**SPONSOR SUBSTITUTE FOR SENATE BILL NO. 112**

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

**BY SENATOR GIESSEL**

**Introduced: 1/22/18**
**Referred: Labor and Commerce, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

**"An Act relating to the controlled substance prescription database; relating to employer-required drug testing; relating to the office of administrative hearings; relating to the Alaska Workers' Compensation Board; relating to the payment of workers' compensation or benefits; relating to compensable injuries; relating to rehabilitation and reemployment of injured workers; relating to reemployment vouchers; relating to the treatment or care of employees; relating to use of evidence-based treatment guidelines; relating to prescribing or dispensing a controlled substance to an employee for a compensable injury; relating to workers' compensation prehearings; relating to the filing of claims for workers' compensation benefits or petitions for other relief; relating to the burden of proof and credibility of witnesses in workers' compensation matters; relating to attorney fees; relating to the filing of a verified annual report; relating to permanent total disability; relating to temporary total**

**disability; excluding independent contractors from workers' compensation coverage; and providing for an effective date."**

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

*** Section 1.** AS 17.30.200(b), as amended by sec. 38, ch. 2, SSSLA 2017, is amended to read:

(b) The pharmacist-in-charge of each licensed or registered pharmacy, regarding each schedule II, III, or IV controlled substance under federal law dispensed by a pharmacist under the supervision of the pharmacist-in-charge, [AND] each practitioner who directly dispenses a schedule II, III, or IV controlled substance under federal law other than those dispensed or administered under the circumstances described in (u) of this section, **and each practitioner who prescribes a controlled substance subject to AS 23.30.096** shall submit to the board, by a procedure and in a format established by the board, the following information for inclusion in the database on at least a daily basis:

(1) the name of the prescribing practitioner and the practitioner's federal Drug Enforcement Administration registration number or other appropriate identifier;

(2) the date of the prescription;

(3) the date the prescription was filled and the method of payment; this paragraph does not authorize the board to include individual credit card or other account numbers in the database;

(4) the name, address, and date of birth of the person for whom the prescription was written;

(5) the name and national drug code of the controlled substance;

(6) the quantity and strength of the controlled substance dispensed;

(7) the name of the drug outlet dispensing the controlled substance; and

(8) the name of the pharmacist or practitioner dispensing the controlled substance and other appropriate identifying information.

*** Sec. 2.** AS 17.30.200(d) is amended to read:

(d) The database and the information contained within the database are confidential, are not public records, are not subject to public disclosure, and may not be shared with the federal government. The board shall undertake to ensure the security and confidentiality of the database and the information contained within the database. The board may allow access to the database only to the following persons, and in accordance with the limitations provided and regulations of the board:

(1) personnel of the board regarding inquiries concerning licensees or registrants of the board or personnel of another board or agency concerning a practitioner under a search warrant, subpoena, or order issued by an administrative law judge or a court;

(2) authorized board personnel or contractors as required for operational and review purposes;

(3) a licensed practitioner having authority to prescribe controlled substances or an agent or employee of the practitioner whom the practitioner has authorized to access the database on the practitioner's behalf, to the extent the information relates specifically to a current patient of the practitioner to whom the practitioner is prescribing or considering prescribing a controlled substance; the agent or employee must be licensed or registered under AS 08;

(4) a licensed or registered pharmacist having authority to dispense controlled substances or an agent or employee of the pharmacist whom the pharmacist has authorized to access the database on the pharmacist's behalf, to the extent the information relates specifically to a current patient to whom the pharmacist is dispensing or considering dispensing a controlled substance; the agent or employee must be licensed or registered under AS 08;

(5) federal, state, and local law enforcement authorities may receive printouts of information contained in the database under a search warrant or order issued by a court establishing probable cause for the access and use of the information;

(6) an individual who is the recipient of a controlled substance prescription entered into the database may receive information contained in the database concerning the individual on providing evidence satisfactory to the board that the individual requesting the information is in fact the person about whom the data

entry was made and on payment of a fee set by the board under AS 37.10.050 that does not exceed $10;

(7) a licensed pharmacist employed by the Department of Health and Social Services who is responsible for administering prescription drug coverage for the medical assistance program under AS 47.07, to the extent that the information relates specifically to prescription drug coverage under the program;

(8) a licensed pharmacist, licensed practitioner, or authorized employee of the Department of Health and Social Services responsible for utilization review of prescription drugs for the medical assistance program under AS 47.07, to the extent that the information relates specifically to utilization review of prescription drugs provided to recipients of medical assistance;

(9) the state medical examiner, to the extent that the information relates specifically to investigating the cause and manner of a person's death;

(10) an authorized employee of the Department of Health and Social Services may receive information from the database that does not disclose the identity of a patient, prescriber, dispenser, or dispenser location, for the purpose of identifying and monitoring public health issues in the state; however, the information provided under this paragraph may include the region of the state in which a patient, prescriber, and dispenser are located and the specialty of the prescriber; [AND]

(11) a practitioner, pharmacist, or clinical staff employed by an Alaska tribal health organization, including commissioned corps officers of the United States Public Health Service employed under a memorandum of agreement; in this paragraph, "Alaska tribal health organization" has the meaning given to "tribal health program" in 25 U.S.C. 1603**; and**

**(12) a licensed practitioner, for the purpose of reporting to an insurer, self-insured employer, or the Alaska Workers' Compensation Board under AS 23.30.096**.

*** Sec. 3.** AS 23.05.067(e) is amended to read:

(e) Annual service fees and civil penalties collected under this section shall be deposited in the workers' safety and compensation administration account in the state treasury. Under AS 37.05.146(c), the service fees and civil penalties shall be

accounted for separately, and appropriations from the account are not made from the unrestricted general fund. The legislature may appropriate money from the account for expenditures by **the office of administrative hearings (AS 44.64.010) for necessary costs incurred for administrative hearings required under AS 23.30 and by** the department for necessary costs incurred by the department in the administration of the workers' safety programs contained in AS 18.60 and of the Alaska Workers' Compensation Act contained in AS 23.30. Nothing in this subsection creates a dedicated fund or dedicates the money in the account for a specific purpose. Money deposited in the account does not lapse at the end of a fiscal year unless otherwise provided by an appropriation.

*** Sec. 4.** AS 23.10.620 is amended by adding a new subsection to read:

(g) In addition to the tests required under (c) and (d) of this section, an employer may require an employee to undergo drug testing under AS 23.30.096(b)(3) if the employee has been prescribed a controlled substance described in AS 17.30.200(a) by a physician under AS 23.30.096.

*** Sec. 5.** AS 23.30.001 is amended to read:

**Sec. 23.30.001. Legislative intent.** It is the intent of the legislature that

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

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

(3) this chapter may not be construed by the **board, commission, office of administrative hearings, and any reviewing** courts in favor of a party;

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

**(5) this chapter be strictly construed by the board, commission, office of administrative hearings, and any reviewing courts;**

**(6) in determining whether a party has met the burden of proof on an issue, the board, commission, office of administrative hearings, and any**

**reviewing courts weigh the evidence impartially and without presumption in favor of a party except where otherwise provided by statute;**

**(7) the workers' compensation system be cost-effective to the citizens of the state**.

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

(a) The Alaska Workers' Compensation Board consists of **two public** [A SOUTHERN PANEL OF THREE] members **representing** [SITTING FOR] the first judicial district, two **public** [NORTHERN PANELS OF THREE] members **representing** [SITTING FOR] the second and fourth judicial districts, **eight public** [FIVE SOUTHCENTRAL PANELS OF THREE] members **representing** [EACH SITTING FOR] the third judicial district, and **includes** [ONE PANEL OF THREE MEMBERS THAT MAY SIT IN ANY JUDICIAL DISTRICT. EACH PANEL MUST INCLUDE] the commissioner of labor and workforce development**. The public members in each judicial district must equally consist of representatives of industry and** [OR A HEARING OFFICER DESIGNATED TO REPRESENT THE COMMISSIONER, A REPRESENTATIVE OF INDUSTRY, AND A REPRESENTATIVE OF] labor. The **public members** [LATTER TWO MEMBERS OF EACH PANEL] shall be appointed by the governor and are subject to confirmation by a majority of the members of the legislature in joint session. The board shall by regulation provide procedures to avoid conflicts and the appearance of impropriety in hearings.

