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Wallace
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CS FOR HOUSE BILL NO. 79(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

**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; repealing the second injury fund upon**
2 **satisfaction of claims; relating to service fees and civil penalties for the workers' safety**
3 **programs and the workers' compensation program; relating to the liability of business**
4 **entities and certain persons for payment of workers' compensation benefits and civil**
5 **penalties; relating to civil penalties for underinsuring or failing to insure or provide**
6 **security for workers' compensation liability; relating to preauthorization and timely**
7 **payment for medical treatment and services provided to injured employees; relating to**
8 **incorporation of reference materials in workers' compensation regulations; relating to**
9 **proceedings before the Alaska Workers' Compensation Board; relating to the**
10 **authorization of the workers' compensation benefits guaranty fund to claim a lien;**
11 **excluding independent contractors from workers' compensation coverage; establishing**
12 **the circumstances under which certain nonemployee executive corporate officers and**

members of limited liability companies may obtain workers' compensation coverage; relating to the duties of injured employees to report income or work; relating to misclassification of employees and deceptive leasing; defining 'employee'; relating to the Alaska Workers' Compensation Board's approval of attorney fees in a settlement agreement; relating to reemployment benefits; and providing for an effective date."

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

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

(a) Each insurer providing workers' compensation insurance and each employer who is self-insured or uninsured for purposes of AS 23.30 in this state shall pay an annual service fee to the department for the administrative expenses of the state for workers' safety programs under AS 18.60 and the workers' compensation program under AS 23.30 as follows:

(1) for each employer,

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

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

(2) for each insurer, the director of the division of insurance shall,

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

* **Sec. 2.** AS 23.05.067(a), as amended by sec. 1 of this Act, is amended to read:

(a) Each insurer providing workers' compensation insurance and each employer who is self-insured or uninsured for purposes of AS 23.30 in this state shall pay an annual service fee to the department for the administrative expenses of the state for workers' safety programs under AS 18.60 and the workers' compensation program

under AS 23.30 as follows:

(1) for each employer,

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

(B) the service fee is 2.9 percent of all payments reported to the division of workers' compensation in the department under AS 23.30.155(m) or (n) [, EXCEPT SECOND INJURY FUND PAYMENTS]; and

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

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

(e) Annual service fees and civil penalties collected under this section **and AS 23.30.155(c) and (m)** 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 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 23.30.015(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

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 board, and the present value of the cost of all benefits to be furnished later under AS 23.30.095 as estimated by the 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. 5.** AS 23.30.070(a) is amended to read:

(a) Within 10 days from the date the employer has knowledge of an injury or death or from the date the employer has knowledge of a disease or infection, alleged by the employee or on behalf of the employee to have arisen out of and in the course of the employment, the employer shall file with [SEND TO] the division a report setting out

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

(2) the name, address, and occupation of the employee;

(3) the cause and nature of the alleged injury or death;

(4) the year, month, day, and hour when and the particular locality where the alleged injury or death occurred; and

(5) the other information that the division may require.

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

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

1 * **Sec. 7.** AS 23.30.070(d) is amended to read:

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

5 * **Sec. 8.** AS 23.30.070(f) is amended to read:

6 (f) An employer who fails or refuses to **file** [SEND] a report required of the
7 employer by this section or who fails or refuses to **file** [SEND] the report required by
8 (a) of this section within the time required shall, if so required by the board, pay the
9 employee or the legal representative of the employee or other person entitled to
10 compensation by reason of the employee's injury or death an additional award equal to
11 20 percent of the amounts that were unpaid when due. The award shall be against
12 either the employer or the insurance carrier, or both.

13 * **Sec. 9.** AS 23.30.075(b) is repealed and reenacted to read:

14 (b) If an employer is a corporation, limited liability company, or limited
15 liability partnership, or a person who, at the time of an employee's injury or death, has
16 at least a 10 percent ownership in the business entity, is actively in charge of the
17 operations of the business entity, or has the authority to insure the business entity or
18 apply for a certificate of self insurance, is personally, jointly, and severally liable, with
19 the business entity, for the payment of

20 (1) all compensation or other benefits for which the business entity is
21 liable under this chapter if the business entity is not insured or qualified as a self-
22 insurer at the time of the injury or death; and

23 (2) a civil penalty under AS 23.30.080 for which the business entity is
24 liable.

