

SENATE CS FOR CS FOR HOUSE BILL NO. 79()

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR**A BILL****FOR AN ACT ENTITLED**

1 "An Act relating to workers' compensation; relating to the second injury fund; relating
2 to service fees and civil penalties for the workers' safety programs and the workers'
3 compensation program; relating to incorporation of reference materials in workers'
4 compensation regulations; excluding independent contractors from workers'
5 compensation coverage; establishing the circumstances under which certain
6 nonemployee executive corporate officers and members of limited liability companies
7 may obtain workers' compensation coverage; establishing a legislative workers'
8 compensation working group; and providing for an effective date."

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

10 * **Section 1.** AS 23.05.067(a) is amended to read:

11 (a) Each insurer providing workers' compensation insurance and each
12 employer who is self-insured or uninsured for purposes of AS 23.30 in this state shall

1 pay an annual service fee to the department for the administrative expenses of the state
2 for workers' safety programs under AS 18.60 and the workers' compensation program
3 under AS 23.30 as follows:

4 (1) for each employer,

5 (A) except as provided in (b) of this section, the service fee
6 shall be paid each year to the department at the time that the annual report is
7 required to be filed under AS 23.30.155(m) or (n); and

8 (B) the service fee is 2.9 percent of all payments reported to the
9 division of workers' compensation in the department under AS 23.30.155(m)
10 or (n), except second injury fund payments; and

11 (2) for each insurer, the director of the division of insurance shall,
12 under (e) of this section, deposit from funds received from the insurer under
13 AS 21.09.210 a service fee of 2.5 [1.82] percent of the direct premium income for
14 workers' compensation insurance received by the insurer during the year ending on the
15 preceding December 31, subject to all the deductions specified in AS 21.09.210(b).

16 * **Sec. 2.** AS 23.05.067(e) is amended to read:

17 (e) Annual service fees and civil penalties collected under this section and
18 AS 23.30.155(c) and (m) shall be deposited in the workers' safety and compensation
19 administration account in the state treasury. Under AS 37.05.146(c), the service fees
20 and civil penalties shall be accounted for separately, and appropriations from the
21 account are not made from the unrestricted general fund. The legislature may
22 appropriate money from the account for expenditures by the department for necessary
23 costs incurred by the department in the administration of the workers' safety programs
24 contained in AS 18.60 and of the Alaska Workers' Compensation Act contained in
25 AS 23.30. Nothing in this subsection creates a dedicated fund or dedicates the money
26 in the account for a specific purpose. Money deposited in the account does not lapse at
27 the end of a fiscal year unless otherwise provided by an appropriation.

28 * **Sec. 3.** AS 23.30.070(a) is amended to read:

29 (a) Within 10 days from the date the employer has knowledge of an injury or
30 death or from the date the employer has knowledge of a disease or infection, alleged
31 by the employee or on behalf of the employee to have arisen out of and in the course

1 of the employment, the employer shall file with [SEND TO] the division a report
2 setting out

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

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

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

13 * **Sec. 5.** AS 23.30.070(d) is amended to read:

14 (d) Filing [MAILING] of the report with [AND A COPY TO] the division in
15 a format prescribed by the director [IN A STAMPED ENVELOPE], within the
16 time prescribed in (a) or (b) of this section, is compliance with this section.

17 * **Sec. 6.** AS 23.30.070(f) is amended to read:

18 (f) An employer who fails or refuses to file [SEND] a report required of the
19 employer by this section or who fails or refuses to file [SEND] the report required by
20 (a) of this section within the time required shall, if so required by the board, pay the
21 employee or the legal representative of the employee or other person entitled to
22 compensation by reason of the employee's injury or death an additional award equal to
23 20 percent of the amounts that were unpaid when due. The award shall be against
24 either the employer or the insurance carrier, or both.

25 * **Sec. 7.** AS 23.30.098 is amended to read:

26 **Sec. 23.30.098. Regulations.** Under AS 44.62.245(a)(2), in adopting or
27 amending regulations under this chapter, the department may incorporate future
28 amended versions of a document or reference material incorporated by reference if the
29 document or reference material is one of the following:

30 (1) Current Procedural Terminology Codes, produced by the American
31 Medical Association;

(2) Healthcare Common Procedure Coding System, produced by the **federal Centers for Medicare and Medicaid Services** [AMERICAN MEDICAL ASSOCIATION];

(3) International Classification of Diseases, published by the World Health Organization [AMERICAN MEDICAL ASSOCIATION];

(4) Relative Value Guide, produced by the American Society of Anesthesiologists;

(5) Diagnostic and Statistical Manual of Mental Disorders, produced by the American Psychiatric Association;

(6) Current Dental Terminology, published by the American Dental Association;