*** Sec. 7.** AS 23.30.005(b) is amended to read:

(b) The commissioner shall act as chair and executive officer of the board and chair of **any hearing** [EACH] panel. The commissioner may designate a representative to act for the commissioner as chair and executive officer of the board. The commissioner may designate hearing officers to serve as chairs of panels for hearing **settlement agreements under AS 23.30.012 or claims arising under AS 23.30.015 or 23.30.247. These hearings may be by telephonic means and do not need to be held in the judicial district where the injury occurred** [CLAIMS].

*** Sec. 8.** AS 23.30.005(c) is amended to read:

(c) [THE GOVERNOR SHALL APPOINT THE MEMBERS OF THE

PANELS.] Each member, except the commissioner of labor and workforce development, serves a term of three years. The term of a management member and the term of a labor member of each panel may not expire in the same year. The management and labor members are entitled to compensation in the amount of $50 a day for each day or portion of a day spent in actual meeting or on authorized official business incidental to their duties and to all other transportation and per diem as provided by law.

*** Sec. 9.** AS 23.30.005(e) is amended to read:

(e) A member of one **judicial district** [PANEL] may serve on **any** [ANOTHER] panel [WHEN THE COMMISSIONER CONSIDERS IT NECESSARY FOR THE PROMPT ADMINISTRATION OF THIS CHAPTER. TRANSFERS SHALL BE ALLOWED ONLY IF A LABOR OR MANAGEMENT REPRESENTATIVE REPLACES A COUNTERPART ON THE OTHER PANEL].

*** Sec. 10.** AS 23.30.005(g) is amended to read:

(g) A claim **or petition for other relief must be heard by administrative law judges from the office of administrative hearings on a rotating basis and these proceedings will be subject to AS 44.62 (Administrative Procedure Act), except as otherwise provided in this chapter** [MAY BE HEARD BY ONLY ONE PANEL].

*** Sec. 11.** AS 23.30.005(h) is amended to read:

(h) The department [SHALL ADOPT RULES FOR ALL PANELS, AND PROCEDURES FOR THE PERIODIC SELECTION, RETENTION, AND REMOVAL OF BOTH REHABILITATION SPECIALISTS AND PHYSICIANS UNDER AS 23.30.041 AND 23.30.095, AND] shall adopt regulations to carry out the provisions of this chapter**, except on matters over which AS 44.62 (Administrative Procedure Act) controls** [. THE DEPARTMENT MAY BY REGULATION PROVIDE FOR PROCEDURAL, DISCOVERY, OR STIPULATED MATTERS TO BE HEARD AND DECIDED BY THE COMMISSIONER OR A HEARING OFFICER DESIGNATED TO REPRESENT THE COMMISSIONER RATHER THAN A PANEL. IF A PROCEDURAL, DISCOVERY, OR STIPULATED MATTER IS HEARD AND DECIDED BY THE COMMISSIONER OR A

HEARING OFFICER DESIGNATED TO REPRESENT THE COMMISSIONER, THE ACTION TAKEN IS CONSIDERED THE ACTION OF THE FULL BOARD ON THAT ASPECT OF THE CLAIM. PROCESS AND PROCEDURE UNDER THIS CHAPTER SHALL BE AS SUMMARY AND SIMPLE AS POSSIBLE. THE DEPARTMENT, THE BOARD OR A MEMBER OF IT MAY FOR THE PURPOSES OF THIS CHAPTER SUBPOENA WITNESSES, ADMINISTER OR CAUSE TO BE ADMINISTERED OATHS, AND MAY EXAMINE OR CAUSE TO HAVE EXAMINED THE PARTS OF THE BOOKS AND RECORDS OF THE PARTIES TO A PROCEEDING THAT RELATE TO QUESTIONS IN DISPUTE]. The superior court, **upon** [ON] application of the department, the board or any members of it, **or the office of administrative hearings** shall enforce the attendance and testimony of witnesses and the production and examination of books, papers, and records.

*** Sec. 12.** AS 23.30.005(i) is amended to read:

(i) The department may adopt regulations concerning the medical care provided for in this chapter. In addition to the reports required of physicians under AS 23.30.095(a) - (d), the board may direct a physician or hospital rendering medical treatment or service under this chapter to furnish to the board **or office of administrative hearings** periodic reports of treatment or services on forms procured from the board.

*** Sec. 13.** AS 23.30.005(j) is amended to read:

(j) The board may also arrange to have hearings held by the commission, officer, or tribunal having authority to hear cases arising under the workers' compensation law of any other state, of the District of Columbia, or of any territory of the United States. The testimony and proceedings at the hearing shall be reported to the board and are a part of the record in the case. Evidence taken at the hearing is subject to rebuttal upon final hearing before the **office of administrative hearings** [BOARD].

*** Sec. 14.** AS 23.30.007(a) is amended to read:

(a) There is established in the Department of Labor and Workforce Development the Workers' Compensation Appeals Commission. The commission has

jurisdiction to hear appeals from final decisions and orders of the board **and the office of administrative hearings** under this chapter. Jurisdiction of the commission is limited to administrative appeals arising under this chapter.

*** Sec. 15.** AS 23.30.008(a) is amended to read:

(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 **office of administrative hearings** [BOARD] from which the appeal was taken. Unless reversed by the Alaska Supreme Court, decisions of the commission have the force of legal precedent.

*** Sec. 16.** AS 23.30.008(b) is amended to read:

(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 **office of administrative hearings, and 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.

*** Sec. 17.** AS 23.30.010(a) is repealed and reenacted to read:

(a) The employer shall pay compensation or furnish benefits required by this chapter if the employee suffers an accidental compensable injury or death arising out of work performed in the course and the scope of employment. The injury, its occupational cause, and any resulting manifestations or disability must be established to a reasonable degree of medical certainty, based on relevant objective medical evidence, and the accidental compensable injury must be the major contributing cause of any resulting condition, disability, or need for medical treatment. In cases involving occupational disease or repetitive exposure, both causation and sufficient exposure to

support causation must be proven by clear and convincing evidence. Under this chapter, pain or other subjective complaints are not compensable in the absence of objective relevant medical evidence that correlate to the subjective complaints of the injured employee and are confirmed by physical examination findings or diagnostic testing. The causal relationship between a compensable accident and injuries or conditions that are not readily observable must be established through medical evidence by physical examination findings or diagnostic testing.

*** Sec. 18.** AS 23.30.010 is amended by adding new subsections to read:

(c) This chapter does not require the payment of compensation or benefits for a subsequent injury the employee suffers as a result of an original injury arising out of and in the course of employment unless the original injury is the major contributing cause of the subsequent injury.

(d) If an injury arising out of and in the course of employment aggravates or combines with a preexisting disease or condition to cause or prolong a condition, disability, or the need for treatment, the employer shall pay compensation or benefits required under this chapter to the extent that the injury arising out of and in the course of employment is and remains the major contributing cause of the disability or need for treatment.

(e) To be considered the major contributing cause under this chapter, the compensable injury must be more than 50 percent responsible for the injury as compared to all other causes combined for which treatment or benefits are sought and may be demonstrated only by objective medical evidence.

*** Sec. 19.** AS 23.30.015(b) is amended to read:

(b) Acceptance of compensation under an award in a compensation order filed by the **office of administrative hearings** [BOARD] operates as an assignment to the employer of all rights of the person entitled to compensation and the personal representative of a deceased employee to recover damages from the third person unless the person or representative entitled to compensation commences an action against the third person within one year after an award.