25 * **Sec. 10.** AS 23.30.080(e) is amended to read:

26 (e) If a representative of the department investigates an employer's failure to
27 file the evidence of compliance required by AS 23.30.085 and, after investigation,
28 there is substantial evidence that the employer failed to insure or provide security as
29 required by AS 23.30.075, the representative shall inform the employer. The
30 representative may request the director to issue a stop order prohibiting the use of
31 employee labor by the employer until the employer insures or provides security as

required by AS 23.30.075. The director may issue a stop order, without a hearing, based on the representative's investigation. The director shall dissolve a stop order issued under this subsection upon receipt of substantial evidence that the employer is insured or has provided security as required by AS 23.30.075(a). If an employer fails to comply with a stop order issued under this subsection, the division may [PETITION THE BOARD TO ASSESS A CIVIL PENALTY. THE BOARD MAY] assess a civil penalty of \$1,000 a day. An employer who is assessed a penalty under this subsection may not obtain a public contract with the state or a political subdivision of the state for the three years following violation of the stop order.

* **Sec. 11.** AS 23.30.080(f) is repealed and reenacted to read:

(f) If, after an investigation, the division finds substantial evidence that an employer has failed to insure or provide security as required by AS 23.30.075 or is underinsured as a result of misclassifying employees or engaging in deceptive leasing practices as defined in AS 23.30.250, the division may assess a civil penalty of up to three times the workers' compensation insurance premium that the employer would have paid if the employer had insured, provided the required security, or properly classified employees. The division shall calculate the premium based on the employer's payroll, including payments that would be considered wages if the employer had not misclassified employees or engaged in deceptive leasing practices under AS 23.30.250, and the assigned risk rates approved by the division of insurance in effect at the time the employer was uninsured or underinsured. The division shall apply aggravating and mitigating factors adopted in regulation to set the penalty amount. Notwithstanding AS 23.30.250(e), a civil penalty under this subsection may be assessed against an employer that misclassifies employees or engages in deceptive leasing practices, even if the employer does not do so knowingly and with the purpose of evading full payment for workers' compensation insurance premiums.

* **Sec. 12.** AS 23.30.080(g) is amended to read:

(g) **The** [IF AN EMPLOYER FAILS TO PAY A CIVIL PENALTY ORDER ISSUED UNDER (d), (e), OR (f) OF THIS SECTION WITHIN SEVEN DAYS AFTER THE DATE OF SERVICE OF THE ORDER UPON THE EMPLOYER, THE] director may declare **an** [THE] employer in default **if the employer fails to pay**

1 or contest a civil penalty assessed under this section not later than 30 days after
2 the date of service of notice on the employer, fails to pay a civil penalty not later
3 than 30 days after the board orders payment, or fails to pay a civil penalty in
4 accordance with the terms of a payment plan. The director shall file a certified copy
5 of the penalty order, notice, or payment plan, and declaration of default with the
6 clerk of the superior court. The court shall, upon the filing of the copy [OF THE
7 ORDER] and declaration, enter judgment for the amount declared in default if it is in
8 accordance with law. Any time [ANYTIME] after a declaration of default, the
9 attorney general shall, when requested to do so by the director, take appropriate action
10 to ensure collection of the defaulted payment. Review of the judgment may be had as
11 provided under the Alaska Rules of Civil Procedure. Final proceedings to execute the
12 judgment may be had by writ of execution.

13 * **Sec. 13.** AS 23.30.080 is amended by adding new subsections to read:

14 (h) If the division requests copies of records required to be kept under
15 AS 23.05.080 or information relating to an investigation of an employer's compliance
16 with the insurance provisions of this chapter, and the employer does not provide the
17 requested records or information not later than 30 days after service of the written
18 request, the division may assess a civil penalty against the employer of \$150 for each
19 day the employer is late, up to a maximum penalty of \$10,000.

20 (i) A civil penalty assessed under this section may not be suspended in full or
21 in part.

22 (j) The division and an employer may agree to a payment plan for a civil
23 penalty assessed under this section. The board, in reviewing an assessed civil penalty
24 under (k) of this section, may order a payment plan. Interest under a payment plan
25 accrues at the rate specified in AS 09.30.070(a) that is in effect on the date that the
26 payment plan is agreed to or ordered.

