

CS FOR HOUSE BILL NO. 237(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/5/95
Referred: Rules

Sponsor(s): REPRESENTATIVES MULDER BY REQUEST, Porter

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to workers' compensation insurance rate filings; to second
2 independent medical evaluations for workers' compensation claims; to immunity for
3 third-party design professionals from civil actions by recipients of workers'
4 compensation benefits; to workers' compensation death benefits; to computation of
5 workers' compensation benefits; to penalties for fraudulent acts related to workers'
6 compensation; to immunity for employer workplace safety inspections related to
7 workers' compensation insurance; and providing for an effective date."

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

9 * **Section 1.** FINDINGS AND PURPOSE AS TO SECTION 7. (a) The legislature finds
10 that

11 (1) efficiency in calculating workers' compensation benefits does not require
12 unfairness;

13 (2) a quick, efficient, and predictable scheme for determining a worker's gross

1 weekly earnings can be formulated without denying employees their workers' compensation
2 benefits commensurate with their actual losses;

3 (3) many workers in the state are only seasonally employed in the construction,
4 tourism, fishing, and education industries;

5 (4) many workers in the state choose a subsistence lifestyle and are only
6 occasionally, sporadically, or on a part-time basis members of the labor force;

7 (5) many other states avoid the need for an alternative open-ended determination
8 of an employee's future earning capacity by focusing on the employee's wages at the time of
9 injury and converting, by formula, the employee's rate of pay into a weekly wage;

10 (6) benefits for permanent total disability can last for a substantial period into
11 the future and serve a different purpose than benefits for temporary partial or temporary total
12 disability.

13 (b) It is the purpose of sec. 7 of this Act to

14 (1) redefine the calculation of an employee's spendable weekly wage used to
15 determine workers' compensation benefits in a manner that complies with the decision of the
16 Alaska Supreme Court in *Gilmore v. Alaska Workers' Compensation Board*, 882 P.2d 922
17 (Alaska 1994);

18 (2) fix a fair approximation of an employee's probable future earning capacity
19 during the period of temporary partial or temporary total disability without resorting to an open-
20 ended determination of actual future earning capacity;

21 (3) avoid uncertainty and litigation for injured workers and their employers;

22 (4) allow an alternative open-ended determination of actual future earnings for
23 those employees who suffer a permanent total disability and whose wages cannot otherwise be
24 fairly calculated.

25 * **Sec. 2.** AS 21.39 is amended by adding a new section to read:

26 Sec. 21.39.045. **WORKERS' COMPENSATION RATE FILINGS.** (a)
27 Notwithstanding any other provision of this chapter, a rate filing for workers'
28 compensation insurance that classifies a risk in the construction industry may not contain
29 or impose a higher premium rate if the risk upon which the higher rate filing is based
30 consists only of a higher wage rate paid by the employer.

31 (b) The director shall accept a rate filing for workers' compensation insurance
32 if the filing includes a reasonable method of recognizing differences in rates of pay and

1 the method uses a credit scale that begins at an amount equal to the average weekly
2 wage in this state as determined by the Department of Labor.

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

4 Sec. 23.30.017. IMMUNITY FOR THIRD-PARTY DESIGN PROFESSIONAL.

5 (a) A person entitled to compensation under this chapter as a result of injury occurring
6 at the job site of a construction project may not bring a civil action to recover damages
7 for that injury against a design professional or an employee of a design professional who
8 provides professional services for the construction project.

9 (b) This section does not apply to a person receiving compensation under this
10 chapter who is injured at a job site at which the design professional or employee of the
11 design professional

12 (1) specifically assumed responsibility for job site safety practices under
13 a contract;

14 (2) actually exercises control over the premises where the injury
15 occurred; or

16 (3) prepared design plans or specifications, the plans or specifications
17 contributed to the injury, and the plans or specifications were prepared negligently,
18 recklessly, or with intentional misconduct.

19 (c) In this section,

20 (1) "design professional" means a person licensed under AS 08.48 as an
21 architect, engineer, or land surveyor;

22 (2) "professional services" means services provided by a design
23 professional that are within the scope of services for which the design professional is
24 licensed.

25 * **Sec. 4.** AS 23.30.095(k) is amended to read:

26 (k) In the event of a medical dispute regarding determinations of causation,
27 medical stability, ability to enter a reemployment plan, degree of impairment, functional
28 capacity, the amount and efficacy of the continuance of or necessity of treatment, or
29 compensability between the employee's attending physician and the employer's
30 independent medical evaluation, **the board may require that** a second independent
31 medical evaluation [SHALL] be conducted by a physician or physicians selected by the
32 board from a list established and maintained by the board. The cost of **an** [THE]

1 examination and medical report shall be paid by the employer. The report of an [THE]
2 independent medical examiner shall be furnished to the board and to the parties within
3 14 days after the examination is concluded. A person may not seek damages from an
4 independent medical examiner caused by the rendering of an opinion or providing
5 testimony under this subsection, except in the event of fraud or gross incompetence.

6 * **Sec. 5.** AS 23.30.175(b) is amended to read:

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

9 (1) the weekly rate of compensation shall be calculated by multiplying
10 the recipient's weekly compensation rate calculated under AS 23.30.180, 23.30.185,
11 23.30.190, 23.30.200, or 23.30.215, by the ratio of the cost of living of the area in which
12 the recipient resides to the cost of living in this state;

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

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

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

23 * **Sec. 6.** AS 23.30.215(f) is amended to read:

24 (f) Except as provided in (g) of this section, the death benefit payable to a
25 widow or widower shall

26 [(1) FIVE YEARS FOLLOWING DATE OF DEATH OF THE
27 DECEASED EMPLOYEE BE REDUCED TO 66 2/3 PERCENT OF THE BENEFIT
28 BEING THEN PAID;

29 (2) EIGHT YEARS FOLLOWING DATE OF DEATH OF THE
30 DECEASED EMPLOYEE BE REDUCED TO 50 PERCENT OF THE BENEFIT
31 BEING THEN PAID;

32 (3)] terminate 10 years following death of the deceased employee.

