

SENATE BILL NO. 140

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Introduced: 3/23/95

Referred: JUD, FIN

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
8 determination of an employee's future earning capacity by focusing on the employee's wages
9 at the time of injury and converting, by formula, the employee's rate of pay into a weekly
10 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. 7 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
21 open-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
25 be 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
30 contain or impose a higher premium rate if the risk upon which the higher rate filing
31 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 insurance
2 if the filing includes a reasonable method of recognizing differences in rates of pay
3 and the method uses a credit scale that begins at an amount equal to the average
4 weekly wage in this state as determined by the Department of Labor.

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

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

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

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

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

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

22 (c) In this section,

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

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

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

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

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

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

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

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

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

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

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

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

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

31 [(1) FIVE YEARS FOLLOWING DATE OF DEATH OF THE

1 DECEASED EMPLOYEE BE REDUCED TO 66 2/3 PERCENT OF THE BENEFIT
2 BEING THEN PAID;

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

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

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

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

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

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

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

19 (4) if at the time of injury the

20 (A) employee's earnings are calculated by the day, hour, or by
21 the output of the employee, the employee's gross weekly earnings are the
22 employee's earnings most favorable to the employee computed by dividing by
23 13 the employee's earnings, not including overtime or premium pay, earned
24 during any period of 13 consecutive calendar weeks within the 52 weeks
25 immediately preceding the injury;

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

1 this sum by 13;

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

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

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

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

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

28 (10) if an employee is entitled to compensation under AS 23.30.180
29 and the board determines that calculation of the employee's gross weekly earnings
30 under (1) - (7) of this subsection does not fairly reflect the employee's earnings during
31 the period of disability, the board shall determine gross weekly earnings by considering

1 the nature of the employee's work, work history, and resulting disability, but
2 compensation calculated under this paragraph may not exceed the employee's gross
3 weekly earnings at the time of injury.

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

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

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

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

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

28 Sec. 23.30.263. IMMUNITY FROM CIVIL LIABILITY FOR WORKPLACE
29 SAFETY INSPECTIONS. An employer's safety inspector is not liable for civil
30 damages for an injury to an employee of that employer resulting from an act or
31 omission in performing or failing to perform a loss control service, a workplace safety

1 inspection, or a safety advisory service provided in connection with an employer's
2 workers' compensation insurance coverage, unless the act or failure to act constitutes
3 intentional misconduct. In this section, "safety inspector" means

- 4 (1) a carrier and an employee or agent of the carrier;
- 5 (2) a trade association of which the employer is a member; or
- 6 (3) a person providing adjusting or inspection services to an employer
7 who is a member of an association established under AS 21.76.010 or to an employer
8 who is self-insured under AS 23.30.090.

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

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

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

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

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

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