27 (k) An employer may contest a civil penalty assessed by the division under
28 (e), (f), or (h) of this section by filing a petition with the board not later than 30 days
29 after the notice of the civil penalty is served on the employer. The board shall schedule
30 a prehearing not later than 30 days after the filing date of the petition for the purpose
31 of setting a hearing date. The board may not consider a late petition unless the

1 employer shows good cause for the late filing. The failure of an employer to file
2 evidence of compliance as required by AS 23.30.085 creates a rebuttable presumption
3 that the employer failed to insure or provide security as required by AS 23.30.075. If
4 the employer disputes the division's calculation of the amount that the employer would
5 have paid for workers' compensation insurance during the time the employer was
6 uninsured or underinsured, the employer bears the burden of producing evidence and
7 proving that the workers' compensation insurance premium would have been less than
8 the division's calculation. If the employer does not file a petition, the assessment of the
9 civil penalty is considered final and not subject to review by the board, commission, or
10 a court.

11 * **Sec. 14.** AS 23.30.082(a) is amended to read:

12 (a) The workers' compensation benefits guaranty fund is established in the
13 general fund to carry out the purposes of this section. The fund is composed of civil
14 penalty **and interest** payments made by employers under AS 23.30.080, **civil penalty**
15 **payments under AS 23.30.085,** income earned on investment of the money in the
16 fund, money deposited in the fund by the department, and appropriations to the fund,
17 if any. However, money appropriated to the fund does not lapse. Amounts in the fund
18 may be appropriated for claims against the fund, for expenses directly related to fund
19 operations and claims, and for legal expenses.

20 * **Sec. 15.** AS 23.30.085 is repealed and reenacted to read:

21 **Sec. 23.30.085. Duty of employer or insurer to file evidence of compliance.**

22 (a) An employer or insurer subject to this chapter shall, not later than 30 days after
23 acquiring insurance, initially file with the division, in the format prescribed by the
24 director, evidence of compliance with the insurance provisions of this chapter. The
25 employer or insurer also shall, not later than 30 days after the expiration or
26 termination, file evidence of compliance by expiration or cancellation of the
27 employer's insurance. The requirements in this section do not apply to an employer
28 who has certification from the division of the employer's financial ability to pay
29 compensation directly without insurance.

30 (b) If an employer or insurer fails, refuses, or neglects to comply with this
31 section, the employer or insurer is subject to a civil penalty of \$100 for each day the

1 employer or insurer is late. Total penalties under this subsection may not exceed
2 \$1,000 for each late filing and \$10,000 for each employer or insurer each year for late
3 filings under this section.

4 * **Sec. 16.** AS 23.30.097(d) is amended to read:

5 (d) An employer shall

6 (1) pay or controvert an employee's bills for medical treatment under
7 this chapter, excluding prescription charges or transportation for medical treatment,
8 not later than [WITHIN] 30 days after the date that the employer receives the
9 provider's bill or a completed report as required by AS 23.30.095(c), whichever is
10 later;

11 (2) authorize or controvert medical treatment or services,
12 excluding prescription charges or transportation for medical treatment, not later
13 than 60 days after the date that the employer receives the provider's written
14 request for authorization for medical treatment that includes the estimated fee or
15 charge for the medical treatment and does not exceed the maximum
16 reimbursement allowed under this section.

17 * **Sec. 17.** AS 23.30.098 is amended to read:

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

22 (1) Current Procedural Terminology Codes, produced by the American
23 Medical Association;

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

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

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

31 (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;

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

(15) Hospital Outpatient Prospective Payment System, produced by the federal Centers for Medicare and Medicaid Services; or

(16) Ambulatory Surgical Center Payment System, produced by the federal Centers for Medicare and Medicaid Services.

* **Sec. 18.** AS 23.30.110(c) is repealed and reenacted to read:

(c) The board shall schedule a prehearing not later than 30 days after a claim is filed. At the prehearing, the board or the board's designee shall issue a scheduling order that includes a discovery plan, appropriate deadlines, and the hearing date. The board or the board's designee may modify the scheduling order, including changing the hearing date, on the board's own motion or upon a showing of good cause by the party seeking the modification. The board shall serve notice on each party at least 10

1 days before the hearing.

