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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; 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 the liability of business entities and certain persons**
4 **for payment of workers' compensation benefits and civil penalties; relating to civil**
5 **penalties for underinsuring or failing to insure or provide security for workers'**
6 **compensation liability; relating to preauthorization and timely payment for medical**
7 **treatment and services provided to injured employees; relating to incorporation of**
8 **reference materials in workers' compensation regulations; relating to proceedings**
9 **before the Alaska Workers' Compensation Board; relating to the authorization of the**
10 **workers' compensation benefits guaranty fund to claim a lien; excluding independent**
11 **contractors from workers' compensation coverage; establishing the circumstances under**
12 **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(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. 3.** 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. 4.** 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.

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

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

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

(f) An employer who fails or refuses to file [SEND] a report required of the employer by this section or who fails or refuses to file [SEND] the report required by (a) of this section within the time required shall, if so required by the 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. 7.** AS 23.30.075(b) is repealed and reenacted to read:

(b) If an employer is a corporation, limited liability company, or limited liability partnership, or a person who, at the time of an employee's injury or death, has at least a 10 percent ownership in the business entity, 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 personally, jointly, and severally liable, with the business entity, for the payment of

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

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

* **Sec. 8.** AS 23.30.080(e) is amended to read:

(e) If a representative of the department investigates an employer's failure to file the evidence of compliance required by AS 23.30.085 and, after investigation, there is substantial evidence that the employer failed to insure or provide security as required by AS 23.30.075, the representative shall inform the employer. The representative may request the director to issue a stop order prohibiting the use of 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. 9.** 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. 10.** 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 or contest a civil penalty assessed under this section not later than 30 days after the date of service of notice on the employer, fails to pay a civil penalty not later than 30 days after the board orders payment, or fails to pay a civil penalty in accordance with the terms of a payment plan.** The director shall file a certified copy of the penalty order, **notice, or payment plan,** and declaration of default with the clerk of the superior court. The court shall, upon the filing of the copy [OF THE ORDER] and declaration, enter judgment for the amount declared in default if it is in accordance with law. **Any time** [ANYTIME] after a declaration of default, the

attorney general shall, when requested to do so by the director, take appropriate action to ensure collection of the defaulted payment. Review of the judgment may be had as provided under the Alaska Rules of Civil Procedure. Final proceedings to execute the judgment may be had by writ of execution.

* **Sec. 11.** AS 23.30.080 is amended by adding new subsections to read:

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

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

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

(k) An employer may contest a civil penalty assessed by the division under (e), (f), or (h) of this section by filing a petition with the board not later than 30 days after the notice of the civil penalty is served on the employer. The board shall schedule a prehearing not later than 30 days after the filing date of the petition for the purpose of setting a hearing date. The board may not consider a late petition unless the employer shows good cause for the late filing. The failure of an employer to file evidence of compliance as required by AS 23.30.085 creates a rebuttable presumption that the employer failed to insure or provide security as required by AS 23.30.075. If the employer disputes the division's calculation of the amount that the employer would have paid for workers' compensation insurance during the time the employer was uninsured or underinsured, the employer bears the burden of producing evidence and proving that the workers' compensation insurance premium would have been less than the division's calculation. If the employer does not file a petition, the assessment of the

civil penalty is considered final and not subject to review by the board, commission, or a court.

* **Sec. 12.** AS 23.30.082(a) is amended to read:

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

* **Sec. 13.** AS 23.30.085 is repealed and reenacted to read:

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

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

(b) If an employer or insurer fails, refuses, or neglects to comply with this section, the employer or insurer is subject to a civil penalty of \$100 for each day the employer or insurer is late. Total penalties under this subsection may not exceed \$1,000 for each late filing and \$10,000 for each employer or insurer each year for late filings under this section.

* **Sec. 14.** AS 23.30.097(d) is amended to read:

(d) An employer shall

(1) pay **or controvert** an employee's bills for medical treatment under this chapter, excluding prescription charges or transportation for medical treatment, **not later than** [WITHIN] 30 days after the date that the employer receives the

provider's bill or a completed report as required by AS 23.30.095(c), whichever is later;

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

* Sec. 15. AS 23.30.098 is amended to read:

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

(1) Current Procedural Terminology Codes, produced by the American 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;

(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. 16.** 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 days before the hearing.

