37.** AS 23.30.100(b) is amended to read:

14 (b) The notice must be in writing, contain the name and address of the
15 employee, [AND] a statement of the time, place, nature, and cause of the injury or
16 death, **and authority to release records of medical treatment for the injury or**
17 **death,** and be signed by the employee or by a person on behalf of the employee, or, in
18 case of death, by a person claiming to be entitled to compensation for the death or by a
19 person on behalf of that person.

20 * **Sec. 38.** AS 23.30.107 is amended to read:

21 **Sec. 23.30.107. Release of information.** (a) Upon written request, an
22 employee shall provide written authority to the employer, carrier, rehabilitation
23 specialist, or reemployment benefits administrator to obtain medical and rehabilitation
24 information relative to the employee's injury. The request must include notice of the
25 employee's right to file a petition for a protective order with the **division** [BOARD]
26 and must be served by certified mail to the employee's address on the notice of injury
27 or by hand delivery to the employee. This subsection may not be construed to
28 authorize an employer, carrier, rehabilitation specialist, or reemployment benefits
29 administrator to request medical or other information that is not applicable to the
30 employee's injury.

31 (b) Medical or rehabilitation records in an employee's file maintained by the

1 **division or held by the** board are not public records subject to public inspection and
2 copying under AS 40.25. This subsection does not prohibit

3 (1) the reemployment benefits administrator, **the division**, the board,
4 or the department from releasing medical or rehabilitation records in an employee's
5 file, without the employee's consent, to a physician providing medical services under
6 AS 23.30.095(k) or 23.30.110(g), a party to a claim filed by the employee, or a
7 governmental agency; or

8 (2) the quoting or discussing of medical or rehabilitation records
9 contained in an employee's file during a hearing on a claim for compensation [,] or in
10 a decision and order of the board.

11 * **Sec. 39.** AS 23.30.107 is amended by adding a new subsection to read:

12 (c) The division may not assemble, or provide information respecting,
13 individual records for commercial purposes that are outside the scope of this chapter.

14 * **Sec. 40.** AS 23.30.125 is repealed and reenacted to read:

15 **Sec. 23.30.125. Administrative review of compensation order.** (a) A
16 compensation order becomes effective when filed with the office of the board as
17 provided in AS 23.30.110, and, unless proceedings to reconsider, suspend, or set aside
18 the order are instituted as provided in this chapter, the order becomes final on the 31st
19 day after it is filed.

20 (b) Notwithstanding other provisions of law, a decision or order of the board is
21 subject to review by the commission as provided in this chapter.

22 (c) If a compensation order is not in accordance with law or fact, the order
23 may be suspended or set aside, in whole or in part, through proceedings in the
24 commission brought by a party in interest against all other parties to the proceedings
25 before the board. The payment of the amounts required by an award may not be
26 stayed pending a final decision in the proceeding unless, upon application for a stay,
27 the commission, on hearing, after not less than three days' notice to the parties in
28 interest, allows the stay of payment, in whole or in part, where the party filing the
29 application would otherwise suffer irreparable damage. Continuing future periodic
30 compensation payments may not be stayed without a showing by the appellant of
31 irreparable damage and the existence of the probability of the merits of the appeal

1 being decided adversely to the recipient of the compensation payments. The order of
2 the commission allowing a stay must contain a specific finding, based upon evidence
3 submitted to the commission and identified by reference to the evidence, that
4 irreparable damage would result to the party applying for a stay and specifying the
5 nature of the damage.

6 (d) Proceedings for reconsidering, suspending, setting aside, or enforcing a
7 compensation order, whether rejecting a claim or making an award, may not be
8 instituted, except as provided in this chapter.

9 * **Sec. 41.** AS 23.30 is amended by adding new sections to read:

10 **Sec. 23.30.127. Appeals to commission.** (a) A party in interest may appeal a
11 compensation order issued by the board to the commission within 30 days after the
12 compensation order is filed with the office of the board under AS 23.30.110. The
13 director may intervene in an appeal. If a party in interest is not represented by counsel
14 and the compensation order concerns an unsettled question of law, the director may
15 file an appeal to obtain a ruling on the question by the commission.

16 (b) An appeal is initiated by filing with the office of the commission

17 (1) a signed notice of appeal specifying the compensation order
18 appealed from;

19 (2) a statement of the grounds upon which the appeal is taken; and

20 (3) other material the commission may by regulation require.

21 (c) A cross-appeal may be initiated by filing with the office of the commission
22 a signed notice of cross-appeal within 30 days after the decision is filed or within 15
23 days after service of notice of an appeal, whichever is later. The notice of cross-
24 appeal shall specify the compensation order appealed from and the grounds upon
25 which the cross-appeal is taken.

26 (d) The office of the commission may charge a fee, not to exceed \$100, for
27 filing appeals and cross-appeals, except that the office of the commission may not
28 charge a fee if the appellant is the state or a political subdivision of the state. The
29 commission may require an appellant to pay the costs of the transcript of hearing and
30 the preparation of the record on appeal. The commission may require cross-appellants
31 or intervenors to share in the costs.

1 (e) If a request for reconsideration of a board decision was timely filed with
2 the office of the board, the notice of appeal must be filed within 30 days after the
3 reconsideration decision is mailed to the parties or the date the request for
4 reconsideration is considered denied in the absence of any action on the request,
5 whichever is earlier.

6 (f) The commission may require written briefs and make other rules and
7 orders to facilitate the business of the commission and advance the prompt, fair, and
8 just disposition of appeals.

9 **Sec. 23.30.128. Commission proceedings.** (a) An appeal from a decision of
10 the board under this chapter, and other proceedings under this section, shall be heard
11 and decided by a three-member panel of the commission. An appeal panel of the
12 commission must include the chair of the commission. The chair of the commission
13 shall assign two members to each appeal, including one commission member
14 classified as representing employees and one commission member classified as
15 representing employers. Acts, decisions, and orders of the commission panel in the
16 appeal or related proceeding shall be considered the acts, decisions, and orders of the
17 full commission. The matter on appeal shall be decided on the record made before the
18 board, a transcript or recording of the proceedings before the board, and oral argument
19 and written briefs allowed by the commission. Except as provided in (c) of this
20 section, new or additional evidence may not be received with respect to the appeal.