2 * **Sec. 19.** AS 23.30.110(d) is repealed and reenacted to read:

3 (d) At the hearing, each party may present evidence with respect to the claim
4 and may be self-represented, represented by an attorney licensed to practice law in this
5 state, or by a parent of a minor, guardian, or court-appointed representative.

6 * **Sec. 20.** AS 23.30.110 is amended by adding a new subsection to read:

7 (i) The board shall file its decision not later than 30 days after the hearing
8 record closes.

9 * **Sec. 21.** AS 23.30.155(a) is amended to read:

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

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

15 (2) the name of the employee;

16 (3) the name of the employer;

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

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

20 * **Sec. 22.** AS 23.30.155(b) is amended to read:

21 (b) The first installment of compensation, **excluding medical benefits, shall**
22 **be paid** [BECOMES DUE] on **or before** the **21st** [14TH] day after the employer has
23 knowledge of the injury or death. [ON THIS DATE ALL COMPENSATION THEN
24 DUE SHALL BE PAID.] Subsequent compensation, **excluding medical benefits,**
25 shall be paid in installments, every **21** [14] days, except where the board determines
26 that payment in installments should be made monthly or at some other period.
27 **Medical benefits shall be paid in accordance with AS 23.30.095 and 23.30.097.**

28 * **Sec. 23.** AS 23.30.155(c) is amended to read:

29 (c) The insurer or adjuster shall notify the division **in a format** [AND THE
30 EMPLOYEE ON A FORM] prescribed by the director that the payment of
31 compensation has begun or has been increased, decreased, suspended, terminated,

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

21 * **Sec. 24.** AS 23.30.155(d) is amended to read:

22 (d) If the employer controverts the right to compensation, the employer shall
23 file with the division, **in a format prescribed by the director,** [AND SEND TO THE
24 EMPLOYEE] a notice of controversion on or before the 21st day after the employer
25 has knowledge of the alleged injury or death. If the employer controverts the right to
26 compensation, **excluding medical benefits,** after payments have begun, the employer
27 shall file with the division, **in a format prescribed by the director,** [AND SEND TO
28 THE EMPLOYEE] a notice of controversion **not later than the date** [WITHIN
29 SEVEN DAYS AFTER] an installment of compensation payable without an award is
30 due **under (b) of this section. If the employer controverts medical treatment, the**
31 **employer shall file with the division, in a format prescribed by the director, a**

notice of controversion not later than the date the payment, reimbursement, or authorization for medical treatment is due under AS 23.30.097. The division shall notify the employee if an employer controverts the employee's right to compensation. When payment of temporary disability benefits is controverted solely on the grounds that another employer or another insurer of the same employer may be responsible for all or a portion of the benefits, the most recent employer or insurer who is party to the claim and who may be liable shall make the payments during the pendency of the dispute. When a final determination of liability is made, any reimbursement required, including interest at the statutory rate, and all costs and attorney fees incurred by the prevailing employer, shall be made not later than [WITHIN] 14 days after the determination.

* **Sec. 25.** AS 23.30.155(e) is amended to read:

(e) If any installment of compensation, excluding medical benefits, payable without an award is [NOT] paid late [WITHIN SEVEN DAYS AFTER IT BECOMES DUE], as provided in (b) of this section, there shall be added to the unpaid installment an amount equal to 25 percent of the installment. If a bill for medical treatment, including prescription charges or transportation for medical treatment, is paid or reimbursed late, or a request for medical treatment is not timely authorized under AS 23.30.097, there shall be added an amount equal to 25 percent of the bill, reimbursement, or estimated fee or charge for the requested medical treatment. This additional amount shall be paid to the person owed or to be reimbursed at the same time as, and in addition to, the installment, bill, or reimbursement, or sent with authorization for medical treatment, unless notice is filed under (d) of this section or unless the nonpayment or late authorization is excused by the board after a showing by the employer that, owing to conditions over which the employer had no control, the installment, bill, or reimbursement could not be paid or the request could not be authorized within the period prescribed for the payment or authorization. The additional amount shall be paid directly to the recipient to whom the unpaid installment, bill, or reimbursement was to be paid or, if authorization of medical treatment was requested, to the employee seeking the medical treatment.