*** Sec. 20.** AS 23.30.015(e) is amended to read:

(e) An amount recovered by the employer under an assignment, whether by

action or compromise, shall be distributed as follows:

(1) the employer shall retain an amount equal to

(A) the expenses incurred by the employer with respect to the action or compromise, including a reasonable attorney fee determined by the **office of administrative hearings** [BOARD];

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

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

(D) the present value of all amounts payable later as compensation, computed from a schedule prepared by the **office of administrative hearings** [BOARD], and the present value of the cost of all benefits to be furnished later under AS 23.30.095 as estimated by the **office of administrative hearings** [BOARD]; the amounts so computed and estimated shall be retained by the employer as a trust fund to pay compensation and the cost of benefits as they become due and to pay any finally remaining excess sum to the person entitled to compensation or to the representative; and

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

*** Sec. 21.** AS 23.30.030(6) is amended to read:

(6) All claims for compensation, death benefits, physician's fees, nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices, transportation charges to the nearest point where adequate medical facilities are available, and burial expenses may be made directly against either the employer or the insurer, or both, and the order or award of the **office of administrative hearings** [BOARD] may be made against either the employer or the insurer or both.

*** Sec. 22.** AS 23.30.040(a) is amended to read:

(a) There is created a second injury fund, administered by the commissioner. Money in the second injury fund may only be paid for the benefit of those persons entitled to payment of benefits from the second injury fund under this chapter.

Payments from the second injury fund must be made by the commissioner in accordance with the orders and awards of the **office of administrative hearings** [BOARD].

*** Sec. 23.** AS 23.30.040(d) is amended to read:

(d) The **office of administrative hearings** [BOARD] may refund a payment made into the second injury fund if the employer or insurance carrier shows that it made the payment by mistake or inadvertence, or if it shows there existed at the time of the death of the employee a beneficiary entitled to benefits under AS 23.30.215.

*** Sec. 24.** AS 23.30.041 is repealed and reenacted to read:

**Sec. 23.30.041. Rehabilitation and reemployment of injured workers.** (a) The director shall select and employ a reemployment benefits administrator. The director may authorize the administrator to select and employ additional staff. The administrator is in the partially exempt service under AS 39.25.120.

(b) The administrator shall enforce regulations adopted by the board to implement this section.

(c) If the employee is medically stable, the injury causes a permanent partial impairment rating equal to or greater than five percent, and the employee's attending physician or employer independent physician has determined that the employee will be permanently incapable of returning to the employee's occupation at the time of injury upon review of a job description prepared in accordance with the most recent version of the United States Department of Labor's "Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles." The employee shall be entitled to a reemployment voucher as provided in this section, unless the employer makes an offer of suitable alternative employment that meets the following criteria:

(1) the offer is made within 90 days after receiving the first report from the employee's attending physician or employer independent physician, on a form created by the board, that the employee is medically stable, has a permanent partial impairment rating equal to or greater than five percent, and will be permanently incapable of returning to the employee's occupation at the time of injury, as described in accordance with the most recent version of the United States Department of Labor's

"Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles";

(2) if the employer or claims adjuster has provided the physician with a job description of the employer's proposed modified work, or proposed alternative work, the physician shall indicate whether the employee has the physical or mental requirements to perform the duties described in that job description; and

(3) the offer is for regular work, modified work, or alternative work that will last at least 12 months and pay the employee at least 75 percent of wages earned at the time of injury.

(d) If an offer of suitable work cannot be timely made, the employer or claims adjuster shall issue a voucher, on a form prescribed by the board, within 14 days after expiration of the 90-day deadline for making an offer of suitable alternative employment under (c) of this section.

(e) An employee may receive a reemployment voucher after the employee attains medical stability, receives a permanent partial impairment rating equal to or greater than five percent from the employee's attending physician or employer's independent physician, and the employee's attending physician or employer's independent physician determines that the employee is permanently incapable of returning to the employee's occupation at the time of injury as determined under (c) of this section, based on the following amounts:

(1) $18,000 if the permanent partial impairment rating is five percent or more but less than 15 percent;

(2) $23,000 if the permanent partial impairment rating is 15 percent or more, but less than 30 percent; or

(3) $28,000 if the permanent partial impairment rating is 30 percent or more.

(f) A voucher issued under this section may be applied toward a retraining program chosen by the employee. The voucher may be used for payment of tuition, fees, books, tools, and other expenses required by the school, institution, or educational organization for retraining or skill enhancement. The board shall adopt regulations governing the form of payment, direct payment to the school, institution,

or educational organization, reimbursement to the employee upon presentation to the employer of appropriate documentation and receipts, and other matters necessary to administer the reemployment benefit.

(g) Up to $1,000 of a voucher issued under this section may be paid as a miscellaneous expense, reimbursement, or advance payable to the employee upon request and without need for itemized documentation or accounting. An amount greater than $1,000 must be agreed upon by the parties. The employee will not be entitled to a voucher payment for transportation, travel expenses, telephone or Internet access, clothing, uniforms, or other incidental expenses.

(h) A voucher under this section expires two years after the date the voucher is furnished to the employee or five years after the date of injury. The employee will not be entitled to payment or reimbursement of any expenses that have not been incurred and submitted with appropriate documentation to the employer after the reemployment voucher expiration date. If the employee requests, in writing on a form prescribed by the board, assistance in helping the employee identify or develop a plan, the employer or claims adjuster shall, within 30 days, provide the employee with a vocational rehabilitation specialist of the employer's or claims adjuster's choice to provide vocational rehabilitation counseling to the employee. The vocational rehabilitation specialist may not be paid more than 15 percent of the voucher amount to provide counseling to the employee and must be paid by the employer in addition to the reemployment voucher amount under (e) of this section. The employee shall cooperate and stay in contact with the vocational rehabilitation specialist on a full-time basis, as an extension of time of the deadline under (h) of this section is not allowed. The vocational rehabilitation specialist shall meet with the employee and perform the work necessary to assist the employee in returning to work or retraining counseling within 30 days of assignment. It is not the duty of the vocational rehabilitation specialist to prepare a formal vocational rehabilitation plan or to secure employment for the employee.

(i) The voucher amounts under (e) of this section may not be paid to the employee, except as provided under (f) of this section, and may not be calculated into any settlement figures as part of any compromise and release.

(j) An employer may not be liable for compensation for injuries incurred by the employee while using a voucher issued under this section.

(k) The employee may not be entitled to any further remuneration, wage replacement, or other indemnity benefit while undergoing retraining, other than the lump-sum payment of permanent partial impairment under AS 23.30.190.

(*l*) The employer or claims adjuster may select a vocational rehabilitation specialist to prepare job descriptions under this section. Before using the job descriptions under (c) of this section, the vocational rehabilitation specialist shall submit the job descriptions chosen for the employee for the employee's agreement to the employee. If the employee does not agree with the job descriptions chosen for use under (c) of this section, the employee shall file a request for review on a form prescribed by the board to the administrator within seven days after receiving the job descriptions. The administrator shall review, and issue an order either approving or disapproving, the descriptions chosen for use under (c) of this section within 10 days and, in the order, state which job descriptions are appropriate according to the most recent version of the United States Department of Labor's "Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles." If the employee or the administrator fails to meet the deadlines under this subsection, the job descriptions chosen by the vocational rehabilitation specialist will be considered appropriate. If a dispute arises regarding the job descriptions under (c) of this section, the 90-day deadline under (c) of this section shall be tolled until the deadlines under this subsection have been exhausted.

(m) An employee may not receive permanent total disability benefits under AS 23.30.180 if the employee

(1) rejects or fails to accept, in the form and manner prescribed by the board, suitable alternative employment under (c) of this section; or

(2) qualifies for a voucher under this section and fails to use the voucher.

(n) In this section,

(1) "administrator" means the reemployment benefits administrator under (a) of this section;

(2) "rehabilitation specialist" means a person who is a certified vocational rehabilitation specialist, a certified rehabilitation counselor, or a person who has equivalent or better qualifications as determined under regulations adopted by the department.