21 (b) The commission may review discretionary actions, findings of fact, and
22 conclusions of law by the board in hearing, determining, or otherwise acting on a
23 compensation claim or petition. The board's findings regarding the credibility of
24 testimony of a witness before the board are binding on the commission. The board's
25 findings of fact shall be upheld by the commission if supported by substantial
26 evidence in light of the whole record. In reviewing questions of law and procedure,
27 the commission shall exercise its independent judgment.

28 (c) The commission may hold hearings and receive evidence on applications
29 for (1) stays under AS 23.30.125; (2) attorney fees and costs of appeal; (3) waiver of
30 fees by indigent appellants; or (4) dismissal of appeals for failure to prosecute or upon
31 settlement. The commission may rely on new or additional evidence presented during

1 the hearing in making its decision on the application.

2 (d) The commission may affirm, reverse, or modify a decision or order upon
3 review and issue other orders as appropriate. The commission may remand matters it
4 determines were improperly, incompletely, or otherwise insufficiently developed. The
5 commission may remand for further proceedings and appropriate action with or
6 without relinquishing the commission's jurisdiction of the appeal. The administrative
7 adjudication procedures of AS 44.62 (Administrative Procedure Act) do not apply to
8 the proceedings of the commission.

9 (e) Within 90 days after written briefing on the appeal is completed or oral
10 argument is held, whichever is later, the commission shall issue a decision in writing.
11 The decision must contain a concise statement of reasons for the decision, including
12 findings of fact, if required, and conclusions of law. The commission shall serve each
13 party and the director with a copy of the decision. Appeals may be expedited for good
14 cause by the commission. Unless reconsideration is ordered under (f) of this section, a
15 decision under this subsection is the final commission decision.

16 (f) A party or the director may request reconsideration of a decision issued
17 under (e) of this section within 30 days after the date of service shown in the
18 certificate of service of the decision. The request must state specific grounds for
19 reconsideration. Reconsideration may be granted if, in reaching the decision, the
20 commission (1) overlooked, misapplied, or failed to consider a statute, regulation,
21 court or administrative decision, or legal principle directly controlling; (2) overlooked
22 or misconceived a material fact; (3) misconceived a material question in the case; or
23 (4) applied law in the ruling that has subsequently changed. The panel of the
24 commission hearing the request for reconsideration shall consist of the same members
25 of the panel that issued the decision. The commission may issue an order for
26 reconsideration of all or part of the decision upon request of a party or the director.
27 Reconsideration is based on the record, unless the commission allows additional
28 argument. The power to order reconsideration expires 60 days after the date of
29 service, as shown on the certificate of service, of a decision issued under (e) of this
30 section. If the commission does not issue an order for reconsideration within the time
31 allowed for ordering reconsideration, a request for reconsideration is considered

1 denied. If reconsideration is ordered, the commission shall issue a decision within 30
2 days after the close of the record on reconsideration. The commission shall serve each
3 party in the case with a copy of the decision upon reconsideration. The decision upon
4 reconsideration is the final commission decision.

5 (g) A decision of the commission becomes final on the

6 (1) 31st day after the date of service of a decision if reconsideration is
7 not requested;

8 (2) 61st day after the date of service of a decision if reconsideration is
9 requested but an order for reconsideration is not issued; or

10 (3) date of service of the commission decision upon reconsideration
11 under (f) of this section if reconsideration is requested and an order for reconsideration
12 is issued.

13 **Sec. 23.30.129. Judicial review of commission orders.** (a) Notwithstanding
14 the provisions of AS 44.62.560, orders of the commission may not be appealed to the
15 superior court. Consistent with AS 22.05.010(b), final decisions of the commission
16 may be appealed to the supreme court, and other orders may be reviewed by the
17 supreme court as provided by the Alaska Rules of Appellate Procedure.

18 (b) A finding by the commission concerning the weight to be accorded a
19 witness's testimony, including medical testimony and reports, is conclusive even if the
20 evidence is conflicting or susceptible to contrary conclusions. The commission's
21 findings of fact may be reversed on appeal if not supported by substantial evidence in
22 light of the whole record.

23 * **Sec. 42.** AS 23.30.140 is amended to read:

24 **Sec. 23.30.140. Appointment of guardian by court.** The director
25 [BOARD] may require the appointment of a guardian or other representative by a
26 competent court for any person who is mentally incompetent or a minor to receive
27 compensation payable to the person under this chapter and to exercise the powers
28 granted to or to perform the duties required of the person under this chapter. If the
29 director [BOARD] does not require the appointment of a guardian to receive the
30 compensation of a minor, appointment for this purpose is not necessary.

31 * **Sec. 43.** AS 23.30.145(b) is amended to read:

1 (b) If an employer fails to file timely notice of controversy or fails to pay
2 compensation or medical and related benefits within 15 days after it becomes due or
3 otherwise resists the payment of compensation or medical and related benefits and if
4 the claimant has employed an attorney in the successful prosecution of the claim, the
5 board shall make an award to reimburse the claimant for the costs in the proceedings,
6 including [A] reasonable attorney fees [FEE]. The award is in addition to the
7 compensation or medical and related benefits ordered.

8 * **Sec. 44.** AS 23.30.155(a) is amended to read:

9 (a) Compensation under this chapter shall be paid periodically, promptly, and
10 directly to the person entitled to it, without an award, except where liability to pay
11 compensation is controverted by the employer. To controvert a claim, the employer
12 must file a notice, on a form prescribed by the director [BOARD], stating

- 13 (1) that the right of the employee to compensation is controverted;
14 (2) the name of the employee;
15 (3) the name of the employer;
16 (4) the date of the alleged injury or death; and
17 (5) the type of compensation and all grounds upon which the right to
18 compensation is controverted.