* **Sec. 17.** AS 23.30.110(d) is repealed and reenacted to read:

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

* **Sec. 18.** AS 23.30.110 is amended by adding a new subsection to read:

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

1 * **Sec. 19.** AS 23.30.155(a) is amended to read:

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

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

7 (2) the name of the employee;

8 (3) the name of the employer;

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

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

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

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

20 * **Sec. 21.** AS 23.30.155(c) is amended to read:

21 (c) The insurer or adjuster shall notify the division **in a format** [AND THE
22 EMPLOYEE ON A FORM] prescribed by the director that the payment of
23 compensation has begun or has been increased, decreased, suspended, terminated,
24 resumed, or changed in type. An initial report shall be filed **not later than** [WITH
25 THE DIVISION AND SENT TO THE EMPLOYEE WITHIN] 28 days after the date
26 of issuing the first payment of compensation. If, at any time, 21 days or more pass and
27 no compensation payment is issued, a report notifying the division [AND THE
28 EMPLOYEE] of the termination or suspension of compensation shall be filed **not**
29 **later than** [WITH THE DIVISION AND SENT TO THE EMPLOYEE WITHIN] 28
30 days after the date the last compensation payment was issued. A report shall also be
31 filed **not later than** [WITH THE DIVISION AND SENT TO THE EMPLOYEE

1 WITHIN] 28 days after the date of issuing a payment increasing, decreasing,
2 resuming, or changing the type of compensation paid. **When the insurer or adjuster**
3 **files a report, the division shall notify the employee of the payment or change in**
4 **payment of compensation.** If the division **is** [AND THE EMPLOYEE ARE] not
5 notified within the 28 days prescribed by this subsection for reporting, the insurer or
6 adjuster shall pay a civil penalty of \$100 for the first day plus \$10 for each day after
7 the first day that the notice was not given. Total penalties under this subsection may
8 not exceed \$1,000 for a failure to file a required report. Penalties assessed under this
9 subsection are eligible for reduction under (m) of this section. A penalty assessed
10 under this subsection after penalties have been reduced under (m) of this section shall
11 be increased by 25 percent and shall bear interest at the rate established under
12 AS 45.45.010.

13 * **Sec. 22.** AS 23.30.155(d) is amended to read:

14 (d) If the employer controverts the right to compensation, the employer shall
15 file with the division, **in a format prescribed by the director,** [AND SEND TO THE
16 EMPLOYEE] a notice of controversion on or before the 21st day after the employer
17 has knowledge of the alleged injury or death. If the employer controverts the right to
18 compensation, **excluding medical benefits,** after payments have begun, the employer
19 shall file with the division, **in a format prescribed by the director,** [AND SEND TO
20 THE EMPLOYEE] a notice of controversion **not later than the date** [WITHIN
21 SEVEN DAYS AFTER] an installment of compensation payable without an award is
22 due **under (b) of this section. If the employer controverts medical treatment, the**
23 **employer shall file with the division, in a format prescribed by the director, a**
24 **notice of controversion not later than the date the payment, reimbursement, or**
25 **authorization for medical treatment is due under AS 23.30.097. When the**
26 **employer files a notice of controversion, the division shall notify the employee if**
27 **an employer controverts the employee's right to compensation.** When payment of
28 temporary disability benefits is controverted solely on the grounds that another
29 employer or another insurer of the same employer may be responsible for all or a
30 portion of the benefits, the most recent employer or insurer who is party to the claim
31 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. 23.** 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 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.**

* **Sec. 24.** 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 **in a format** [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. 25.** AS 23.30.165(a) is amended to read:

(a) **If an** [EACH] employee, **a** [AND] beneficiary, **or the workers' compensation benefits guaranty fund (AS 23.30.082) is** entitled to compensation under the provisions of this chapter, **the person or the fund** has a lien for the full amount of the compensation the person **or the fund** is entitled to, including costs and disbursements of suit and attorney fees allowed, **on** [UPON] all of the property in connection with the construction, preservation, maintenance, or operation of which the work of the employee was being performed at the time of the injury or death. For example, **[:]** in the case of an employee injured or killed while engaged in mining or in work connected with mining, the lien extends to the entire mine and all property used in connection with it; and, **in** the case of an employee injured or killed while engaged in fishing or in the packing, canning, or salting of fish, or other branch of the fish industry, the lien extends to the entire packing, fishing, salting, or canning plant or establishment and all property used in connection with it; and this is the case with other businesses, industries, works, occupations, and employments. **If the workers'**

compensation benefits guaranty fund (AS 23.30.082) is entitled to a civil penalty assessed under AS 23.30.080, the fund has a lien for the full amount of the civil penalty on all of the property in connection with the construction, preservation, maintenance, or operation of the uninsured or underinsured employer.