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

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

*** Sec. 26.** AS 23.30.095(a) is amended to read:

(a) The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the **injury in accordance with evidence-based treatment guidelines based on the most recent version of the American College of Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines published by Reed Group. If medical treatment outside the evidence-based treatment guidelines is recommended to the employee, the employer or insurer may request that the office of administrative hearings appoint a third party to conduct an independent utilization review and make recommendations to the office of administrative hearings on the treatment recommended for the employee. If medical treatment is recommended after two years from the date of injury to the employee, the employee may not be afforded the presumption of compensability under AS 23.30.120(a), but** [PERIOD WHICH THE NATURE OF THE INJURY OR THE PROCESS OF RECOVERY REQUIRES, NOT EXCEEDING TWO YEARS FROM AND AFTER THE DATE OF INJURY TO THE EMPLOYEE. HOWEVER, IF THE CONDITION REQUIRING THE TREATMENT, APPARATUS, OR MEDICINE IS A LATENT ONE, THE TWO-YEAR PERIOD RUNS FROM THE TIME THE EMPLOYEE HAS KNOWLEDGE OF THE NATURE OF THE EMPLOYEE'S DISABILITY AND ITS

RELATIONSHIP TO THE EMPLOYMENT AND AFTER DISABLEMENT. IT SHALL BE ADDITIONALLY PROVIDED THAT, IF CONTINUED TREATMENT OR CARE OR BOTH BEYOND THE TWO-YEAR PERIOD IS INDICATED,] the injured employee has the right of review by the **office of administrative hearings** [BOARD]. The **office of administrative hearings** [BOARD] may authorize continued treatment or care or both**,** as the process of recovery may require**, for up to an additional two years upon clear and convincing evidence that the continued treatment or care is necessary**. When medical care is required, the injured employee may designate a licensed physician to provide all medical and related benefits. **Any time after acceptance of liability by an employer or insurer, the employer or insurer may designate a different attending physician. Designation by the employer or insurer of an attending physician does not constitute the employer's or insurer's right to an employer independent medical examination under (e) of this section.** The employee may not make more than one change in the employee's choice of attending physician without the written consent of the employer. Referral to a specialist by the employee's attending physician is not considered a change in physicians**, but a referral to a specialist by the employee's attending physician within the same specialty is considered a change in physician**. Upon procuring the services of a physician, the injured employee shall give proper notification of the selection to the employer within a reasonable time after first being treated. Notice of a change in the attending physician shall be given before the change. **After expiration of an additional two years for continued treatment or care under this subsection, no further medical treatment may be authorized except for**

**(1) prosthetic devices, braces, and supports;**

**(2) non-narcotic prescription medications;**

**(3) narcotic prescription medications necessary to allow the employee to continue to work or participate in vocational rehabilitation;**

**(4) services necessary to monitor the status, replacement, or repair of prosthetic devices, braces, and supports or to prescribe prescription medications under (2) or (3) of this subsection; and**

**(5) life-preserving modalities similar to insulin therapy, dialysis,**

**and transfusions, if related to the claimed injury or exposure.**

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

(c) A claim for medical or surgical treatment, or treatment requiring continuing and multiple treatments of a similar nature, is not valid and enforceable against the employer unless, within 14 days following treatment, the physician or health care provider giving the treatment or the employee receiving it furnishes to the employer and the **office of administrative hearings** [BOARD] notice of the injury and treatment, preferably on a form prescribed by the board. The **office of administrative hearings** [BOARD] shall, however, excuse the failure to furnish notice within 14 days when it finds it to be in the interest of justice to do so, and it may, upon application by a party in interest, make an award for the reasonable value of the medical or surgical treatment so obtained by the employee. When a claim is made for a course of treatment requiring continuing and multiple treatments of a similar nature, in addition to the notice, the physician or health care provider shall furnish a written treatment plan if the course of treatment will require more frequent outpatient visits than the standard treatment frequency for the nature and degree of the injury and the type of treatments. The treatment plan shall be furnished to the employee and the employer within 14 days after treatment begins. The treatment plan must include objectives, modalities, frequency of treatments, and reasons for the frequency of treatments. If the treatment plan is not furnished as required under this subsection, neither the employer nor the employee may be required to pay for treatments [THAT EXCEED THE FREQUENCY STANDARD. THE BOARD SHALL ADOPT REGULATIONS ESTABLISHING STANDARDS FOR FREQUENCY OF TREATMENT].

*** Sec. 28.** AS 23.30.095(d) is amended to read:

(d) If**,** at any time during the period the employee unreasonably refuses to submit to medical or surgical treatment **or appropriate diagnostic tests**, the **office of administrative hearings** [BOARD] may by order suspend the payment of further compensation while the refusal continues, and no compensation may be paid at any time during the period of suspension, unless the circumstances justified the refusal.

*** Sec. 29.** AS 23.30.095(e) is amended to read:

(e) The employee shall, after an injury, at reasonable times during the continuance of the disability, if requested by the employer or when ordered by the **office of administrative hearings** [BOARD], submit to an examination by a physician**,** [OR] surgeon**, or mental health provider** of the employer's choice authorized to practice medicine under the laws of the jurisdiction in which the examination occurs, furnished and paid for by the employer. The employer may not make more than one change in the employer's choice of a physician or surgeon without the written consent of the employee. Referral to a specialist by the employer's physician is not considered a change in physicians. An examination requested by the employer not less than 14 days after injury, and every 60 days thereafter, shall be presumed to be reasonable, and the employee shall submit to the examination without further request or order by the **office of administrative hearings** [BOARD]. Unless medically appropriate, the physician shall use existing diagnostic data to complete the examination. Facts relative to the injury or claim communicated to or otherwise learned by a physician or surgeon who may have attended or examined the employee, or who may have been present at an examination are not privileged, either in the hearings provided for in this chapter or an action to recover damages against an employer who is subject to the compensation provisions of this chapter. If an employee refuses to submit to an examination provided for in this section, the employee's rights to compensation shall be suspended until the obstruction or refusal ceases, and the employee's compensation during the period of suspension may, in the discretion of the **office of administrative hearings** [BOARD] or the court determining an action brought for the recovery of damages under this chapter, be forfeited. The **office of administrative hearings** [BOARD] in any case of death may require an autopsy at the expense of the party requesting the autopsy. An autopsy may not be held without notice first being given to the widow or widower or next of kin if they reside in the state or their whereabouts can be reasonably ascertained, of the time and place of the autopsy and reasonable time and opportunity given the widow or widower or next of kin to have a representative present to witness the autopsy. If adequate notice is not given, the findings from the autopsy may be suppressed on motion made to the **office of administrative hearings** [BOARD] or to the superior

court, as the case may be.

*** Sec. 30.** AS 23.30.095(h) is amended to read:

(h) Upon the filing with the **office of administrative hearings** [DIVISION] by a party in interest of a claim or other pleading, all parties to the proceeding **shall file with the office of administrative hearings,** [MUST IMMEDIATELY, OR IN ANY EVENT] within **30** [FIVE] days after service of the pleading, [SEND TO THE DIVISION] the original signed reports of all physicians relating to the proceedings that they may have in their possession or under their control, and copies of the reports shall be served by the party immediately on any adverse party. There is a continuing duty on all parties to file and serve all the reports during the pendency of the proceeding.

*** Sec. 31.** AS 23.30.095(j) is amended to read:

(j) The commissioner shall appoint a medical services review committee to assist and advise the department**, the board,** and the **office of administrative hearings** [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. 32.** AS 23.30.095(o) is amended to read:

(o) Notwithstanding (a) of this section, an employer is not liable for palliative

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

*** Sec. 33.** AS 23.30.095 is amended by adding new subsections to read:

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

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

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

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

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

*** Sec. 34.** AS 23.30 is amended by adding a new section to read:

**Sec. 23.30.096. Controlled substances.** (a) Within two business days after prescribing or dispensing a supply of 30 or more days of a controlled substance described in AS 17.30.200(a) to an employee for a compensable injury, a physician shall submit a report to the Board of Pharmacy under AS 17.30.200 and request the employee's prescription information that is compiled and maintained under AS 17.30.200. Notwithstanding AS 17.30.200(d), the physician shall report the results to the employer and office of administrative hearings as soon as practicable, but not later than 30 days after the date of the inquiry. Thereafter, the employer or office of administrative hearings may, not more than once every two months, request that the physician make additional inquiries to the Board of Pharmacy under AS 17.30.200.