19 * **Sec. 45.** AS 23.30.155(c) is amended to read:

20 (c) The insurer or adjuster shall notify the division [BOARD] and the
21 employee on a form prescribed by the director [BOARD] that the payment of
22 compensation has begun or has been increased, decreased, suspended, terminated,
23 resumed, or changed in type. An initial report shall be filed with the division
24 [BOARD] and sent to the employee within 28 days after the date of issuing the first
25 payment of compensation. If at any time 21 days or more pass and no compensation
26 payment is issued, a report notifying the division [BOARD] and the employee of the
27 termination or suspension of compensation shall be filed with the division [BOARD]
28 and sent to the employee within 28 days after the date the last compensation payment
29 was issued. A report shall also be filed with the division [BOARD] and sent to the
30 employee within 28 days after the date of issuing a payment increasing, decreasing,
31 resuming, or changing the type of compensation paid. If the division [BOARD] and

1 the employee are not notified within the 28 days prescribed by this subsection for
2 reporting, the insurer or adjuster shall pay a civil penalty of \$100 for the first day plus
3 \$10 for each day **after the first day** [THEREAFTER] that the notice was not given.
4 Total penalties under this subsection may not exceed \$1,000 for a failure to file a
5 required report. Penalties assessed under this subsection are eligible for reduction
6 under (m) of this section. A penalty assessed under this subsection after penalties
7 have been reduced under (m) of this section shall be increased by 25 percent and shall
8 bear interest at the rate established under AS 45.45.010.

9 * **Sec. 46.** AS 23.30.155(d) is amended to read:

10 (d) If the employer controverts the right to compensation, the employer shall
11 file with the **division** [BOARD] and send to the employee a notice of controversion on
12 or before the 21st day after the employer has knowledge of the alleged injury or death.
13 If the employer controverts the right to compensation after payments have begun, the
14 employer shall file with the **division** [BOARD] and send to the employee a notice of
15 controversion within seven days after an installment of compensation payable without
16 an award is due. When payment of temporary disability benefits is controverted solely
17 on the grounds that another employer or another insurer of the same employer may be
18 responsible for all or a portion of the benefits, the most recent employer or insurer
19 who is party to the claim and who may be liable shall make the payments during the
20 pendency of the dispute. When a final determination of liability is made, any
21 reimbursement required, including interest at the statutory rate, and all costs and
22 **attorney** [ATTORNEYS'] fees incurred by the prevailing employer, shall be made
23 within 14 days **after** [OF] the determination.

24 * **Sec. 47.** AS 23.30.155(e) is amended to read:

25 (e) If any installment of compensation payable without an award is not paid
26 within seven days after it becomes due, as provided in (b) of this section, there shall be
27 added to the unpaid installment an amount equal to 25 percent of **the installment** [IT].
28 This additional amount shall be paid at the same time as, and in addition to, the
29 installment, unless notice is filed under (d) of this section or unless the nonpayment is
30 excused by the board after a showing by the employer that owing to conditions over
31 which the employer had no control the installment could not be paid within the period

1 prescribed for the payment. **The additional amount shall be paid directly to the**
2 **recipient to whom the unpaid installment was to be paid.**

3 * **Sec. 48.** AS 23.30.155(f) is amended to read:

4 (f) If compensation payable under the terms of an award is not paid within 14
5 days after it becomes due, there shall be added to that unpaid compensation an amount
6 equal to 25 percent of **the unpaid installment. The additional amount** [IT,
7 WHICH] shall be paid at the same time as, but in addition to, the compensation, unless
8 review of the compensation order making the award [IS HAD] as provided **under**
9 **AS 23.30.008** [IN AS 23.30.125] and an interlocutory injunction staying payments is
10 allowed by the court. **The additional amount shall be paid directly to the recipient**
11 **to whom the unpaid compensation was to be paid.**

12 * **Sec. 49.** AS 23.30.155(i) is amended to read:

13 (i) When the **director** [BOARD] considers it advisable, **the director** [IT] may
14 require an employer to make a deposit with the Department of Revenue to secure the
15 prompt and convenient payment of the compensation, and payments from the deposit
16 upon an award shall be made upon order of the **director** [BOARD].

17 * **Sec. 50.** AS 23.30.155(k) is amended to read:

18 (k) An injured employee [,] or, in case of death, the employee's dependents or
19 personal representative [,] shall give receipts for payment of compensation to the
20 employer paying **the compensation**, [IT] and the employer shall produce **the receipts**
21 [THEM] for inspection by the **director** [BOARD], whenever required.

22 * **Sec. 51.** AS 23.30.155(m) is amended to read:

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

1 filed during the preceding year under (c) of this section. If, during the preceding year,
2 the insurer or adjuster filed at least 99 percent of the reports on time, the penalties
3 assessed under (c) of this section shall be waived. If, during the preceding year, the
4 insurer or adjuster filed at least 97 percent of the reports on time, 75 percent of the
5 penalties assessed under (c) of this section shall be waived. If, during the preceding
6 year, the insurer or adjuster filed 95 percent of the reports on time, 50 percent of the
7 penalties assessed under (c) of this section shall be waived. If, during the preceding
8 year, the insurer's or adjuster's reports have not been filed on time at least 95 percent
9 of the time, none of the penalties assessed under (c) of this section shall be waived.
10 The penalties that are not waived are due and payable when the insurer or adjuster
11 receives notification from the **director** [COMMISSIONER] regarding the timeliness
12 of the reports. If the annual report is not filed by March 1 of each year, the insurer or
13 adjuster shall pay a civil penalty of \$100 for the first day the annual report is late [,]
14 and \$10 for each additional day the report is late. If the annual report is incomplete
15 when filed, the insurer or adjuster shall pay a civil penalty of \$1,000.