(7) Resource-Based Relative Value Scale, produced by the federal Centers for Medicare and Medicaid Services;

(8) Ambulatory Payment Classifications, produced by the federal Centers for Medicare and Medicaid Services; [OR]

(9) Medicare Severity Diagnosis Related Groups, produced by the federal Centers for Medicare and Medicaid Services;

**(10) International Classification of Diseases, Tenth Revision,
Clinical Modification, developed by the National Center for Health Statistics;**

(11) Clinical Diagnostic Laboratory Services, produced by the federal Centers for Medicare and Medicaid Services;

(12) Durable Medical Equipment, Prosthetics, Orthotics, and Supplies, produced by the federal Centers for Medicare and Medicaid Services;

(13) Payment Allowance Limits for Medicare Part B Drugs, Average Sale Price, produced by the federal Centers for Medicare and Medicaid Services; or

(14) Ambulance Fee Schedule, produced by the federal Centers for Medicare and Medicaid Services.

* **Sec. 8.** AS 23.30.100(a) is amended to read:

(a) Notice of an injury or death in respect to which compensation is payable under this chapter shall be given within 30 days after the date of such injury or death

1 [TO THE BOARD AND] to the employer.

2 * **Sec. 9.** AS 23.30.100(b) is amended to read:

3 (b) The notice must be in a format prescribed by the director and
4 [WRITING,] contain the name and address of the employee, a statement of the time,
5 place, nature, and cause of the injury or death, and authority to release records of
6 medical treatment for the injury or death, and be signed by the employee or by a
7 person on behalf of the employee, or, in case of death, by a person claiming to be
8 entitled to compensation for the death or by a person on behalf of that person.

9 * **Sec. 10.** AS 23.30.100(c) is amended to read:

10 (c) Notice shall be given [TO THE BOARD BY DELIVERING IT OR
11 SENDING IT BY MAIL ADDRESSED TO THE BOARD'S OFFICE, AND] to the
12 employer by delivering it to the employer or by sending it by mail addressed to the
13 employer at the employer's last known place of business. If the employer is a
14 partnership, the notice may be given to a partner, if a limited liability company, the
15 notice may be given to a member, or if a corporation, the notice may be given to an
16 agent or officer on [UPON] whom legal process may be served or who is in charge of
17 the business in the place where the injury occurred.

18 * **Sec. 11.** AS 23.30.155(a) is amended to read:

19 (a) Compensation under this chapter shall be paid periodically, promptly, and
20 directly to the person entitled to it, without an award, except where liability to pay
21 compensation is controverted by the employer. To controvert a claim, the employer
22 must file a notice, in a format [ON A FORM] prescribed by the director, stating

23 (1) that the right of the employee to compensation is controverted;

24 (2) the name of the employee;

25 (3) the name of the employer;

26 (4) the date of the alleged injury or death; and

27 (5) the type of compensation and all grounds on [UPON] which the
28 right to compensation is controverted.

29 * **Sec. 12.** AS 23.30.155(c) is amended to read:

30 (c) The insurer or adjuster shall notify the division in a format [AND THE
31 EMPLOYEE ON A FORM] prescribed by the director that the payment of

compensation has begun or has been increased, decreased, suspended, terminated, resumed, or changed in type. An initial report shall be filed not later than [WITH THE DIVISION AND SENT TO THE EMPLOYEE WITHIN] 28 days after the date of issuing the first payment of compensation. If, at any time, 21 days or more pass and no compensation payment is issued, a report notifying the division [AND THE EMPLOYEE] of the termination or suspension of compensation shall be filed not later than [WITH THE DIVISION AND SENT TO THE EMPLOYEE WITHIN] 28 days after the date the last compensation payment was issued. A report shall also be filed not later than [WITH THE DIVISION AND SENT TO THE EMPLOYEE WITHIN] 28 days after the date of issuing a payment increasing, decreasing, resuming, or changing the type of compensation paid. When the insurer or adjuster files a report, the division shall notify the employee of the payment or change in payment of compensation. If the division is [AND THE EMPLOYEE ARE] not notified within the 28 days prescribed by this subsection for reporting, the insurer or adjuster shall pay a civil penalty of \$100 for the first day plus \$10 for each day after the first day that the notice was not given. Total penalties under this subsection may not exceed \$1,000 for a failure to file a required report. Penalties assessed under this subsection are eligible for reduction under (m) of this section. A penalty assessed under this subsection after penalties have been reduced under (m) of this section shall be increased by 25 percent and shall bear interest at the rate established under AS 45.45.010.