1 * **Sec. 26.** AS 23.30.155(m) is amended to read:

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

26 * **Sec. 27.** AS 23.30.165(a) is amended to read:

27 (a) **If an** [EACH] employee, **a** [AND] beneficiary, **or the workers'**
28 **compensation benefits guaranty fund (AS 23.30.082) is** entitled to compensation
29 under the provisions of this chapter, **the person or the fund** has a lien for the full
30 amount of the compensation the person **or the fund** is entitled to, including costs and
31 disbursements of suit and attorney fees allowed, **on** [UPON] all of the property in

1 connection with the construction, preservation, maintenance, or operation of which the
2 work of the employee was being performed at the time of the injury or death. For
3 example,[:] in the case of an employee injured or killed while engaged in mining or in
4 work connected with mining, the lien extends to the entire mine and all property used
5 in connection with it; and, in the case of an employee injured or killed while engaged
6 in fishing or in the packing, canning, or salting of fish, or other branch of the fish
7 industry, the lien extends to the entire packing, fishing, salting, or canning plant or
8 establishment and all property used in connection with it; and this is the case with
9 other businesses, industries, works, occupations, and employments. **If the workers'**
10 **compensation benefits guaranty fund (AS 23.30.082) is entitled to a civil penalty**
11 **assessed under AS 23.30.080, the fund has a lien for the full amount of the civil**
12 **penalty on all of the property in connection with the construction, preservation,**
13 **maintenance, or operation of the uninsured or underinsured employer.**

14 * Sec. 28. AS 23.30.165(d) is amended to read:

15 (d) A person **or the workers' compensation benefits guaranty fund**
16 **(AS 23.30.082)** claiming a lien under this chapter shall, **not later than** [WITHIN] one
17 year after the **person or the fund has knowledge** [DATE] of the injury **or death**
18 [FROM WHICH THE CLAIM OF COMPENSATION ARISES], record in the office
19 of the recorder of the recording district in which the property affected by the lien is
20 located, a notice of lien signed and verified by the claimant, or someone on behalf of
21 the claimant **or the fund,** and stating [, IN SUBSTANCE,] the name of the person
22 injured or killed out of which injury or death the claim of compensation arises, the
23 name of the employer of the injured or deceased person at the time of the injury or
24 death, a description of the property affected or covered by the lien, and the name of
25 the owner or reputed owner of the property. **In claiming a lien for a civil penalty**
26 **under AS 23.30.080, the workers' compensation benefits guaranty (AS 23.30.082)**
27 **fund shall, not later than one year after the date of a declaration of default,**
28 **record in the office of the recorder of the recording district in which the property**
29 **affected by the lien is located a signed and verified notice of lien stating the name**
30 **of the employer assessed a civil penalty under AS 23.30.080, a description of the**
31 **property affected or covered by the lien, and the name of the owner or reputed**

owner of the property.

* **Sec. 29.** AS 23.30.205 is amended by adding a new subsection to read:

(g) Claims for reimbursement may not be submitted to the second injury fund on or after September 1, 2017. The fund shall continue to make reimbursement payments on claims accepted before July 1, 2018, or ordered by the board, until the fund's liabilities for the claim are extinguished.

* **Sec. 30.** 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; [AND]

(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 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 a license, permit, or certification if 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 three of the following criteria:

(i) the person 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 separate from the location of the individual for whom, or the entity for which, the services are performed;

(iii) the person engages in business advertising, solicitation, or other marketing efforts reasonably calculated to obtain new contracts to provide similar services;

(iv) the person holds a bank account in the name of the business entity for the purpose of paying business expenses or expenses related to the work or services performed;

(v) the person engages in a trade, occupation, profession, or business to provide services that are outside the usual course of business for the individual for whom, or the entity for which, the services are performed.

* **Sec. 31.** 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. 32.** 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. 33.** AS 23.30.250(a) is amended to read:

(a) A person who (1) knowingly makes a false or misleading statement, representation, or submission or knowingly fails to report a material fact related to a benefit under this chapter; (2) knowingly assists, abets, solicits, or conspires in making a false or misleading submission affecting the payment, coverage, or other benefit under this chapter; (3) knowingly misclassifies employees or engages in deceptive leasing practices for the purpose of evading full payment of workers' compensation insurance premiums; or (4) employs or contracts with a person or firm to coerce or encourage an individual to file a fraudulent compensation claim is civilly liable to a person adversely affected by the conduct, is guilty of theft by deception as defined in AS 11.46.180, and may be punished as provided by AS 11.46.120 - 11.46.150. The division may assess a civil penalty as provided in AS 23.30.080 against an employer that misclassifies employees or engages in deceptive leasing practices.