16 * **Sec. 52.** AS 23.30.155(o) is amended to read:

17 (o) The **director** [BOARD] shall promptly notify the division of insurance if
18 the board determines that the employer's insurer has frivolously or unfairly
19 controverted compensation due under this chapter. After receiving notice from the
20 **director** [BOARD], the division of insurance shall determine if the insurer has
21 committed an unfair claim settlement practice under AS 21.36.125.

22 * **Sec. 53.** AS 23.30.175(b) is amended to read:

23 (b) The following rules apply to benefits payable to recipients not residing in
24 the state at the time compensation benefits are payable:

25 (1) the weekly rate of compensation shall be calculated by multiplying
26 the recipient's weekly compensation rate calculated under AS 23.30.180, 23.30.185,
27 23.30.190, 23.30.200, or 23.30.215 [,] by the ratio of the cost of living of the area in
28 which the recipient resides to the cost of living in this state;

29 (2) the calculation required by (1) of this subsection does not apply if
30 the recipient is absent from the state for medical or rehabilitation services not
31 reasonably available in the state;

1 (3) if the gross weekly earnings of the recipient and the resulting
2 compensation rate are determined under AS 23.30.220(a)(6), (7), or (10), the
3 calculation required by this subsection applies only to the portion of the recipient's
4 weekly compensation rate attributable to wages earned in the state;

5 (4) application of this subsection may not reduce the weekly
6 compensation rate to less than \$154 a week, except as provided in (a) of this section;

7 **(5) application of (1) - (4) of this subsection may not result in**
8 **raising a recipient's weekly compensation rate to an amount that exceeds the**
9 **weekly compensation rate that the recipient would have received if the recipient**
10 **had been residing in the state.**

11 * **Sec. 54.** AS 23.30.175(c) is amended to read:

12 (c) The **department** [BOARD] shall provide by regulation for the
13 determination and comparison of living costs for this state and the other areas in which
14 recipients reside and for the [ANNUAL] redetermination and comparison of these
15 costs **every three years.**

16 * **Sec. 55.** AS 23.30.175 is amended by adding a new subsection to read:

17 (e) If the commissioner fails to determine the average weekly wage in the state
18 as required in (d) of this section until after January 1, but before April 1, of the year
19 following the date the determination was to be made, an employer is not required to
20 make a retroactive adjustment of compensation.

21 * **Sec. 56.** AS 23.30.205(e) is amended to read:

22 (e) The second injury fund may not be bound as to any question of law or fact
23 by reason of an award or an adjudication to which it was not a party or in relation to
24 which the **director** [COMMISSIONER] was not notified at least three weeks before
25 the award or adjudication [,] that the fund might be subject to liability for the injury or
26 death.

27 * **Sec. 57.** AS 23.30.220(a) is amended to read:

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

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

3 (2) if at the time of injury the employee's earnings are calculated by the
4 month, the employee's gross weekly earnings are the monthly earnings multiplied by
5 12 and divided by 52;

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

8 (4) if at the time of injury the [(A)] employee's earnings are calculated
9 by the day, **by the** hour, or by the output of the employee, **then** the employee's gross
10 weekly earnings are **1/50 of the total wages that the employee earned from all**
11 **occupations during either of the two calendar years immediately preceding the**
12 **injury, whichever is** [THE EMPLOYEE'S EARNINGS] most favorable to the
13 employee [COMPUTED BY DIVIDING BY 13 THE EMPLOYEE'S EARNINGS,
14 INCLUDING OVERTIME OR PREMIUM PAY, EARNED DURING ANY PERIOD
15 OF 13 CONSECUTIVE CALENDAR WEEKS WITHIN THE 52 WEEKS
16 IMMEDIATELY PRECEDING THE INJURY;

17 (B) EMPLOYEE HAS BEEN EMPLOYED FOR LESS THAN
18 13 CALENDAR WEEKS IMMEDIATELY PRECEDING THE INJURY,
19 THEN, NOTWITHSTANDING (1) - (3) OF THIS SUBSECTION AND (A)
20 OF THIS PARAGRAPH, THE EMPLOYEE'S GROSS WEEKLY
21 EARNINGS ARE COMPUTED BY DETERMINING THE AMOUNT THAT
22 THE EMPLOYEE WOULD HAVE EARNED, INCLUDING OVERTIME
23 OR PREMIUM PAY, HAD THE EMPLOYEE BEEN EMPLOYED BY THE
24 EMPLOYER FOR 13 CALENDAR WEEKS IMMEDIATELY PRECEDING
25 THE INJURY AND DIVIDING THIS SUM BY 13];

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

30 (6) if at the time of injury **the employee's earnings are calculated by**
31 **the week under (1) of this subsection or by the month under (2) of this subsection**

1 **and** the employment is exclusively seasonal or temporary, then [,
2 NOTWITHSTANDING (1) - (5) OF THIS SUBSECTION,] the gross weekly
3 earnings are 1/50 of the total wages that the employee has earned from all occupations
4 during the 12 calendar months immediately preceding the injury;

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

8 (8) if an employee when injured is a minor, an apprentice, or a trainee
9 in a **formalized** [FORMAL] training program, as determined by the board, whose
10 wages under normal conditions would increase during the period of disability, the
11 projected increase may be considered by the board in computing the gross weekly
12 earnings of the employee; **if the minor, apprentice, or trainee would have likely**
13 **continued that training program, then the compensation shall be the average**
14 **weekly wage at the time of injury rather than that based on the individual's prior**
15 **earnings;**

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

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

gross weekly earnings at the time of injury.

* **Sec. 58.** AS 23.30 is amended by adding a new section to read:

Sec. 23.30.224. Coordination of benefits. (a) Notwithstanding other provisions of this chapter, an employer's liability for payment of weekly compensation under AS 23.30.180 or 23.30.185 to an employee eligible for a disability benefit under AS 14.25.130, AS 39.35.400, or 39.35.410 may not exceed the lesser of

(1) the difference between the disability benefit payable to the employee under AS 14.25.130, AS 39.35.400, or 39.35.410, converted to a weekly basis, and 100 percent of the employee's spendable weekly wage as calculated under AS 23.30.220; or

(2) the maximum compensation rate calculated under AS 23.30.175.