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

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

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

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

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

(2) the justification for the use of the controlled substance and a treatment plan that includes a description of measures that the physician will implement to monitor and prevent the development of abuse, dependence, addiction, or diversion by the employee; and

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

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

(d) If a drug test under (b)(3) of this section reveals inconsistent results, the

physician shall, within five business days after receiving the inconsistent results, provide a written report to the employer and office of administrative hearings setting out a treatment plan to address the inconsistent drug test results.

(e) If the result of an inquiry to the Board of Pharmacy under (a) of this section reveals that the employee is receiving a controlled substance described in AS 17.30.200(a) from another undisclosed health care provider, the physician shall, within five business days after receiving the results, on a form prescribed by the board, report the results to the employer.

(f) If an employee resides outside the state and receives treatment from an out-of-state physician for a compensable injury, the employer is not liable for providing prescription medications that require reporting under this section if the out-of-state physician fails to comply with this section. If the other state has a controlled substances monitoring program, the out-of-state physician shall submit an inquiry to the out-of-state database and report to the employer and office of administrative hearings as prescribed under this section.

(g) This section does not apply to prescription medications administered to the employee while the employee is receiving inpatient hospital treatment.

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

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

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

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

(j) In this section,

(1) "clinically meaningful improvement in function" means

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

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

(C) a return to gainful employment.

(2) "inconsistent results" means

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

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

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

*** Sec. 35.** AS 23.30.097(d) is amended to read:

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

*** Sec. 36.** AS 23.30.097(g) is amended to read:

(g) Unless the employer controverts a charge, the employer shall reimburse an employee's prescription charges under this chapter within 30 days after the employer receives **the employee's request for reimbursement,** the health care provider's completed report and an itemization of the prescription charges for the employee. Unless the employer controverts a charge, an employer shall reimburse any transportation expenses for medical treatment under this chapter within 30 days after the employer receives the health care provider's completed report and an itemization of the dates, destination, and transportation expenses for each date of travel for

medical treatment. If the employer does not plan to make or does not make payment or reimbursement in full as required by this subsection, the employer shall notify the employee and the employee's health care provider in writing that payment will not be made timely and the reason for the nonpayment. The notification must be provided not later than the date that the payment is due under this subsection.

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

(d) Failure to give notice does not bar a claim under this chapter

(1) if the employer, an agent of the employer in charge of the business in the place where the injury occurred, or the carrier had knowledge of the injury or death and the **office of administrative hearings** [BOARD] determines that the employer or carrier has not been prejudiced by failure to give notice;

(2) if the **office of administrative hearings** [BOARD] excuses the failure on the ground that for some satisfactory reason notice could not be given;

(3) unless objection to the failure is raised before the **office of administrative hearings** [BOARD] at the first hearing of a claim for compensation in respect to the injury or death.

*** Sec. 38.** AS 23.30.105(a) is amended to read:

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

*** Sec. 39.** AS 23.30.107(b) is amended to read:

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

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

(2) the quoting or discussing of medical or rehabilitation records contained in an employee's file during a hearing on a claim for compensation [OR IN A DECISION OR ORDER OF THE BOARD OR COMMISSION].

*** Sec. 40.** AS 23.30.108 is amended to read:

**Sec. 23.30.108. Prehearings on discovery matters; objections to requests for release of information; sanctions for noncompliance.** (a) If an employee objects to a request for written authority under AS 23.30.107, the employee must file a petition with the **office of administrative hearings** [BOARD] seeking a protective order within 14 days after service of the request. If the employee fails to file a petition and fails to deliver the written authority as required by AS 23.30.107 within 14 days after service of the request, the employee's rights to benefits under this chapter are suspended until the written authority is delivered.

(b) If a petition seeking a protective order is filed, the board shall **notify the office of administrative hearings, and the office of administrative hearings shall** set a prehearing within 21 days after the filing date of the petition. At a prehearing conducted by **the office of administrative hearings, the office of administrative hearings** [THE BOARD'S DESIGNEE, THE BOARD'S DESIGNEE] has the authority to resolve disputes concerning the written authority. If the **office of**

**administrative hearings** [BOARD OR THE BOARD'S DESIGNEE] orders delivery of the written authority and if the employee refuses to deliver it within 10 days after being ordered to do so, the employee's rights to benefits under this chapter are suspended until the written authority is delivered. During any period of suspension under this subsection, the employee's benefits under this chapter are forfeited unless the board, or the court determining an action brought for the recovery of damages under this chapter, determines that good cause existed for the refusal to provide the written authority.

(c) At a prehearing on discovery matters conducted by the **office of administrative hearings, the office of administrative hearings** [BOARD'S DESIGNEE, THE BOARD'S DESIGNEE] shall direct parties to sign releases or produce documents, or both, if the parties present releases or documents that are likely to lead to admissible evidence relative to an employee's injury. If a party refuses to comply with an order by the **office of administrative hearings** [BOARD'S DESIGNEE OR THE BOARD] concerning discovery matters, the **office of administrative hearings** [BOARD] may impose appropriate sanctions in addition to any forfeiture of benefits, including dismissing the party's claim, petition, or defense. [IF A DISCOVERY DISPUTE COMES BEFORE THE BOARD FOR REVIEW OF A DETERMINATION BY THE BOARD'S DESIGNEE, THE BOARD MAY NOT CONSIDER ANY EVIDENCE OR ARGUMENT THAT WAS NOT PRESENTED TO THE BOARD'S DESIGNEE, BUT SHALL DETERMINE THE ISSUE SOLELY ON THE BASIS OF THE WRITTEN RECORD.] The decision by the **office of administrative hearings** [BOARD] on a discovery dispute shall be made within 30 days. [THE BOARD SHALL UPHOLD THE DESIGNEE'S DECISION EXCEPT WHEN THE BOARD'S DESIGNEE'S DETERMINATION IS AN ABUSE OF DISCRETION.]

(d) If the employee files a petition seeking a protective order to recover medical and rehabilitation information that has been provided but is not related to the employee's injury, and the **office of administrative hearings** [BOARD OR THE BOARD'S DESIGNEE] grants the protective order, the **office of administrative hearings** [BOARD OR THE BOARD'S DESIGNEE GRANTING THE

PROTECTIVE ORDER] shall direct [THE DIVISION, THE BOARD, THE COMMISSION, AND] the parties to return to the employee, as soon as practicable following the issuance of the protective order, all medical and rehabilitation information, including copies, in their possession that is unrelated to the employee's injury under the protective order.

(e) If the **office of administrative hearings** [BOARD OR THE BOARD'S DESIGNEE] limits the medical or rehabilitation information that may be used by the parties to a claim, either by an order on the record or by issuing a written order, the division, [THE BOARD,] the commission, and a party to the claim may request and an employee shall provide or authorize the production of medical or rehabilitation information only to the extent of the limitations of the order. If information has been produced that is outside of the limits designated in the order, the **office of administrative hearings** [BOARD OR THE BOARD'S DESIGNEE] shall direct the party in possession of the information to return the information to the employee as soon as practicable following the issuance of the order.

*** Sec. 41.** AS 23.30.110(a) is amended to read:

(a) Subject to the provisions of AS 23.30.105, a claim for **benefits or a petition for other relief shall** [COMPENSATION MAY] be filed with the **office of administrative hearings** [BOARD] in accordance with [ITS] regulations **adopted by the board** at any time after the first seven days of disability following an injury, or at any time after death**. The parties shall make requests with the office of administrative hearings on all matters, except those under AS 23.30.012 and 23.30.247** [, AND THE BOARD MAY HEAR AND DETERMINE ALL QUESTIONS IN RESPECT TO THE CLAIM].

*** Sec. 42.** AS 23.30.110(b) is amended to read:

(b) Within 10 days after a claim is filed**,** the **office of administrative hearings** [BOARD], in accordance with its regulations, shall notify the employer and any other person, other than the claimant, whom the **office of administrative hearings** [BOARD] considers an interested party that a claim has been filed. The notice may be served personally upon the employer or other person, or sent by registered **or electronic** mail.