* **Sec. 13.** AS 23.30.155(d) is amended to read:

(d) If the employer contests the right to compensation, the employer shall file with the division, in a format prescribed by the director, [AND SEND TO THE EMPLOYEE] a notice of contestation on or before the 21st day after the employer has knowledge of the alleged injury or death. If the employer contests the right to compensation after payments have begun, the employer shall file with the division, in a format prescribed by the director, [AND SEND TO THE EMPLOYEE] a notice of contestation not later than the date [WITHIN SEVEN DAYS AFTER] an installment of compensation payable without an award is due. When payment of temporary disability benefits is contested solely on the grounds that another

1 employer or another insurer of the same employer may be responsible for all or a
2 portion of the benefits, the most recent employer or insurer who is party to the claim
3 and who may be liable shall make the payments during the pendency of the dispute.
4 When a final determination of liability is made, any reimbursement required, including
5 interest at the statutory rate, and all costs and attorney fees incurred by the prevailing
6 employer, shall be made **not later than** [WITHIN] 14 days after the determination.

7 * **Sec. 14. AS 23.30.155(m)** is amended to read:

8 (m) On or before March 1 of each year, the insurer or adjuster shall file a
9 verified annual report **in a format** [ON A FORM] prescribed by the director stating
10 the total amount of all compensation by type, the number of claims received and the
11 percentage controverted, medical and related benefits, vocational rehabilitation
12 expenses, legal fees, including a separate total of fees paid to attorneys and fees paid
13 for the other costs of litigation, and penalties paid on all claims during the preceding
14 calendar year. If the annual report is timely and complete when received by the
15 division and provides accurate information about each category of payments, the
16 director shall review the timeliness of the insurer's or adjuster's reports filed during the
17 preceding year under (c) of this section. If, during the preceding year, the insurer or
18 adjuster filed at least 99 percent of the reports on time, the penalties assessed under (c)
19 of this section shall be waived. If, during the preceding year, the insurer or adjuster
20 filed at least 97 percent of the reports on time, 75 percent of the penalties assessed
21 under (c) of this section shall be waived. If, during the preceding year, the insurer or
22 adjuster filed 95 percent of the reports on time, 50 percent of the penalties assessed
23 under (c) of this section shall be waived. If, during the preceding year, the insurer's or
24 adjuster's reports have not been filed on time at least 95 percent of the time, none of
25 the penalties assessed under (c) of this section shall be waived. The penalties that are
26 not waived are due and payable when the insurer or adjuster receives notification from
27 the director regarding the timeliness of the reports. If the annual report is not filed by
28 March 1 of each year, the insurer or adjuster shall pay a civil penalty of \$100 for the
29 first day the annual report is late and \$10 for each additional day the report is late. If
30 the annual report is incomplete when filed, the insurer or adjuster shall pay a civil
31 penalty of \$1,000.

1 * **Sec. 15.** AS 23.30.205(e) is amended to read:

2 (e) An employer or the employer's carrier shall notify the commissioner of
3 labor and workforce development of any possible claim against the second injury fund
4 as soon as practicable, but in no event later than 100 weeks after the employer or the
5 employer's carrier has knowledge of the injury or death **or after the deadline for**
6 **submitting a claim for reimbursement under (g) of this section.**

7 * **Sec. 16.** AS 23.30.205 is amended by adding a new subsection to read:

8 (g) An employer or the employer's insurance carrier shall satisfy all
9 requirements for reimbursement under this section, including notice of any possible
10 claim and payment of compensation in excess of 104 weeks, before submitting a claim
11 for reimbursement to the second injury fund. Notwithstanding (a) and (b) of this
12 section, a claim for reimbursement may not be submitted for an injury or death that
13 occurs after August 31, 2018, and must be submitted before October 1, 2020. An
14 employer that qualifies for reimbursement under this section shall continue to receive
15 reimbursement payments on claims accepted by the fund, or ordered by the board,
16 until the fund's liabilities for the claim are extinguished.

17 * **Sec. 17.** AS 23.30.230(a) is amended to read:

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

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

20 (2) a cleaning person;

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

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

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

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

28 (7) an individual who drives a taxicab whose compensation and written
29 contractual arrangement is as described in AS 23.10.055(a)(13), unless the hours
30 worked by the individual or the areas in which the individual may work are restricted
31 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 section 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. 18.** AS 23.30.240 is repealed and reenacted to read:

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

(a) Except as provided in (b) of this section, an executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation or a member of a limited liability company organized under AS 10.50 is not an employee of the business entity under this chapter if the executive officer or member owns at least 10 percent of the business entity. Except as provided in (b) of this section, an executive officer of a municipal corporation or charitable, religious, educational, or other nonprofit corporation is not an employee of the corporation under this chapter.