(b) An employer's liability for payment of compensation under AS 23.30.041(k) to an employee eligible for a disability benefit payable under AS 14.25.130, AS 39.35.400, or 39.35.410 may not exceed the lesser of

(1) the difference between the disability benefit payable to the employee under AS 14.25.130, AS 39.35.400, or 39.35.410, converted to a weekly basis, and 80 percent of the employee's spendable weekly wage as calculated under AS 23.30.220; or

(2) 105 percent of the average weekly wage calculated under AS 23.30.175(d).

(c) Notwithstanding other provisions of this chapter, the liability of an employer for payment of compensation for an injury or illness under AS 23.30.180 or 23.30.185 to an employee who is covered by a union or group retirement system to which the employer makes contributions under a collective bargaining agreement or by membership in a welfare or pension plan or trust may not exceed the lesser of

(1) the difference between 100 percent of the employee's spendable weekly wage and an amount equal to the disability benefit, disability pension, or medical retirement benefit that the employee is eligible to receive as a result of the injury or illness, as calculated on a weekly basis, under the retirement system or welfare or pension plan or trust; or

(2) the maximum compensation rate calculated under AS 23.30.175.

1 (d) If the union or group retirement system, pension plan, or trust referred to in
2 (c) of this section provides by its terms that its benefits are precluded or reduced if
3 benefits are awarded under this chapter, the limitation provided in (c)(1) of this section
4 is not applicable to the extent of the amount precluded or reduced.

5 (e) Notwithstanding other provisions of this chapter, the liability of an
6 employer for payment of compensation for an injury or illness under AS 23.30.041(k)
7 to an employee who is covered by a union or group retirement system to which the
8 employer makes contributions under a collective bargaining agreement or by
9 membership in a welfare or pension plan or trust may not exceed the lesser of

10 (1) the difference between 100 percent of the employee's spendable
11 weekly wage and an amount equal to the disability benefit, disability pension, or
12 medical retirement benefit that the employee is eligible to receive as a result of the
13 injury or illness, calculated on a weekly basis, under the retirement system or welfare
14 or pension plan or trust; or

15 (2) 105 percent of the average weekly wage calculated under
16 AS 23.30.175(d).

17 (f) If the union or group retirement system, pension plan, or trust referred to in
18 (e) of this section provides by its terms that its benefits are precluded or reduced if
19 benefits are awarded under this chapter, the limitation provided in (e)(1) of this section
20 is not applicable to the extent of the amount precluded or reduced.

21 (g) If the employee receives a lump sum distribution of disability benefits,
22 disability pension, or medical retirement benefits, the combined workers'
23 compensation and weekly disability or medical retirement benefit specified in this
24 section shall be calculated by assuming that the employee received weekly disability
25 or medical retirement payments under the applicable plan from the date of eligibility
26 for the disability benefit or medical retirement until the total of the weekly payments
27 equals the amount of the lump sum, exclusive of that portion of the lump sum
28 specifically set aside under the applicable plan for retraining expenses, medical and
29 transportation expenses, and attorney fees or other legal costs.

30 * **Sec. 59.** AS 23.30.240 is amended to read:

31 **Sec. 23.30.240. Officers of corporations, municipal corporations, and**

1 **nonprofit corporations and members of limited liability companies as employees.**

2 An executive officer elected or appointed and empowered in accordance with the
3 charter and bylaws of a corporation, other than an official of a municipal corporation
4 or a charitable, religious, educational, or other nonprofit corporation, is an employee
5 of the corporation under this chapter. However, an executive officer of a corporation
6 may waive coverage under this chapter, subject to the approval of the **director**
7 [COMMISSIONER OF LABOR AND WORKFORCE DEVELOPMENT],
8 notwithstanding AS 23.30.245(b). Notwithstanding any other provision of this
9 chapter, an executive officer of a municipal corporation or of a charitable, religious,
10 educational, or other nonprofit corporation may be brought within the coverage of its
11 insurance contract by the corporation by specifically including the officer in the
12 contract of insurance. The election to bring an executive officer within the coverage
13 continues in force for the period the contract of insurance is in effect. During that
14 period, an executive officer brought within the coverage of the insurance contract is an
15 employee of the corporation under this chapter.

16 * **Sec. 60.** AS 23.30.240 is amended by adding a new subsection to read:

17 (b) Except as provided in this subsection, a member of a limited liability
18 company organized under AS 10.50 is not an employee of the company under this
19 chapter. Notwithstanding any other provision of this chapter, a limited liability
20 company may bring a member of the company within the coverage of the company's
21 insurance contract by specifically including the member in the contract of insurance.
22 The election to bring the member within the company's coverage continues in force
23 for the period the contract of insurance is in effect. During that period, a member
24 brought within the coverage of the insurance contract is an employee of the company
25 under this chapter.

26 * **Sec. 61.** AS 23.30.250(b) is amended to read:

27 (b) If the board, after a hearing, finds that a person has obtained compensation,
28 medical treatment, or another benefit provided under this chapter, **or that a provider**
29 **has received a payment,** by knowingly making a false or misleading statement or
30 representation for the purpose of obtaining that benefit, the board shall order that
31 person to make full reimbursement of the cost of all benefits obtained. Upon entry of

1 an order authorized under this subsection, the board shall also order that person to pay
2 all reasonable costs and attorney fees incurred by the employer and the employer's
3 carrier in obtaining an order under this section and in defending any claim made for
4 benefits under this chapter. If a person fails to comply with an order of the board
5 requiring reimbursement of compensation and payment of costs and attorney fees, the
6 employer may declare the person in default and proceed to collect any sum due as
7 provided under AS 23.30.170(b) and (c).

8 * **Sec. 62.** AS 23.30.250 is amended by adding a new subsection to read:

9 (c) To the extent allowed by law, in a civil action under (a) of this section, an
10 award of damages by a court or jury may include compensatory damages and an
11 award of three times the amount of damages sustained by the person, subject to
12 AS 09.17. Attorney fees may be awarded to a prevailing party as allowed by law.

