

**SENATE CS FOR CS FOR HOUSE BILL NO. 237(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 5/3/95

Referred: Rules

Sponsor(s): REPRESENTATIVES MULDER BY REQUEST, Porter, Foster

**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 confidentiality  
3 of workers' compensation medical and rehabilitation information; to immunity for  
4 third-party design professionals from civil actions by recipients of workers'  
5 compensation benefits; to workers' compensation death benefits; to computation of  
6 workers' compensation benefits; to penalties for fraudulent acts related to workers'  
7 compensation; to immunity for employer workplace safety inspections related to  
8 workers' compensation insurance; and providing for an effective date."

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

10 \* **Section 1.** FINDINGS AND PURPOSE AS TO SECTION 9. (a) The legislature finds  
11 that  
12 (1) efficiency in calculating workers' compensation benefits does not require  
13 unfairness;

1 (2) a quick, efficient, and predictable scheme for determining a worker's gross  
2 weekly earnings can be formulated without denying employees their workers' compensation  
3 benefits commensurate with their actual losses;

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

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

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

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

14 (b) It is the purpose of sec. 9 of this Act to

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

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

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

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

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

27 Sec. 21.39.045. **WORKERS' COMPENSATION RATE FILINGS.** (a)

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

32 (b) The director shall accept a rate filing for workers' compensation insurance

1 if the filing includes a reasonable method of recognizing differences in rates of pay and  
2 the method uses a credit scale that begins at an amount equal to the average weekly  
3 wage in this state as determined by the Department of Labor.

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

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

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

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

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

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

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

20 (c) In this section,

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

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

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

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

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

7 \* **Sec. 5.** AS 23.30.107 is amended to read:

8 Sec. 23.30.107. **RELEASE OF INFORMATION.** Upon request, an employee  
9 shall provide written authority to the employer, carrier, rehabilitation specialist  
10 [PROVIDER], or reemployment benefits [REHABILITATION] administrator to obtain  
11 medical and rehabilitation information relative to the employee's injury.

12 \* **Sec. 6.** AS 23.30.107 is amended by adding a new subsection to read:

13 (b) Medical or rehabilitation records in an employee's file maintained by the  
14 board are not public records subject to public inspection and copying under AS 09.25.  
15 This subsection does not prohibit

16 (1) the reemployment benefits administrator, the board, or the department  
17 from releasing medical or rehabilitation records in an employee's file, without the  
18 employee's consent, to a physician providing medical services under AS 23.30.095(k) or  
19 23.30.110(g), a party to a claim filed by the employee, or a governmental agency; or

20 (2) the quoting or discussing of medical or rehabilitation records  
21 contained in an employee's file during a hearing on a claim for compensation, or in a  
22 decision and order of the board.

23 \* **Sec. 7.** AS 23.30.175(b) is amended to read:

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

26 (1) the weekly rate of compensation shall be calculated by multiplying  
27 the recipient's weekly compensation rate calculated under AS 23.30.180, 23.30.185,  
28 23.30.190, 23.30.200, or 23.30.215, by the ratio of the cost of living of the area in which  
29 the recipient resides to the cost of living in this state;

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

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

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

8 \* **Sec. 8.** AS 23.30.215(f) is amended to read:

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

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

14 (2) EIGHT YEARS FOLLOWING DATE OF DEATH OF THE  
15 DECEASED EMPLOYEE BE REDUCED TO 50 PERCENT OF THE BENEFIT  
16 BEING THEN PAID;

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

18 \* **Sec. 9.** AS 23.30.220(a) is repealed and reenacted to read:

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

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

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

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

30 (4) if at the time of injury the

31 (A) employee's earnings are calculated by the day, hour, or by the  
32 output of the employee, the employee's gross weekly earnings are the employee's

1 earnings most favorable to the employee computed by dividing by 13 the  
2 employee's earnings, not including overtime or premium pay, earned during any  
3 period of 13 consecutive calendar weeks within the 52 weeks immediately  
4 preceding the injury;