1 * **Sec. 7.** AS 23.30.220(a) is repealed and reenacted to read:

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

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

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

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

13 (4) if at the time of injury the

14 (A) employee's earnings are calculated by the day, hour, or by the
15 output of the employee, the employee's gross weekly earnings are the employee's
16 earnings most favorable to the employee computed by dividing by 13 the
17 employee's earnings, not including overtime or premium pay, earned during any
18 period of 13 consecutive calendar weeks within the 52 weeks immediately
19 preceding the injury;

20 (B) employee has been employed for less than 13 calendar weeks
21 immediately preceding the injury, then, notwithstanding (1) - (3) of this
22 subsection and (A) of this paragraph, the employee's gross weekly earnings are
23 computed by determining the amount that the employee would have earned, not
24 including overtime or premium pay, had the employee been employed by the
25 employer for 13 calendar weeks immediately preceding the injury and dividing
26 this sum by 13;

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

31 (6) if at the time of injury the employment is exclusively seasonal or
32 temporary, then, notwithstanding (1) - (5) of this subsection, the gross weekly earnings

1 are 1/50th of the total wages that the employee has earned from all occupations during
2 the calendar year immediately preceding the injury;

3 (7) when the employee is working under concurrent contracts with two
4 or more employers and the employer liable for compensation has knowledge of the dual
5 employment before the injury, the employee's earnings from all employers is considered
6 as if earned from the employer liable for compensation;

7 (8) if an employee when injured is a minor, an apprentice, or a trainee
8 in a formal training program, as determined by the board, whose wages under normal
9 conditions would increase during the period of disability, the projected increase may be
10 considered by the board in computing the gross weekly earnings of the employee;

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

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

28 * **Sec. 8.** AS 23.30.220 is amended by adding a new subsection to read:

29 (c) In this section,

30 (1) "seasonal work" means employment that is not intended to continue
31 through an entire calendar year, but recurs on an annual basis;

32 (2) "temporary work" means employment that is not permanent, ends

1 upon completion of the task, job, or contract, and ends within six months from the date
2 of injury.

3 * **Sec. 9.** AS 23.30.250 is repealed and reenacted to read:

4 Sec. 23.30.250. PENALTIES FOR FRAUDULENT OR MISLEADING ACTS.

5 (a) A person who (1) knowingly makes a false or misleading statement, representation,
6 or submission related to a benefit under this chapter; (2) knowingly assists, abets, solicits,
7 or conspires in making a false or misleading submission affecting the payment, coverage,
8 or other benefit under this chapter; (3) knowingly misclassifies employees or engages in
9 deceptive leasing practices for the purpose of evading full payment of workers'
10 compensation insurance premiums; or (4) employs or contracts with a person or firm to
11 coerce or encourage an individual to file a fraudulent compensation claim is civilly
12 liable to a person adversely affected by the conduct, is guilty of theft by deception as
13 defined in AS 11.46.180, and may be punished as provided by AS 11.46.120 -
14 11.46.150.

15 (b) If the board, after a hearing, finds that a person has obtained compensation,
16 medical treatment, or another benefit provided under this chapter by knowingly making
17 a false or misleading statement or representation for the purpose of obtaining that benefit,
18 the board shall order that person to make full reimbursement of the cost of all benefits
19 obtained. Upon entry of an order authorized under this subsection, the board shall also
20 order that person to pay all reasonable costs and attorney fees incurred by the employer
21 and the employer's carrier in obtaining an order under this section and in defending any
22 claim made for benefits under this chapter. If a person fails to comply with an order of
23 the board requiring reimbursement of compensation and payment of costs and attorney
24 fees, the employer may declare the person in default and proceed to collect any sum due
25 as provided under AS 23.30.170(b) and (c).

26 * **Sec. 10.** AS 23.30 is amended by adding a new section to read:

27 Sec. 23.30.263. IMMUNITY FROM CIVIL LIABILITY FOR WORKPLACE
28 SAFETY INSPECTIONS. An employer's safety inspector is not liable for civil damages
29 for an injury to an employee of that employer resulting from an act or omission in
30 performing or failing to perform a loss control service, a workplace safety inspection, or
31 a safety advisory service provided in connection with an employer's workers'
32 compensation insurance coverage, unless the act or failure to act constitutes intentional

1 misconduct. In this section, "safety inspector" means
2 (1) a carrier and an employee or agent of the carrier;
3 (2) a trade association of which the employer is a member; or
4 (3) a person providing adjusting or inspection services to an employer
5 who is a member of an association established under AS 21.76.010 or to an employer
6 who is self-insured under AS 23.30.090.

7 * **Sec. 11.** TRANSITION. By January 1, 1996, a rating organization that files a rate for
8 workers' compensation insurance shall file a rating that contains a method of computing workers'
9 compensation insurance rates that is in compliance with AS 21.39.045, added by sec. 2 of this
10 Act.

11 * **Sec. 12.** Section 2 of this Act applies to a policy of workers' compensation insurance that
12 is entered into or renewed on or after the effective date of this Act.

13 * **Sec. 13.** This Act takes effect July 1, 1995.