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

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

* Sec. 27. 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. 28. 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;

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

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

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

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

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

17 (G) follows federal Internal Revenue Service requirements
18 by

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

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

24 (iii) intending to file business or self-employment tax
25 returns for the current tax year to report profit or income earned
26 for the same type of services provided under the contract if the
27 person's business was not operating in the previous tax year; and

28 (H) meets at least three of the following criteria:

29 (i) the person maintains liability insurance or other
30 insurance policies necessary to protect the employees, financial
31 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. 29.** 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.

1 * **Sec. 30.** AS 23.30.247(c) is amended to read:

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

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

10 (a) A person who (1) knowingly makes a false or misleading statement,
11 representation, or submission **or knowingly fails to report a material fact** related to
12 a benefit under this chapter; (2) knowingly assists, abets, solicits, or conspires in
13 making a false or misleading submission affecting the payment, coverage, or other
14 benefit under this chapter; (3) knowingly misclassifies employees or engages in
15 deceptive leasing practices for the purpose of evading full payment of workers'
16 compensation insurance premiums; or (4) employs or contracts with a person or firm
17 to coerce or encourage an individual to file a fraudulent compensation claim is civilly
18 liable to a person adversely affected by the conduct, is guilty of theft by deception as
19 defined in AS 11.46.180, and may be punished as provided by AS 11.46.120 -
20 11.46.150. **The division may assess a civil penalty as provided in AS 23.30.080**
21 **against an employer that misclassifies employees or engages in deceptive leasing**
22 **practices.**

23 * **Sec. 32.** AS 23.30.250(b) is amended to read:

24 (b) If the board, after a hearing, finds that a person has obtained compensation,
25 medical treatment, or another benefit provided under this chapter, or that a provider
26 has received a payment, by knowingly making a false or misleading statement or
27 representation **or knowingly failing to report a material fact** [FOR THE PURPOSE
28 OF OBTAINING THAT BENEFIT], the board shall order that person to make full
29 reimbursement of the cost of all benefits obtained. Upon entry of an order authorized
30 under this subsection, the board shall also order that person to pay all reasonable costs
31 and attorney fees incurred by the employer and the employer's carrier in obtaining an

1 order under this section and in defending any claim made for benefits under this
2 chapter. If a person fails to comply with an order of the board requiring reimbursement
3 of compensation and payment of costs and attorney fees, the employer may declare the
4 person in default and proceed to collect any sum due as provided under
5 AS 23.30.170(b) and (c).

6 * **Sec. 33.** AS 23.30.250 is amended by adding new subsections to read:

7 (d) While receiving compensation provided under this chapter, an employee
8 shall inform the employer or insurer of the employee's receipt of any unemployment
9 or disability benefits other than the compensation provided under this chapter, and
10 shall report any employment other than work for the employer providing the
11 compensation under this chapter. An employee knowingly fails to report a material
12 fact under (a) and (b) of this section if the employee does not disclose the receipt of
13 unemployment or other disability benefits or other employment, and the employee
14 knowingly receives compensation under this chapter to which the employee is not
15 entitled because of the receipt of the other benefits or other employment. In this
16 subsection, "employment" means any type of work, whether paid or unpaid.

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

21 (1) job duties of employees;

22 (2) payments made to employees, including concealing payment by not
23 reporting or underreporting wages or payments made in kind;

24 (3) true identity of the employer;

25 (4) nature of the employer's business;

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

27 or

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

1 * **Sec. 34.** AS 23.30.255(a) is amended to read:

2 (a) An employer required to secure the payment of compensation under this
3 chapter who fails to do so is guilty of a class B felony if the amount involved exceeds
4 \$25,000 or a class C felony if the amount involved is \$25,000 or less. If the employer
5 is a limited liability company, limited liability partnership, or corporation, a
6 person who, at the time of an employee's injury or death, has at least a 10 percent
7 ownership in the business entity, is actively in charge of the operations of the
8 business entity, or has the authority to insure the business entity or apply for a
9 certificate of self insurance, is [ITS PRESIDENT, SECRETARY, AND
10 TREASURER ARE ALSO] severally liable with the business entity for [TO] the
11 fine or imprisonment imposed for the failure of the business entity
12 [CORPORATION] to secure the payment of compensation. [THE PRESIDENT,
13 SECRETARY, AND TREASURER ARE SEVERALLY PERSONALLY LIABLE,
14 JOINTLY WITH THE CORPORATION, FOR THE COMPENSATION OR OTHER
15 BENEFIT WHICH ACCRUES UNDER THIS CHAPTER IN RESPECT TO AN
16 INJURY THAT HAPPENS TO AN EMPLOYEE OF THE CORPORATION WHILE
17 IT HAS FAILED TO SECURE THE PAYMENT OF COMPENSATION AS
18 REQUIRED BY AS 23.30.075.]

19 * **Sec. 35.** AS 23.30.255(b) is amended to read:

20 (b) An employer who knowingly transfers, sells, encumbers, assigns, or in any
21 manner disposes of, conceals, secretes, or destroys any property after one of the
22 employer's employees has been injured within the scope of this chapter, with intent to
23 avoid the payment of compensation under this chapter to the employee or the
24 employee's dependents, is guilty of a class B felony if the amount involved exceeds
25 \$25,000 or a class C felony if the amount involved is \$25,000 or less. If the employer
26 is a limited liability company, limited liability partnership, or corporation, a
27 person who, at the time of an employee's injury or death, has at least a 10 percent
28 ownership in the business entity, is actively in charge of the operations of the
29 business entity, or has the authority to insure the business entity or apply for a
30 certificate of self insurance, is [ITS PRESIDENT, SECRETARY, AND
31 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. 36.** 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. 37.** 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. 38.** AS 23.30.040(f), 23.30.080(d), 23.30.110(h), and 23.30.155(q) are repealed.

* **Sec. 39.** The uncodified 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. 7 of this Act, AS 23.30.080(e), as amended by sec. 8 of this Act, AS 23.30.080(f), as repealed and reenacted by sec. 9 of this Act, AS 23.30.080(g), as amended by sec. 10 of this Act, AS 23.30.080(h) - (k), added by sec. 11 of this Act, and the repeal of AS 23.30.080(d) by sec. 38 of this Act, petitions of the division of workers' compensation against employers for a failure to insure for workers' compensation liability that are pending before the Alaska Workers' Compensation Board before the effective date of secs. 7 - 11 and 38 of this Act shall be continued and completed under AS 23.30.075(b) and 23.30.080, as those statutes read on the day before the effective date of secs. 7 - 11 and 38 of this Act.

(b) AS 23.30.110(c), as repealed and reenacted by sec. 16 of this Act, AS 23.30.110(d), as repealed and reenacted by sec. 17 of this Act, and the repeal of AS 23.30.110(h) by sec. 38 of this Act apply to claims filed on or after the effective date of secs. 16, 17, and 38 of this Act. Claims pending on the effective date of secs. 16, 17, and 38 of this Act shall be continued and completed under AS 23.30.110(c), (d), and (h), as those statutes read on the day before the effective date of secs. 16, 17, and 38 of this Act.

(c) Notwithstanding AS 23.30.240, as repealed and reenacted by sec. 29 of this Act,

1 the terms of an insurance policy or contract in effect before the effective date of sec. 29 of this
2 Act shall comply with AS 23.30.240, as that section read on the day before the effective date
3 of sec. 29 of this Act. AS 23.30.240, as repealed and reenacted by sec. 29 of this Act, applies
4 to an insurance policy or contract entered into or renewed on or after the effective date of sec.
5 29 of this Act.

6 * **Sec. 40.** The uncoded law of the State of Alaska is amended by adding a new section to
7 read:

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

12 * **Sec. 41.** The uncoded law of the State of Alaska is amended by adding a new section to
13 read:

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

18 * **Sec. 42.** Section 41 of this Act takes effect immediately under AS 01.10.070(c).

19 * **Sec. 43.** Section 30 of this Act takes effect July 1, 2018.

20 * **Sec. 44.** Section 29 of this Act takes effect August 1, 2018.