*** Sec. 43.** AS 23.30.110(c) is amended to read:

(c) Before a hearing is scheduled, the party seeking a hearing shall file a request for a hearing together with an affidavit stating that the party has completed necessary discovery, obtained necessary evidence, and is prepared for the hearing. An opposing party shall have 10 days after the hearing request is filed to file a response. If a party opposes the hearing request, the **office of administrative hearings** [BOARD OR A BOARD DESIGNEE] shall**,** within 30 days of the filing of the opposition**,** conduct a **prehearing** [PRE-HEARING] conference and set a hearing date **consistent with affording both parties an opportunity to conduct discovery and adequate time to prepare for the hearing and to schedule witnesses**. If opposition is not filed, a hearing shall be scheduled **not** [NO] later than 60 days after the receipt of the hearing request. The **office of administrative hearings** [BOARD] shall give each party at least 10 days' notice of the hearing, either personally or by certified mail. After a hearing has been scheduled, the parties may not stipulate to change the hearing date or to cancel, postpone, or continue the hearing, except for good cause as determined by the **office of administrative hearings** [BOARD]. After completion of the hearing**,** the **office of administrative hearings** [BOARD] shall close the hearing record. If a settlement agreement is reached by the parties less than 14 days before the hearing, the parties shall appear at the time of the scheduled hearing **before the office of administrative hearings** to state the terms of the settlement agreement. Within 30 days after the hearing record closes, the **office of administrative hearings** [BOARD] shall file its decision. If the employer controverts a claim on a board-prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied.

*** Sec. 44.** AS 23.30.110(d) is amended to read:

(d) At the hearing the claimant and the employer may each present evidence in respect to the claim **or petition** and may be represented by any person authorized **by regulation of the board** [IN WRITING] for that purpose.

*** Sec. 45.** AS 23.30.110(e) is amended to read:

(e) The order rejecting the claim or making the award, referred to in this chapter as a compensation order, shall be filed in the office of the board, **or office of**

**administrative hearings consistent with this chapter,** and a copy of it shall be sent [BY REGISTERED MAIL] to the claimant and [TO THE] employer **electronically or by registered mail to** [AT] the last known address of each.

*** Sec. 46.** AS 23.30.110(h) is amended to read:

(h) The filing of a hearing request under (c) of this section suspends the running of the two-year time period specified in (c) of this section. However, if the employee subsequently requests a continuance of the hearing and the request is approved by the **office of administrative hearings** [BOARD], the granting of the continuance renders the request for hearing inoperative, and the two-year time period specified in (c) of this section continues to run again from the date of the [BOARD'S] notice **by the office of administrative hearings** to the employee of the [BOARD'S] granting **by the office of administrative hearings** of the continuance and of its effect. If the employee fails to again request a hearing before the conclusion of the two-year time period in (c) of this section, the claim is denied.

*** Sec. 47.** AS 23.30.115 is amended to read:

**Sec. 23.30.115. Attendance and fees of witnesses.** (a) A person is not required to attend as a witness in a proceeding before **the office of administrative hearings or** the board at a place more than 100 miles from the person's place of residence, unless the person's lawful mileage and fee for one day's attendance is first paid or tendered to the person; but the testimony of a witness may be taken by deposition or interrogatories according to the Rules of Civil Procedure.

(b) A witness summoned in a proceeding before **the office of administrative hearings or** the board or whose deposition is taken shall receive the same fees and mileage as a witness in the superior court.

*** Sec. 48.** AS 23.30.120(a) is amended to read:

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

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

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

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

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

*** Sec. 49.** AS 23.30.120(b) is amended to read:

(b) If delay in giving notice is excused by the **office of administrative hearings** [BOARD] under AS 23.30.100(d)(2), the burden of proof of the validity of the claim shifts to the employee notwithstanding the provisions of (a) of this section.

*** Sec. 50.** AS 23.30.120 is amended by adding new subsections to read:

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

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

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

*** Sec. 51.** AS 23.30.122 is amended to read:

**Sec. 23.30.122. Credibility of witnesses. Only the office of administrative hearings and the** [THE] board **have the** [HAS THE SOLE] power to determine the credibility of a witness. A finding by **the office of administrative hearings or** the board concerning the weight to be accorded a witness's testimony, including medical testimony and reports, is conclusive even if the evidence is conflicting or susceptible to contrary conclusions. The findings of **the office of administrative hearings and** the board are subject to the same standard of review as a jury's finding in a civil

action.

*** Sec. 52.** AS 23.30.122 is amended by adding new subsections to read:

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

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

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

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

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

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

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

*** Sec. 53.** AS 23.30.125(a) is amended to read:

(a) A compensation order becomes effective when filed with the office of

**administrative hearings** [THE BOARD] as provided in AS 23.30.110, and, unless proceedings to reconsider, suspend, or set aside the order are instituted as provided in this chapter, the order becomes final on the 31st day after it is filed.

*** Sec. 54.** AS 23.30.125(b) is amended to read:

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

*** Sec. 55.** AS 23.30.125(c) is amended to read:

(c) If a compensation order is not in accordance with law or fact, the order may be suspended or set aside, in whole or in part, through proceedings in the commission brought by a party in interest against all other parties to the proceedings before the **office of administrative hearings** [BOARD]. The payment of the amounts required by an award may not be stayed pending a final decision in the proceeding unless, upon application for a stay, the commission, on hearing, after not less than three days' notice to the parties in interest, allows the stay of payment, in whole or in part, where the party filing the application would otherwise suffer irreparable damage. Continuing future periodic compensation payments may not be stayed without a showing by the appellant of irreparable damage and the existence of the probability of the merits of the appeal being decided adversely to the recipient of the compensation payments. The order of the commission allowing a stay must contain a specific finding, based **on** [UPON] evidence submitted to the commission and identified by reference to the evidence, that irreparable damage would result to the party applying for a stay and specifying the nature of the damage.

*** Sec. 56.** AS 23.30.127(a) is amended to read:

(a) A party in interest may appeal a compensation order issued by the board **or the office of administrative hearings** to the commission within 30 days after the compensation order is filed [WITH THE OFFICE OF THE BOARD] under AS 23.30.110. The director may intervene in an appeal. If a party in interest is not represented by counsel and the compensation order concerns an unsettled question of law, the director may file an appeal to obtain a ruling on the question by the commission.

*** Sec. 57.** AS 23.30.127(e) is amended to read:

(e) If a request for reconsideration of a [BOARD] decision **of the board or the office of administrative hearings** was timely filed with the office of **administrative hearings or** the board, the notice of appeal must be filed within 30 days after the reconsideration decision is mailed to the parties or the date the request for reconsideration is considered denied in the absence of any action on the request, whichever is earlier.

*** Sec. 58.** AS 23.30.128(a) is amended to read:

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

*** Sec. 59.** AS 23.30.128(b) is amended to read:

(b) The commission may review discretionary actions, findings of fact, and conclusions of law by the board **or the office of administrative hearings** in hearing, determining, or otherwise acting on a compensation claim or petition. The [BOARD'S] findings **of the board or the office of administrative hearings** regarding the credibility of testimony of a witness before the board **or the office of administrative hearings** are binding on the commission. The [BOARD'S] findings of fact **of the board or the office of administrative hearings** shall be upheld by the commission if supported by substantial evidence in light of the whole record. In

reviewing questions of law and procedure, the commission shall exercise its independent judgment.

*** Sec. 60.** AS 23.30.129(a) is amended to read:

(a) Notwithstanding the provisions of AS 44.62.560, orders of **the office of administrative hearings and** the commission **issued under this chapter** may not be appealed to the superior court. Consistent with AS 22.05.010(b), final decisions of the commission may be appealed to the supreme court, and other orders may be reviewed by the supreme court as provided by the Alaska Rules of Appellate Procedure.