13 * **Sec. 63.** AS 23.30.260 is amended to read:

14 **Sec. 23.30.260. Penalty for receiving unapproved fees and soliciting.** A
15 person is guilty of a misdemeanor [,] and, upon conviction, is punishable for each
16 offense by a fine of not more than \$1,000 [,] or by imprisonment for not more than one
17 year, or by both, if the person

18 (1) receives a fee, other consideration, or a gratuity on account of any
19 services rendered for representation or advice with [IN] respect to a claim, unless
20 the consideration or gratuity is approved by the board or the court; or

21 (2) makes it a business to solicit employment for a lawyer or for the
22 person making the solicitation with [ONESELF IN] respect to a claim or award for
23 compensation.

24 * **Sec. 64.** AS 23.30.260 is amended by adding a new subsection to read:

25 (b) Notwithstanding AS 23.30.145 and (a) of this section, approval of a fee is
26 not required if the fee does not exceed \$300 and is a one-time-only charge to an
27 employee by an attorney licensed in this state who performed legal services with
28 respect to the employee's claim but did not enter an appearance.

29 * **Sec. 65.** AS 23.30 is amended by adding a new section to read:

30 **Sec. 23.30.280. Investigation of fraud; staffing.** (a) The director shall
31 establish a section within the division for the investigation of fraudulent or misleading

1 acts under AS 23.30.250 and other fraudulent acts relating to workers' compensation.

2 (b) The director may investigate facts reported under this section and may
3 refer facts indicating a possible violation of law to the appropriate prosecutor or
4 agency. If the director determines that there is credible evidence that a person
5 obtained a payment, compensation, medical treatment, or other benefit provided under
6 this chapter by a fraudulent act or false or misleading statement or representation as
7 provided in AS 23.30.250(a), the director shall notify the affected employer, insurer,
8 and adjuster upon conclusion of the investigation. If the fraudulent act or false or
9 misleading statement or representation was perpetrated against the division, the
10 director may file a petition as provided in AS 23.30.110 for an order of forfeiture
11 against the person, precluding, in whole or in part, the person from future payment,
12 compensation, medical treatment, or other benefit provided under this chapter.

13 (c) The director shall establish a toll-free fraud hotline to receive calls relating
14 to fraudulent or misleading acts under this chapter. The director shall publicize the
15 availability of the toll-free fraud hotline and encourage the public to provide
16 information to the division relating to fraudulent or misleading acts relating to
17 workers' compensation.

18 (d) The section established by the director under (a) of this section shall
19 include not less than two full-time investigators with the primary responsibility of
20 investigating fraudulent or misleading acts relating to workers' compensation. The
21 director shall also ensure that there are sufficient personnel to staff the toll-free fraud
22 hotline established under (c) of this section.

23 (e) Except as provided in (f) of this section, a person is not liable for civil
24 damages for filing a report concerning a suspected, anticipated, or completed
25 fraudulent act or a false or misleading statement or representation with, or for
26 furnishing other information, whether written or oral, concerning a suspected,
27 anticipated, or completed fraudulent act or false or misleading statements or
28 representation to

29 (1) law enforcement officials or their agents and employees;

30 (2) the division of workers' compensation, the division of insurance in
31 the Department of Commerce, Community, and Economic Development, or an agency

1 in another state that regulates insurance or workers' compensation;

2 (3) an insurer or adjuster or its agents, employees, or designees, or the
3 risk manager of a self-insured employer under this chapter.

4 (f) The provisions of (e) of this section do not preclude liability for civil
5 damages as described in (e) of this section if the liability arose as a result of gross
6 negligence or reckless or intentional misconduct.

7 (g) The papers, reports, documents, and evidence received under this section
8 or in an investigation arising from information received under this section are not
9 subject to public inspection for so long as the director considers confidentiality to be
10 in the public interest or reasonably necessary to complete an investigation or protect
11 the person investigated from unwarranted injury. Papers, reports, documents, and
12 other evidence related to an investigation under this section are confidential.

13 (h) If the material that the director seeks to obtain is located outside the state,
14 the material may be made available to the director to examine at the place where the
15 material is located. The director may designate representatives, including officials of
16 the state in which the material is located, to inspect the material on behalf of the
17 director. The director may respond to a request from an official of another state for
18 similar material.

19 (i) Papers, reports, documents, and other evidence related to an investigation
20 under this section are not subject to subpoena unless, after notice to the director and a
21 hearing, a court determines that the director would not be unduly hindered by public
22 inspection.

23 * **Sec. 66.** AS 23.30.395(17) is amended to read:

24 (17) "injury" means accidental injury or death arising out of and in the
25 course of employment, and an occupational disease or infection **that** [WHICH] arises
26 naturally out of the employment or **that** [WHICH] naturally or unavoidably results
27 from an accidental injury; "injury" includes breakage or damage to eyeglasses, hearing
28 aids, dentures, or any prosthetic devices **that** [WHICH] function as part of the body
29 and further includes an injury caused by the wilful act of a third person directed
30 against an employee because of the employment; ["INJURY" DOES NOT INCLUDE
31 MENTAL INJURY CAUSED BY MENTAL STRESS UNLESS IT IS

1 ESTABLISHED THAT (A) THE WORK STRESS WAS EXTRAORDINARY AND
2 UNUSUAL IN COMPARISON TO PRESSURES AND TENSIONS
3 EXPERIENCED BY INDIVIDUALS IN A COMPARABLE WORK
4 ENVIRONMENT, AND (B) THE WORK STRESS WAS THE PREDOMINANT
5 CAUSE OF THE MENTAL INJURY; THE AMOUNT OF WORK STRESS SHALL
6 BE MEASURED BY ACTUAL EVENTS; A MENTAL INJURY IS NOT
7 CONSIDERED TO ARISE OUT OF AND IN THE COURSE OF EMPLOYMENT
8 IF IT RESULTS FROM A DISCIPLINARY ACTION, WORK EVALUATION, JOB
9 TRANSFER, LAYOFF, DEMOTION, TERMINATION, OR SIMILAR ACTION,
10 TAKEN IN GOOD FAITH BY THE EMPLOYER;]