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

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

16 (6) if at the time of injury the employment is exclusively seasonal or  
17 temporary, then, notwithstanding (1) - (5) of this subsection, the gross weekly earnings  
18 are the greater of 1/50th of the total wages

19 (A) that the employee has earned from all occupations during the  
20 calendar year immediately preceding the injury; or

21 (B) the employee would have earned in the seasonal or temporary  
22 employment but for the injury;

23 (7) when the employee is working under concurrent contracts with two  
24 or more employers, the employee's earnings from all employers is considered as if earned  
25 from the employer liable for compensation;

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

30 (9) if the employee is injured while performing duties as a volunteer  
31 ambulance attendant, volunteer police officer, or volunteer fire fighter, then,  
32 notwithstanding (1) - (6) of this subsection, the gross weekly earnings for calculating

1 compensation shall be the minimum gross weekly earnings paid a full-time ambulance  
2 attendant, police officer, or fire fighter employed in the political subdivision where the  
3 injury occurred, or, if the political subdivision has no full-time ambulance attendants,  
4 police officers, or fire fighters, at a reasonable figure previously set by the political  
5 subdivision to make this determination, but in no case may the gross weekly earnings for  
6 calculating compensation be less than the minimum wage computed on the basis of 40  
7 hours work per week;

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

15 \* **Sec. 10.** AS 23.30.220 is amended by adding a new subsection to read:

16 (c) In this section,

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

19 (2) "temporary work" means employment that is not permanent, ends  
20 upon completion of the task, job, or contract, and ends within six months from the date  
21 of injury.

22 \* **Sec. 11.** AS 23.30.250 is repealed and reenacted to read:

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

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

1 11.46.150.

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 by knowingly making  
4 a false or misleading statement or representation for the purpose of obtaining that benefit,  
5 the board shall order that person to make full reimbursement of the cost of all benefits  
6 obtained. Upon entry of an order authorized under this subsection, the board shall also  
7 order that person to pay all reasonable costs and attorney fees incurred by the employer  
8 and the employer's carrier in obtaining an order under this section and in defending any  
9 claim made for benefits under this chapter. If a person fails to comply with an order of  
10 the board requiring reimbursement of compensation and payment of costs and attorney  
11 fees, the employer may declare the person in default and proceed to collect any sum due  
12 as provided under AS 23.30.170(b) and (c).

13 \* **Sec. 12.** AS 23.30 is amended by adding a new section to read:

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

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

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

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

26 \* **Sec. 13.** AS 23.30.265(2) is amended to read:

27 (2) "arising out of and in the course of employment"

28 (A) includes employer-required or supplied travel to and from  
29 a remote job site and activities occurring anywhere on the premises of a  
30 remote job site if the employee is required to live on the premises of the  
31 remote job site and to be available on a 24-hour basis; but excludes  
32 activities on the premises of a remote job site if the employee has fixed

1                   work hours and the activities occur outside of the fixed work hours of the  
2                   employee;

3                   **(B) includes** activities performed at the direction or under the  
4                   control of the employer; and employer-sanctioned activities at employer-  
5                   provided facilities;

6                   **(C) [BUT]** excludes recreational league activities sponsored by  
7                   the employer, unless participation is required as a condition of employment,  
8                   and activities of a personal nature away from employer-provided facilities;

9       \* **Sec. 14.** TRANSITION. By January 1, 1996, a rating organization that files a rate for  
10 workers' compensation insurance shall file a rating that contains a method of computing workers'  
11 compensation insurance rates that is in compliance with AS 21.39.045, added by sec. 2 of this  
12 Act.

13       \* **Sec. 15.** Section 2 of this Act applies to a policy of workers' compensation insurance that  
14 is entered into or renewed on or after the effective date of this Act.

15       \* **Sec. 16.** Section 8 of this Act takes effect January 1, 1996.

16       \* **Sec. 17.** Except as provided in sec. 16 of this Act, this Act takes effect July 1, 1995.