*** Sec. 61.** AS 23.30.130 is amended to read:

**Sec. 23.30.130. Modification of awards.** (a) Upon [ITS OWN INITIATIVE, OR UPON] the application of any party in interest on the ground of a change in conditions, including, for the purposes of AS 23.30.175, a change in residence, or because of a mistake in its determination of a fact, the board **or the office of administrative hearings** may, before one year after the date of the last payment of compensation benefits under AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, whether or not a compensation order has been issued, or before one year after the rejection of a claim, review a compensation case under the procedure prescribed **with** [IN] respect **to** [OF] claims in AS 23.30.110. Under AS 23.30.110**,** the board **or the office of administrative hearings** may issue a new compensation order **that** [WHICH] terminates, continues, reinstates, increases, or decreases the compensation, or award compensation.

(b) A new order does not affect compensation previously paid, except that an award increasing the compensation rate may be made effective from the date of the injury, and if part of the compensation due or to become due is unpaid, an award decreasing the compensation rate may be made effective from the date of the injury, and payment made earlier in excess of the decreased rate shall be deducted from the unpaid compensation, in the manner the board **or the office of administrative hearings** determines.

*** Sec. 62.** AS 23.30.135 is amended to read:

**Sec. 23.30.135. Procedure before the board and the office of administrative hearings.** (a) In making an investigation or inquiry or conducting a

hearing, the board **or the office of administrative hearings** is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter. The board **or the office of administrative hearings** may make its investigation or inquiry or conduct its hearing in the manner by which it may best ascertain the rights of the parties. Declarations of a deceased employee concerning the injury in respect to which the investigation or inquiry is being made or the hearing conducted shall be received in evidence and are, if corroborated by other evidence, sufficient to establish the injury.

(b) All testimony given during a hearing before the board **and the office of administrative hearings** shall be recorded, but need not be transcribed unless further review is initiated. Hearings before the board **and the office of administrative hearings** shall be open to the public.

*** Sec. 63.** AS 23.30.145 is repealed and reenacted to read:

**Sec. 23.30.145. Attorney fees.** (a) Fees for legal services rendered with respect to a claim are not valid unless approved by the office of administrative hearings. Except as provided under (b) of this section, attorney fees may not exceed the following percentage of the contested amount of compensation benefits secured as a result of a claim filed by an attorney:

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

(2) 30 percent of the amount awarded by the office of administrative hearings after a hearing or upon appeal to the commission;

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

(b) If a written offer to settle an issue pending before the office of administrative hearings is made at least 30 days before a hearing on the claim, for purposes of calculating the amount of attorney fees to be paid under (a) of this section, only the amount of benefits awarded to the employee above the amount specified in the offer to settle may be considered. If multiple issues are pending before the office of administrative hearings, the offer to settle must address each issue and clearly state whether or not the offer on each issue is severable. Any written offer to settle must be kept confidential and not disclosed to the office of administrative hearings until after

the final decision on the merits of the case has been decided. After the final decision on the merits of the case has been issued, the parties shall file the offer to settle with the office of administrative hearings so that the office of administrative hearings can award appropriate attorney fees and costs.

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

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

*** Sec. 64.** AS 23.30.155(b) is amended to read:

(b) The first installment of compensation becomes due on the 14th day after the employer has knowledge of the injury or death. On this date all compensation then due shall be paid. Subsequent compensation shall be paid in installments, every 14 days, except where the **office of administrative hearings** [BOARD] determines that payment in installments should be made monthly or at some other period.

*** Sec. 65.** AS 23.30.155(j) is amended to read:

(j) If an employer has made advance payments or overpayments of compensation, the employer is entitled to be reimbursed by withholding up to 20 percent out of each unpaid installment or installments of compensation due. More than 20 percent of unpaid installments of compensation due may be withheld from an employee

**(1) when the only benefit remaining is a lump-sum payment of permanent partial impairment benefits; or**

**(2) upon approval of the office of administrative hearings** [ONLY ON APPROVAL OF THE BOARD].

*** Sec. 66.** AS 23.30.155(m) is amended to read:

(m) On or before March 1 of each year, the insurer or adjuster shall file a verified annual report on a form prescribed by the director stating the total amount of all compensation by type, the number of claims received and the percentage controverted, medical and related benefits, vocational rehabilitation expenses, legal fees, including a separate total of fees paid to attorneys and fees paid for the other costs of litigation, and penalties paid on all claims during the preceding calendar year.

If the annual report is timely and complete when received by the division and provides accurate information about each category of payments, the director shall review the timeliness of the insurer's or adjuster's reports filed during the preceding year under (c) of this section. If, during the preceding year, the insurer or adjuster filed at least 99 percent of the reports on time, the penalties assessed under (c) of this section shall be waived. If, during the preceding year, the insurer or adjuster filed at least 97 percent of the reports on time, 75 percent of the penalties assessed under (c) of this section shall be waived. If, during the preceding year, the insurer or adjuster filed 95 percent of the reports on time, 50 percent of the penalties assessed under (c) of this section shall be waived. If, during the preceding year, the insurer's or adjuster's reports have not been filed on time at least 95 percent of the time, none of the penalties assessed under (c) of this section shall be waived. The penalties that are not waived are due and payable when the insurer or adjuster receives notification from the director regarding the timeliness of the reports. If the annual report is not filed by March 1 of each year, the insurer or adjuster shall pay a civil penalty of $100 for the first day the annual report is late and $10 for each additional day the report is late. [IF THE ANNUAL REPORT IS INCOMPLETE WHEN FILED, THE INSURER OR ADJUSTER SHALL PAY A CIVIL PENALTY OF $1,000.]

*** Sec. 67.** AS 23.30.155(o) is amended to read:

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

*** Sec. 68.** AS 23.30.175(a) is amended to read:

(a) The weekly rate of compensation for disability or death may not exceed the maximum compensation rate, may not be less than 22 percent of the maximum compensation rate, and initially may not be less than $110; however, if the **office of administrative hearings** [BOARD] determines that the employee's spendable weekly wages are less than $110 a week as computed under AS 23.30.220, or less than 22 percent of the maximum compensation rate a week in the case of an employee who

has furnished documentary proof of the employee's wages, it shall issue an order adjusting the weekly rate of compensation to a rate equal to the employee's spendable weekly wages. If the employer can verify that the employee's spendable weekly wages are less than 22 percent of the maximum compensation rate, the employer may adjust the weekly rate of compensation to a rate equal to the employee's spendable weekly wages without an order of the **office of administrative hearings** [BOARD]. If the employee's spendable weekly wages are greater than 22 percent of the maximum compensation rate, but 80 percent of the employee's spendable weekly wages is less than 22 percent of the maximum compensation rate, the employee's weekly rate of compensation shall be 22 percent of the maximum compensation rate. Prior payments made in excess of the adjusted rate shall be deducted from the unpaid compensation in the manner the **office of administrative hearings** [BOARD] determines. In any case, the employer shall pay timely compensation. In this subsection, "maximum compensation rate" means 120 percent of the average weekly wage, calculated under (d) of this section, applicable on the date of injury of the employee.

*** Sec. 69.** AS 23.30.180 is amended to read:

**Sec. 23.30.180. Permanent total disability.** (a) In case of total disability adjudged to be permanent**,** 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the total disability **until the employee begins receiving social security, pension, or other retirement benefits**. If a permanent partial disability award has been made before a permanent total disability determination, permanent total disability benefits must be reduced by the amount of the permanent partial disability award, adjusted for inflation, in a manner determined by the board. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two of them, in the absence of conclusive proof to the contrary, constitutes permanent total disability. In all other cases permanent total disability is determined in accordance with the facts. In making this determination the market for the employee's services shall be

(1) area of residence;

(2) area of last employment;

(3) the state of residence; and

(4) the State of Alaska.

(b) Failure to achieve remunerative employability [AS DEFINED IN AS 23.30.041(r)] does not, by itself, constitute permanent total disability.