(b) Any type of corporation or limited liability company may bring an executive officer or a member exempted under (a) of this section within the coverage of the business entity's insurance contract by specifically including the executive officer or member in the contract of insurance. The election to bring the executive officer or member within the business entity's coverage continues in force for the period during which the contract of insurance is in effect. During that period, an executive officer or a member brought within the coverage of the insurance contract is an employee of the business entity under this chapter.

* **Sec. 19.** AS 23.30.247(c) is amended to read:

(c) This section may not be construed to prohibit an employer from requiring a prospective employee to fill out a preemployment questionnaire or application regarding the person's prior health or disability history as long as it is meant to [EITHER DOCUMENT WRITTEN NOTICE FOR SECOND INJURY FUND REIMBURSEMENT UNDER AS 23.30.205(c) OR] determine whether the employee has the physical or mental capacity to meet the documented physical or mental demands of the work.

* **Sec. 20.** AS 23.30.260 is amended by adding a new subsection to read:

(c) Notwithstanding AS 23.30.145 and (a) of this section, approval of a fee is

1 not required if the parties who reach an agreement in regard to a claim for injury or
2 death under this chapter agree to the payment of attorney fees, and the agreement in
3 regard to a claim for injury or death does not require board approval under
4 AS 23.30.012.

5 * **Sec. 21.** AS 23.30.395(19) is repealed and reenacted to read:

6 (19) "employee" means a person who is not an independent contractor
7 as described in AS 23.30.230 and who, under a contract of hire, express or implied, is
8 employed by an employer as defined in (20) of this section;

9 * **Sec. 22.** AS 23.30.040(f) and 23.30.155(q) are repealed.

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

12 LEGISLATIVE WORKERS' COMPENSATION WORKING GROUP. (a) The
13 legislative workers' compensation working group is established to

14 (1) review the state's workers' compensation system, including the procedures,
15 compensable injuries, treatment guidelines, monitoring of controlled substance prescription
16 and use, and the burden of proof to support a claim;

17 (2) consult with representatives of the following stakeholders:

18 (A) the Department of Commerce, Community, and Economic
19 Development;

20 (B) the Department of Labor and Workforce Development;

21 (C) the medical services review committee established under
22 AS 23.30.095(j);

23 (D) organized labor;

24 (E) school district administrators; and

25 (F) the state's business community; and

26 (3) recommend improvements to laws relating to workers' compensation.

27 (b) The working group consists of six members, three of whom are members of the
28 house of representatives appointed by the speaker of the house of representatives, and three of
29 whom are members of the senate appointed by the president of the senate. The speaker of the
30 house of representatives and the president of the senate shall each appoint one member from
31 each body as a co-chair.

(c) The working group shall meet in the interim between sessions and prepare a report of its findings, including draft legislation, during the First Regular Session of the Thirty-First Alaska State Legislature. The working group shall submit the report, draft legislation, and any other accompanying reports to the governor, senate secretary, and chief clerk of the house of representatives for distribution to all legislators on or before December 1, 2018, and shall notify the legislature that the report is available.

(d) The working group may make any additional reports as it considers necessary.

(e) The working group terminates January 31, 2019.

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

APPLICABILITY. (a) AS 23.30.205(e), as amended by sec. 15 of this Act, and AS 23.30.205(g), added by sec. 16 of this Act, apply to notice of any possible claims or claims for reimbursement submitted on or after the effective date of secs. 15 and 16 of this Act.

(b) Notwithstanding AS 23.30.240, as repealed and reenacted by sec. 18 of this Act, the terms of an insurance policy or contract in effect before the effective date of sec. 18 of this Act shall comply with AS 23.30.240, as that section read on the day before the effective date of sec. 18 of this Act. AS 23.30.240, as repealed and reenacted by sec. 18 of this Act, applies to an insurance policy or contract entered into or renewed on or after the effective date of sec. 18 of this Act.

* **Sec. 25.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: SATISFACTION OF SECOND INJURY FUND CLAIMS. Subject to appropriation, the balance of the second injury fund created under AS 23.30.040 lapses into the general fund when all liability for accepted claims under AS 23.30.205 to the second injury fund and claims ordered to be paid from that fund have been satisfied.

* **Sec. 26.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: REGULATIONS. The Department of Labor and Workforce Development and the Alaska Workers' Compensation Board may adopt regulations to implement secs. 1 - 22 of this Act. The regulations take effect under AS 44.62

1 (Administrative Procedure Act), but not before the effective date of the law implemented by
2 the regulation.

3 * **Sec. 27.** Sections 15, 16, 23, and 26 of this Act take effect immediately under
4 AS 01.10.070(c).

5 * **Sec. 28.** Section 19 of this Act takes effect September 1, 2018.

6 * **Sec. 29.** Section 18 of this Act takes effect August 1, 2019.