1 * **Sec. 34.** AS 23.30.250(b) is amended to read:

2 (b) If the board, after a hearing, finds that a person has obtained compensation,
3 medical treatment, or another benefit provided under this chapter, or that a provider
4 has received a payment, by knowingly making a false or misleading statement or
5 representation **or knowingly failing to report a material fact** [FOR THE PURPOSE
6 OF OBTAINING THAT BENEFIT], the board shall order that person to make full
7 reimbursement of the cost of all benefits obtained. Upon entry of an order authorized
8 under this subsection, the board shall also order that person to pay all reasonable costs
9 and attorney fees incurred by the employer and the employer's carrier in obtaining an
10 order under this section and in defending any claim made for benefits under this
11 chapter. If a person fails to comply with an order of the board requiring reimbursement
12 of compensation and payment of costs and attorney fees, the employer may declare the
13 person in default and proceed to collect any sum due as provided under
14 AS 23.30.170(b) and (c).

15 * **Sec. 35.** AS 23.30.250 is amended by adding new subsections to read:

16 (d) While receiving compensation provided under this chapter, an employee
17 shall inform the employer or insurer of the employee's receipt of any unemployment
18 or disability benefits other than the compensation provided under this chapter, and
19 shall report any employment other than work for the employer providing the
20 compensation under this chapter. An employee knowingly fails to report a material
21 fact under (a) and (b) of this section if the employee does not disclose the receipt of
22 unemployment or other disability benefits or other employment, and the employee
23 knowingly receives compensation under this chapter to which the employee is not
24 entitled because of the receipt of the other benefits or other employment. In this
25 subsection, "employment" means any type of work, whether paid or unpaid.

26 (e) An employer misclassifies employees or engages in deceptive leasing
27 practices under (a) of this section if, for the purpose of evading full payment of
28 workers' compensation insurance premiums, the employer knowingly falsifies or
29 misrepresents the

30 (1) job duties of employees;

31 (2) payments made to employees, including concealing payment by not

reporting or underreporting wages or payments made in kind;

(3) true identity of the employer;

(4) nature of the employer's business;

(5) the employer's history of injuries or deaths covered under this chapter; or

(6) number of employees, including by misclassifying a worker as an independent contractor as described in AS 23.30.230(a)(11), or as a nonemployee, when that worker is an employee covered under this chapter as provided in AS 23.30.230, 23.30.239, or 23.30.240.

* **Sec. 36.** AS 23.30.255(a) is amended to read:

(a) An employer required to secure the payment of compensation under this chapter who fails to do so is guilty of a class B felony if the amount involved exceeds \$25,000 or a class C felony if the amount involved is \$25,000 or less. If the employer is a **limited liability company, limited liability partnership, or** corporation, **a person who, at the time of an employee's injury or death, has at least a 10 percent ownership in the business entity and is actively in charge of the operations of the business entity or has the authority to insure the business entity or apply for a certificate of self insurance, is** [ITS PRESIDENT, SECRETARY, AND TREASURER ARE ALSO] severally liable **with the business entity for** [TO] the fine or imprisonment imposed for the failure of the **business entity** [CORPORATION] to secure the payment of compensation. [THE PRESIDENT, SECRETARY, AND TREASURER ARE SEVERALLY PERSONALLY LIABLE, JOINTLY WITH THE CORPORATION, FOR THE COMPENSATION OR OTHER BENEFIT WHICH ACCRUES UNDER THIS CHAPTER IN RESPECT TO AN INJURY THAT HAPPENS TO AN EMPLOYEE OF THE CORPORATION WHILE IT HAS FAILED TO SECURE THE PAYMENT OF COMPENSATION AS REQUIRED BY AS 23.30.075.]