*** Sec. 70.** AS 23.30.185 is amended to read:

**Sec. 23.30.185. Compensation for temporary total disability.** In case of disability total in character but temporary in quality, 80 percent of the injured employee's spendable weekly wages shall be paid to the employee during the continuance of the disability. Temporary total disability benefits may not be paid for any period of disability occurring after the date of medical stability **and for more than an aggregate total of 104 weeks for each claim**.

*** Sec. 71.** AS 23.30.190 is amended by adding a new subsection to read:

(e) An employee who returns to work for the same employer in a position that pays a wage equal to or greater than that paid at the time of injury is not eligible to receive permanent partial impairment benefits under this section.

*** Sec. 72.** AS 23.30.200(b) is amended to read:

(b) The wage-earning capacity of an injured employee is determined by the actual spendable weekly wage of the employee if the actual spendable weekly wage fairly and reasonably represents the wage-earning capacity of the employee. The **office of administrative hearings** [BOARD] may, in the interest of justice, fix the wage-earning capacity that is reasonable, having due regard to the nature of the injury, the degree of physical impairment, the usual employment, and other factors or circumstances in the case that may affect the capacity of the employee to earn wages in a disabled condition, including the effect of disability as it may naturally extend into the future.

*** Sec. 73.** AS 23.30.215(d) is amended to read:

(d) Compensation under this chapter to aliens not residents, or about to become nonresidents, of the United States or Canada is the same in amount as provided for residents, except that dependents in a foreign country are limited to widow or widower and child or children, or if there is no widow or widower and child or children, to surviving father or mother whom the employee has supported, either wholly or in part, for a period of one year before the date of injury. The **office of**

**administrative hearings** [BOARD], at its option, or upon the application of the insurance carrier, may commute all future installments of compensation to be paid to an alien dependent who is not a resident of the United States or Canada by paying or causing to be paid to the alien dependent one-half of the commuted amount of the future installments of compensation as determined by the **office of administrative hearings** [BOARD].

*** Sec. 74.** AS 23.30.220(a) is amended to read:

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

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

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

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

(4) if at the time of injury the employee's earnings are calculated by the day, by the hour, or by the output of the employee, then the employee's gross weekly earnings are 1/50 of the total wages that the employee earned from all occupations during either of the two calendar years immediately preceding the injury, whichever is most favorable to the employee;

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

(6) if at the time of injury the employee's earnings are calculated by the week under (1) of this subsection or by the month under (2) of this subsection and the employment is exclusively seasonal or temporary, then the gross weekly earnings are 1/50 of the total wages that the employee has earned from all occupations during the

12 calendar months immediately preceding the injury;

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

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

(9) if the employee is injured while performing duties as a volunteer ambulance attendant, volunteer police officer, or volunteer firefighter, then, notwithstanding (1) - (6) of this subsection, the gross weekly earnings for calculating compensation shall be the minimum gross weekly earnings paid a full-time ambulance attendant, police officer, or firefighter employed in the political subdivision where the injury occurred, or, if the political subdivision has no full-time ambulance attendants, police officers, or firefighters, at a reasonable figure previously set by the political subdivision to make this determination, but in no case may the gross weekly earnings for calculating compensation be less than the minimum wage computed on the basis of 40 hours work **a** [PER] week;

(10) if an employee is entitled to compensation under AS 23.30.180 and the **office of administrative hearings** [BOARD] determines that calculation of the employee's gross weekly earnings under (1) - (7) of this subsection does not fairly reflect the employee's earnings during the period of disability, the **office of administrative hearings** [BOARD] shall determine gross weekly earnings by considering the nature of the employee's work, work history, and resulting disability, but compensation calculated under this paragraph may not exceed the employee's gross weekly earnings at the time of injury.

*** Sec. 75.** AS 23.30.230(a) is amended to read:

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

(1) a part-time baby-sitter;

(2) a cleaning person;

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

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

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

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

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

(8) a participant in the Alaska temporary assistance program (AS 47.27) who is engaged in work activities required under AS 47.27.035 other than subsidized or unsubsidized work or on-the-job training;

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

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

(11) a transportation network company driver who provides a

prearranged ride or is otherwise logged onto the digital network of a transportation network company as a driver**; and**

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

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

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

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

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

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

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

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

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

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

**(iii) intending to file business or self-employment tax returns for the current tax year to report profit or income earned for the same type of services provided under the contract if the**

**person's business was not operating in the previous tax year; and**

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

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

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

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

*** Sec. 76.** AS 23.30.250(b) is amended to read:

(b) If the **office of administrative hearings** [BOARD], after a hearing, finds that a person has obtained compensation, medical treatment, or another benefit provided under this chapter, or that a provider has received a payment, by knowingly making a false or misleading statement or representation for the purpose of obtaining that benefit, the **office of administrative hearings** [BOARD] shall order that person to make full reimbursement of the cost of all benefits obtained. Upon entry of an order authorized under this subsection, the **office of administrative hearings** [BOARD] shall also order that person to pay all reasonable costs and attorney fees incurred by the employer and the employer's carrier in obtaining an order under this section and in defending any claim made for benefits under this chapter. If a person fails to comply with an order of the **office of administrative hearings** [BOARD] requiring reimbursement of compensation and payment of costs and attorney fees, the employer may declare the person in default and proceed to collect any sum due as provided

under AS 23.30.170(b) and (c).

*** Sec. 77.** AS 23.30.260(a) is amended to read:

(a) A person is guilty of a misdemeanor and, upon conviction, is punishable for each offense by a fine of not more than $1,000 or by imprisonment for not more than one year, or by both, if the person

(1) receives a fee, other consideration, or a gratuity on account of any services rendered for representation or advice with respect to a claim, unless the consideration or gratuity is approved by the **office of administrative hearings** [BOARD] or the court; or

(2) makes it a business to solicit employment for a lawyer or for the person making the solicitation with respect to a claim or award for compensation.

*** Sec. 78.** AS 23.30.395(2) is amended to read:

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

*** Sec. 79.** AS 23.30.395(3) is amended to read:

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

(A) a licensed medical doctor;

(B) a licensed doctor of osteopathy;

(C) a licensed dentist or dental surgeon;

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

(E) a licensed advanced practice registered nurse; or

(F) a licensed chiropractor;

*** Sec. 80.** AS 23.30.395 is amended by adding a new paragraph to read:

(43) "office of administrative hearings" means the office of administrative hearings established under AS 44.64.010.

*** Sec. 81.** AS 44.64.030(a) is amended by adding a new paragraph to read:

(51) AS 23.30 (Alaska Workers' Compensation Act).

*** Sec. 82.** AS 23.30.005(f), 23.30.095(b), 23.30.095(i), 23.30.095(k), 23.30.110(g), 23.30.135(a), 23.30.155(h), 23.30.224(b), 23.30.224(e), and 23.30.224(f) are repealed.

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

APPLICABILITY. Sections 6 - 82 of this Act apply to claims for injuries filed on or after the effective dates of those sections.

*** Sec. 84.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: CLAIMS. (a) The Alaska Workers' Compensation Board shall hear and decide claims filed under AS 23.30.110 before the effective date of secs. 41 - 46 of this Act as that statute read on the day before the effective date of secs. 41 - 46 of this Act.

(b) A claim for benefits or petition for other relief under AS 23.30 that has not been filed with the Alaska Workers' Compensation Board before the effective date of secs. 41 - 46 of this Act shall be filed with the office of administrative hearings (AS 44.64.010) after the effective date of secs. 41 - 46 of this Act in accordance with AS 23.30.110, as amended by secs. 41 - 46 of this Act.

*** Sec. 85.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: REGULATIONS. (a) The Department of Labor and Workforce Development may adopt regulations necessary to implement the changes made by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the sections being implemented.

(b) The chief administrative law judge of the office of administrative hearings (AS 44.64.010) may adopt regulations necessary to establish procedures for administrative hearings required by the changes made by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the sections being implemented.

*** Sec. 86.** Section 85 of this Act takes effect immediately under AS 01.10.070(c).

*** Sec. 87.** Section 1 of this Act takes effect on the effective date of Sec. 38, ch. 2, SSSLA 2017.