11 * **Sec. 67.** AS 23.30.395 is amended by adding new paragraphs to read:

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

14 (A) a licensed medical doctor;

15 (B) a licensed doctor of osteopathy;

16 (C) a licensed dentist or dental surgeon;

17 (D) a licensed physician assistant acting under supervision of a
18 licensed medical doctor or doctor of osteopathy;

19 (E) a licensed advanced nurse practitioner; or

20 (F) a licensed chiropractor;

21 (36) "chronic debilitating pain" means pain that is of more than six
22 months duration and that is of sufficient severity that it significantly restricts the
23 employee's ability to perform the activities of daily living;

24 (37) "commission" means the Workers' Compensation Appeals
25 Commission;

26 (38) "commissioner" means the commissioner of labor and workforce
27 development;

28 (39) "department" means the Department of Labor and Workforce
29 Development;

30 (40) "director" means the director of the division of workers'
31 compensation in the department;

1 (41) "division" means the division of workers' compensation in the
2 department;

3 (42) "palliative care" means medical care or treatment rendered to
4 reduce or moderate temporarily the intensity of pain caused by an otherwise stable
5 medical condition, but does not include those medical services rendered to diagnose,
6 heal, or permanently alleviate or eliminate a medical condition.

7 * **Sec. 68.** AS 37.05.146(c) is amended by adding a new paragraph to read:

8 (78) workers' compensation benefits guaranty fund (AS 23.30.082).

9 * **Sec. 69.** AS 39.25.110 is amended by adding a new paragraph to read:

10 (40) the chair of the Workers' Compensation Appeals Commission
11 (AS 23.30.007).

12 * **Sec. 70.** AS 39.25.120(c)(14) is amended to read:

13 (14) the rehabilitation administrator of the division of workers'
14 compensation [WORKERS' COMPENSATION BOARD];

15 * **Sec. 71.** AS 39.50.200(b)(31) is amended to read:

16 (31) Workers' Compensation Board (AS 23.30.005) and Workers'
17 Compensation Appeals Commission (AS 23.30.007);

18 * **Sec. 72.** AS 44.23.020 is amended by adding a new subsection to read:

19 (f) The attorney general shall designate not less than one-half attorney position
20 in the Department of Law for the purpose of prosecuting actions for fraudulent acts
21 related to workers' compensation under AS 23.30.

22 * **Sec. 73.** AS 44.64.020(a) is amended to read:

23 (a) The chief administrative law judge shall

24 (1) supervise the office;

25 (2) employ administrative staff, who shall be in the classified service;

26 (3) employ administrative law judges, who shall be in the partially
27 exempt service;

28 (4) preside over administrative hearings handled by the office or, based
29 upon the qualifications and expertise of the administrative law judges, assign
30 administrative law judges to preside over hearings, and protect, support, and enhance
31 the decisional independence of the administrative law judges;

1 (5) establish and implement performance standards, including
2 provision for timeliness, and peer review programs for administrative law judges
3 employed or retained by the office;

4 (6) make available and facilitate training and continuing education
5 programs and services in administrative procedure, administrative adjudication,
6 substantive law, alternate dispute resolution, and technical matters for administrative
7 law judges and other administrative adjudicators;

8 (7) survey administrative hearing participants and use other methods to
9 monitor the quality of administrative hearings held by the office and other state
10 agencies, and submit to the governor and the legislature on January 31 of each year the
11 results of the survey along with a report that includes a description of the activities of
12 the office and recommendations for statutory changes that may be needed in relation
13 to the administrative hearings held by the office or other state agencies;

14 (8) review and comment on regulations proposed by state agencies to
15 govern procedures in administrative hearings;

16 (9) enter into contracts as necessary to carry out the functions of the
17 office;

18 (10) annually prepare and submit to the commissioner of
19 administration a budget for the office for the next fiscal year that shall include and
20 separately identify funding for training and continuing education; a copy of the budget
21 submitted to the commissioner under this paragraph shall also be submitted to the
22 Finance Committee of each house of the legislature; [AND]

23 (11) after consulting with affected agencies, adopt regulations under
24 AS 44.62 (Administrative Procedure Act) to carry out the duties of the office and
25 implement this chapter;

26 **(12) receive and review applications from individuals seeking**
27 **appointments to the Workers' Compensation Appeals Commission and submit**
28 **the names of individuals to the governor for appointment as provided in**
29 **AS 23.30.007(d); and**

30 **(13) appoint a chair pro tempore for the Workers' Compensation**
31 **Appeals Commission as provided in AS 23.30.007(m).**

1 * **Sec. 74.** AS 23.30.095(f), 23.30.095(l), and 23.30.095(m) are repealed.

2 * **Sec. 75.** AS 23.30.097(a)(1) is repealed August 1, 2007.

3 * **Sec. 76.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 INDIRECT COURT RULE AMENDMENT. AS 23.30.280(i), as enacted by sec. 65
6 of this Act, has the effect of changing Rule 45, Alaska Rules of Civil Procedure, by changing
7 the procedure relating to subpoenas.

8 * **Sec. 77.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 TASK FORCE ON WORKERS' COMPENSATION. (a) There is established in the
11 legislative branch the Task Force on Workers' Compensation to address the improvement of
12 the Alaska workers' compensation system, including

13 (1) a review of workers' compensation and insurance reform measures
14 throughout the United States and an assessment of the effects of those reforms;

15 (2) an analysis and assessment of proposals for workers' compensation and
16 workers' compensation liability insurance reform in Alaska;

17 (3) a review of current Alaska workers' compensation benefits and costs and
18 an assessment of needed changes;

19 (4) a review of compliance with current Alaska workers' compensation laws;

20 (5) a consideration of other issues determined to be relevant by members of
21 the task force.