* **Sec. 37.** AS 23.30.255(b) is amended to read:

(b) An employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes, or destroys any property after one of the employer's employees has been injured within the scope of this chapter, with intent to

avoid the payment of compensation under this chapter to the employee or the employee's dependents, is guilty of a class B felony if the amount involved exceeds \$25,000 or a class C felony if the amount involved is \$25,000 or less. If the employer is a limited liability company, limited liability partnership, or corporation, a person who, at the time of an employee's injury or death, has at least a 10 percent ownership in the business entity and is actively in charge of the operations of the business entity or has the authority to insure the business entity or apply for a certificate of self insurance, is [ITS PRESIDENT, SECRETARY, AND TREASURER ARE ALSO] severally liable with the business entity for [TO] the penalty of imprisonment as well as jointly liable with the business entity [CORPORATION] for the fine.

* **Sec. 38.** 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 not required if the parties who reach an agreement in regard to a claim for injury or death under this chapter agree to the payment of attorney fees, and the agreement in regard to a claim for injury or death does not require board approval under AS 23.30.012.

* **Sec. 39.** AS 23.30.395(19) is repealed and reenacted to read:

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

* **Sec. 40.** AS 23.30.015(c), 23.30.040, 23.30.205, 23.30.395(35); and AS 37.05.146(c)(12) are repealed.

* **Sec. 41.** AS 23.30.040(f), 23.30.080(d), 23.30.110(h), and 23.30.155(q) are repealed.

* **Sec. 42.** The uncoded law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) Notwithstanding AS 23.30.075(b), as repealed and reenacted by sec. 9 of this Act, AS 23.30.080(e), as amended by sec. 10 of this Act, AS 23.30.080(f), as repealed and reenacted by sec. 11 of this Act, AS 23.30.080(8), as amended by sec. 12 of this Act, AS 23.30.080(n) - (k), added by sec. 13 of this Act, and the repeal of AS 23.30.080(d) by sec. 41 of this Act, petitions of the division of workers' compensation against employers for a

1 failure to insure for workers' compensation liability that are pending before the Alaska
2 Workers' Compensation Board before the effective date of secs. 9 - 13 and 41 of this Act shall
3 be continued and completed under AS 23.30.075(b) and 23.30.080, as those statutes read on
4 the day before the effective date of secs. 9 - 13 and 41 of this Act.

5 (b) AS 23.30.110(c), as repealed and reenacted by sec. 18 of this Act, and the repeal
6 of AS 23.30.110(h) by sec. 41 of this Act apply to claims filed on or after the effective date of
7 secs. 18 and 41 of this Act. Claims pending on the effective date of secs. 18 and 41 of this Act
8 shall be continued and completed under AS 23.30.110(c) and (h), as those statutes read on the
9 day before the effective date of secs. 18 and 41 of this Act.

10 * **Sec. 43.** The uncoded law of the State of Alaska is amended by adding a new section to
11 read:

12 **TRANSITION: IMPLEMENTATION OF REPEAL OF SECOND INJURY FUND.**

13 The balance of the second injury fund created by former AS 23.30.040 shall be transferred to
14 the general fund on the effective date of this section.

15 * **Sec. 44.** The uncoded law of the State of Alaska is amended by adding a new section to
16 read:

17 **TRANSITION: REGULATIONS.** The Department of Labor and Workforce
18 Development and the Alaska Workers' Compensation Board may adopt regulations to
19 implement this Act. The regulations take effect under AS 44.62 (Administrative Procedure
20 Act), but not before the effective date of the law implemented by the regulation.

21 * **Sec. 45.** The uncoded law of the State of Alaska is amended by adding a new section to
22 read:

23 **CONDITIONAL EFFECT; NOTIFICATION.** (a) Sections 2, 4, 32, 40, and 43 of this
24 Act take effect only if the commissioner of labor and workforce development notifies the
25 revisor of statutes and the lieutenant governor in writing as required under (b) of this section.

26 (b) The commissioner of labor and workforce development shall notify the revisor of
27 statutes and the lieutenant governor in writing of the date that all liability for previously
28 accepted claims under AS 23.30.205 to the second injury fund created under former
29 AS 23.30.040 and claims ordered to be paid from that fund have been satisfied.

30 * **Sec. 46.** If, under sec. 45 of this Act, secs. 2, 4, 32, 40, and 43 of this Act take effect, they
31 take effect on the day after the date the commissioner of labor and workforce development

1 makes the notification required under sec. 45 of this Act.

2 * **Sec. 47.** Section 44 of this Act takes effect immediately under AS 01.10.070(c).