

HOUSE BILL NO. 237

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES MULDER BY REQUEST, Porter

Introduced: 3/6/95

Referred: Labor and Commerce, Judiciary

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
10 legislature finds that

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

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

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

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

5 (4) many workers in the state choose a subsistence lifestyle and are
6 only 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
8 determination of an employee's future earning capacity by focusing on the employee's
9 wages at the time of injury and converting, by formula, the employee's rate of pay
10 into a weekly wage;

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

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

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

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

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

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

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

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

1 (b) The director shall accept a rate filing for workers' compensation
2 insurance if the filing includes a reasonable method of recognizing differences
3 in rates of pay and the method uses a credit scale that begins at an amount
4 equal to the average weekly wage in this state as determined by the
5 Department of Labor.

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

7 Sec. 23.30.017. IMMUNITY FOR THIRD-PARTY DESIGN
8 PROFESSIONAL. (a) A person entitled to compensation under this chapter
9 as a result of injury occurring at the job site of a construction project may
10 not bring a civil action to recover damages for that injury against a design
11 professional or an employee of a design professional who provides professional
12 services for the construction project.

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

16 (1) specifically assumed responsibility for job site safety practices
17 under a contract;

18 (2) actually exercises control over the premises where the injury
19 occurred;

20 (3) prepared design plans or specifications, the plans or
21 specifications contributed to the injury, and the plans or specifications were
22 prepared negligently, recklessly, or with intentional misconduct.

23 (c) In this section,

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

26 (2) "professional services" means services provided by a design
27 professional that are within the scope of services for which the design
28 professional is licensed.

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

30 (k) In the event of a medical dispute regarding determinations of
31 causation, medical stability, ability to enter a reemployment plan, degree of
32 impairment, functional capacity, the amount and efficacy of the continuance of

1 or necessity of treatment, or compensability between the employee's attending
2 physician and the employer's independent medical evaluation, **the board may**
3 **require that** a second independent medical evaluation [SHALL] be conducted
4 by a physician or physicians selected by the board from a list established and
5 maintained by the board. The cost of **an** [THE] examination and medical
6 report shall be paid by the employer. The report of **an** [THE] independent
7 medical examiner shall be furnished to the board and to the parties within 14
8 days after the examination is concluded. A person may not seek damages
9 from an independent medical examiner caused by the rendering of an opinion
10 or providing testimony under this subsection, except in the event of fraud or
11 gross incompetence.

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

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

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

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

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

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

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

32 (f) Except as provided in (g) of this section, the death benefit payable

1 to a widow or widower shall

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

5 (2) EIGHT YEARS FOLLOWING DATE OF DEATH OF THE
6 DECEASED EMPLOYEE BE REDUCED TO 50 PERCENT OF THE BENEFIT
7 BEING THEN PAID;

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

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

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

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

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

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

25 (4) if at the time of injury the

26 (A) employee's earnings are calculated by the day, hour,
27 or by the output of the employee, the employee's gross weekly earnings
28 are the employee's earnings most favorable to the employee computed
29 by dividing by 13 the employee's earnings, not including overtime or
30 premium pay, earned during any period of 13 consecutive calendar weeks
31 within the 52 weeks immediately preceding the injury;

32 (B) employee has been employed for less than 13

1 calendar weeks immediately preceding the injury, then, notwithstanding
2 (1) - (3) of this subsection and (A) of this paragraph, the employee's
3 gross weekly earnings are computed by determining the amount that the
4 employee would have earned, not including overtime or premium pay,
5 had the employee been employed by the employer for 13 calendar weeks
6 immediately preceding the injury and dividing this sum by 13;

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

11 (6) if at the time of injury the employment is exclusively
12 seasonal or temporary, then, notwithstanding (1) - (5) of this subsection, the
13 gross weekly earnings are 1/50th of the total wages that the employee has
14 earned from all occupations during the calendar year immediately preceding the
15 injury;

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

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

26 (9) if the employee is injured while performing duties as a
27 volunteer ambulance attendant, volunteer police officer, or volunteer fire fighter,
28 then, notwithstanding (1) - (6) of this subsection, the gross weekly earnings for
29 calculating compensation shall be the minimum gross weekly earnings paid a
30 full-time ambulance attendant, police officer, or fire fighter employed in the
31 political subdivision where the injury occurred, or, if the political subdivision
32 has no full-time ambulance attendants, police officers, or fire fighters, at a

1 reasonable figure previously set by the political subdivision to make this
2 determination, but in no case may the gross weekly earnings for calculating
3 compensation be less than the minimum wage computed on the basis of 40
4 hours work per week;

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

12 * **Sec. 8.** AS 23.30.250 is repealed and reenacted to read:

13 Sec. 23.30.250. PENALTIES FOR FRAUDULENT OR MISLEADING
14 ACTS. (a) A person who (1) knowingly makes a false or misleading
15 statement, representation, or submission related to a benefit under this chapter;
16 (2) knowingly assists, abets, solicits, or conspires in making a false or
17 misleading submission affecting the payment, coverage, or other benefit under
18 this chapter; (3) knowingly misclassifies employees or engages in deceptive
19 leasing practices for the purpose of evading full payment of workers'
20 compensation insurance premiums; or (4) employs or contracts with a person
21 or firm to coerce or encourage an individual to file a fraudulent compensation
22 claim is civilly liable to a person adversely affected by the conduct, is guilty
23 of theft by deception as defined in AS 11.46.180, and may be punished as
24 provided by AS 11.46.120 - 11.46.150.

25 (b) If the board, after a hearing, finds that a person has obtained
26 compensation, medical treatment, or another benefit provided under this chapter
27 by knowingly making a false or misleading statement or representation for the
28 purpose 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
30 authorized under this subsection, the board shall also order that person to pay
31 all reasonable costs and attorney fees incurred by the employer and the
32 employer's carrier in obtaining an order under this section and in defending any

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

5 * **Sec. 9.** AS 23.30 is amended by adding a new section to read:

6 Sec. 23.30.263. IMMUNITY FROM CIVIL LIABILITY FOR
7 WORKPLACE SAFETY INSPECTIONS. An employer's safety inspector is not
8 liable for civil damages for an injury to an employee of that employer
9 resulting from an act or omission in performing or failing to perform a loss
10 control service, a workplace safety inspection, or a safety advisory service
11 provided in connection with an employer's workers' compensation insurance
12 coverage, unless the act or failure to act constitutes intentional misconduct. In
13 this section, "safety inspector" means

14 (1) a carrier and an employee or agent of the carrier;

15 (2) a trade association of which the employer is a member; or

16 (3) a person providing adjusting or inspection services to an
17 employer who is a member of an association established under AS 21.76.010
18 or to an employer who is self-insured under AS 23.30.090.

19 * **Sec. 10.** AS 23.30.265 is amended by adding new paragraphs to read:

20 (35) "seasonal work" means employment that does not continue
21 through an entire calendar year;

22 (36) "temporary work" means employment that is not permanent,
23 ends upon completion of the task, job, or contract, and ends within six months
24 from the date of injury.

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

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

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