22 (b) The task force established under (a) of the section shall consist of 13 voting
23 members. One member shall be a state senator appointed by the president of the senate who
24 shall serve as co-chair, one member shall be a state representative appointed by the speaker of
25 the house of representatives who shall serve as co-chair, and one member shall be a member
26 of the minority in either house jointly selected by the president of the senate and the speaker
27 of the house of representatives. Ten members shall be appointed jointly by the president of
28 the senate and speaker of the house of representatives as follows:

29 (1) a representative of the Alaska State Medical Association;

30 (2) a representative of the Alaska State Hospital and Nursing Home
31 Association;

- (3) an attorney who represents employees in workers' compensation cases;
- (4) an attorney who represents employers in workers' compensation cases;
- (5) a representative from organized labor;
- (6) a person representing employees not represented by organized labor;
- (7) a representative of the insurance industry that provides workers' compensation insurance in the state;
- (8) a representative of self-insured employers;
- (9) a person representing businesses that employ less than 100 employees; and
- (10) a person representing businesses that employ more than 99 employees.

(c) With the approval of the co-chairs, nonvoting members may be appointed to the task force. The nonvoting members may take part in discussions but shall defer to the voting members on the matters to be discussed.

(d) The task force established under (a) of this section

- (1) may begin work immediately upon the appointment of its full voting membership and shall meet at least three times telephonically or in person;
- (2) shall hold public hearings and may perform research related to its work;
- (3) may meet in the interim and vote telephonically;
- (4) shall report its written findings and give a copy of proposed legislation and other recommendations to the president of the senate and the speaker of the house of representatives before December 1, 2005; and
- (5) is terminated on February 1, 2006.

*** Sec. 78.** The uncoded law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. The amendment to AS 23.30.175(b) made by sec. 53 of this Act applies to an injury occurring on or after the effective date of sec. 53 of this Act.

*** Sec. 79.** The uncoded law of the State of Alaska is amended by adding a new section to read:

TRANSITION: STAFF. (a) In order to ensure the smooth assumption of duties in the shortest possible time, for a period of six months after the effective date of this section, the director may, with the approval of the commissioner of labor and workforce development and the chair of the commission, temporarily assign division employees to the commission, and

1 the commission may reimburse the division for the temporarily assigned employees. Division
2 employees temporarily assigned to the commission shall continue in the same position and
3 rate of pay for the duration of the temporary assignment as the employees held at the division.

4 (b) In this section,

5 (1) "commission" means the Workers' Compensation Appeals Commission
6 established by AS 23.30.007, enacted by sec. 8 of this Act;

7 (2) "director" means the director of the division of workers' compensation in
8 the Department of Labor and Workforce Development;

9 (3) "division" means the division of workers' compensation in the Department
10 of Labor and Workforce Development.

11 * **Sec. 80.** The uncoded law of the State of Alaska is amended by adding a new section to
12 read:

13 TRANSITIONAL PROVISIONS. (a) Litigation, investigations, and other
14 proceedings pending under a law amended or repealed by this Act or in connection with
15 functions transferred by this Act continue in effect and may be continued and completed,
16 notwithstanding a transfer or amendment or repeal provided for in this Act.

17 (b) Certificates, decisions, and orders issued under authority of a law amended or
18 repealed by this Act remain in effect for the term issued, or until revoked, vacated, or
19 otherwise modified under the provisions of this Act. Contracts, rights, liabilities, and
20 obligations created by or under a law amended or repealed by this Act and in effect on the day
21 before the effective date of this section remain in effect, notwithstanding this Act's taking
22 effect.

23 * **Sec. 81.** The uncoded law of the State of Alaska is amended by adding a new section to
24 read:

25 TRANSITION: REGULATIONS. (a) The Department of Labor and Workforce
26 Development and the director of insurance in the Department of Commerce, Community, and
27 Economic Development may proceed to adopt regulations necessary to implement the
28 respective provisions for which each is responsible under this Act. The regulations take effect
29 under AS 44.62 (Administrative Procedure Act), but not before the effective date of the
30 statutory changes.

31 (b) In order to provide for the procedures and other administrative matters necessary

1 to ensure the ongoing implementation of the state's workers' compensation laws to meet the
2 urgent needs of injured workers and thus ensure the preservation of the public peace, health,
3 safety, or general welfare, the Workers' Compensation Appeals Commission established by
4 AS 23.30.007, enacted by sec. 8 of this Act, may adopt under AS 23.30.008, enacted by sec. 8
5 of this Act, as emergency regulations, the regulations necessary to implement the changes
6 made by this Act.

7 * **Sec. 82.** The uncoded law of the State of Alaska is amended by adding a new section to
8 read:

9 TRANSITION: MEDICAL SERVICES REVIEW COMMITTEE STUDY,
10 REPORTS, AND RECOMMENDATIONS. (a) The medical services review committee
11 appointed under AS 23.30.095(j), as amended by sec. 34 of this Act, shall proceed to study
12 medical and related benefits provided under AS 23.30 to determine the appropriateness,
13 necessity, and cost of the benefits.

14 (b) The medical services review committee appointed under AS 23.30.095(j), as
15 amended by sec. 34 of this Act, shall assist the Task Force on Workers' Compensation
16 established in sec. 77 of this Act and make recommendations for medical procedure
17 guidelines to the task force, not later than December 1, 2005, which may be included in the
18 written findings and proposed legislation under sec. 77(d)(4) of this Act.

19 * **Sec. 83.** The uncoded law of the State of Alaska is amended by adding a new section to
20 read:

21 CONDITIONAL EFFECT. AS 23.30.280(i), enacted by sec. 65 of this Act, takes
22 effect only if sec. 76 of this Act receives the two-thirds majority vote of each house required
23 by art. IV, sec. 15, Constitution of the State of Alaska.

24 * **Sec. 84.** Sections 34 and 77 of this Act take effect immediately under AS 01.10.070(c).

25 * **Sec. 85.** Sections 1, 2, 53, and 82 of this Act take effect September 1, 2005.