

CS FOR HOUSE BILL NO. 419(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/5/00

Referred: Finance

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the weekly rate of compensation and minimum and maximum
2 compensation rates for workers' compensation; specifying components of a workers'
3 compensation reemployment plan; adjusting workers' compensation benefits for
4 permanent partial impairment, for reemployment plans, for rehabilitation benefits,
5 for widows, widowers, and orphans, and for funerals; relating to permanent total
6 disability of an employee receiving rehabilitation benefits; relating to calculation
7 of gross weekly earnings for workers' compensation benefits for seasonal and
8 temporary workers and for workers with overtime or premium pay; setting time
9 limits for requesting a hearing on claims for workers' compensation, for selecting
10 a rehabilitation specialist, and for payment of medical bills; relating to termination
11 and to waiver of rehabilitation benefits, obtaining medical releases, and resolving
12 discovery disputes relating to workers' compensation; setting an interest rate for

1 late payments of workers' compensation; providing for updating the workers'
 2 compensation medical fee schedule; and providing for an effective date."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new
 5 section to read:

6 INTENT. It is the intent of the legislature that

7 (1) AS 23.30 be interpreted so as to ensure the quick, efficient, fair, and
 8 predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost
 9 to the employers who are subject to the provisions of AS 23.30;

10 (2) AS 23.30 not be construed by the courts in favor of any party;

11 (3) workers' compensation cases be decided on the merits, except when
 12 otherwise provided by statute;

13 (4) increases in benefits be tied to the state average weekly wage so as to more
 14 fairly compensate injured workers and that the benefit rate in effect at the time of injury
 15 remain the benefit rate for the life of the claim without regard to any changes that may occur
 16 in the state average weekly wage subsequent to the year of injury;

17 (5) AS 23.30.041 be amended to clarify existing language and to mandate
 18 compliance by the board, the reemployment administrator, and the parties with the deadlines
 19 in AS 23.30.041;

20 (6) vocational rehabilitation clearly be a voluntary process that allows
 21 claimants to waive their rights to receive reemployment benefits;

22 (7) claimants be entitled to permanent impairment benefits and reduced
 23 compensation while involved in the reemployment process so as to encourage injured workers
 24 to complete that process as quickly as possible and return to the workplace in an expeditious
 25 and efficient manner;

26 (8) claimants provide releases of information that allow employers and insurers
 27 and their agents to obtain promptly information needed to investigate and adjust claims;

28 (9) medical information relevant to a claim be discoverable and be promptly
 29 provided; and

30 (10) the discovery process be improved to encourage the quick and efficient

1 resolution of discovery disputes under AS 23.30.

2 * **Sec. 2.** AS 23.30.041(g) is amended to read:

3 (g) Within 15 [10] days after the employee receives the administrator's
 4 notification of eligibility for benefits, an employee who desires to use these benefits
 5 shall give written notice to the employer of the employee's selection of a rehabilitation
 6 specialist who shall provide a complete reemployment benefits plan. **Failure to give**
 7 **notice required by this subsection constitutes noncooperation under (n) of this**
 8 **section.** If the employer disagrees with the employee's choice of rehabilitation
 9 specialist to develop the plan and the disagreement cannot be resolved, then the
 10 administrator shall assign a rehabilitation specialist. The employer and employee each
 11 have one right of refusal of a rehabilitation specialist.

12 * **Sec. 3.** AS 23.30.041(h) is amended to read:

13 (h) Within 90 days after the rehabilitation specialist's selection under (g) of
 14 this section, the reemployment plan must be formulated and approved. **The**
 15 **reemployment plan must require continuous participation by the employee and**
 16 **must maximize the usage of the employee's transferrable skills.** The reemployment
 17 plan must include at least the following:

- 18 (1) a determination of the occupational goal in the labor market;
- 19 (2) an inventory of the employee's technical skills, **transferrable skills,**
 20 physical and intellectual capacities, academic achievement, emotional condition, and
 21 family support;
- 22 (3) a plan to acquire the occupational skills to be employable;
- 23 (4) the cost estimate of the reemployment plan, including provider fees;
 24 **and** [;] the **cost** [AMOUNT] of tuition, books, tools, and supplies, [;] transportation,
 25 [;] temporary lodging, [;] or job modification devices;
- 26 (5) the estimated length of time that the plan will take;
- 27 (6) the date **that** the plan will commence;
- 28 (7) the estimated time of medical stability as predicted by **a treating**
 29 **physician or by a physician who has examined the employee at the request of the**
 30 **employer or the board, or by referral of** the **treating** physician;
- 31 (8) a detailed description and plan schedule; and

(9) a finding by the rehabilitation specialist that the inventory under (2) of this subsection indicates that the employee can be reasonably expected to satisfactorily complete the plan and perform in a new occupation within the time and cost limitations of the plan.

* **Sec. 4.** AS 23.30.041(k) is amended to read:

(k) Benefits related to the reemployment plan may not extend past two years from date of plan approval or acceptance, whichever date occurs first, at which time the benefits expire. If an employee reaches medical stability before completion of the plan, temporary total disability benefits shall cease and permanent impairment benefits shall then be paid at the employee's temporary total disability rate. If the employee's permanent impairment benefits are exhausted before the completion or termination of the reemployment plan, the employer shall provide **compensation** [WAGES] equal to **70** [60] percent of the employee's spendable weekly wages, but not to exceed **105 percent of the average weekly wage** [\$525], until the completion or termination of the plan, **except that any compensation paid under this subsection is reduced by wages earned by the employee while participating in the plan to the extent that the wages earned, when combined with the compensation paid under this subsection, exceed the employee's temporary total disability rate. If permanent partial disability benefits have been paid in a lump sum before the employee requested or was found eligible for reemployment benefits, payment of benefits under this subsection is suspended until permanent partial disability benefits would have ceased, had those benefits been paid at the employee's temporary total disability rate, notwithstanding the provisions of AS 23.30.155(j).** A permanent impairment benefit remaining unpaid upon the completion or termination of the plan shall be paid to the employee in a single lump sum. **An employee may not be considered permanently totally disabled so long as the employee is involved in the rehabilitation process under this chapter.** The fees of the rehabilitation specialist or rehabilitation professional shall be paid by the employer and may not be included in determining the cost of the reemployment plan.

* **Sec. 5.** AS 23.30.041(l) is amended to read:

(l) The cost of the reemployment plan incurred under this section shall be the

responsibility of the employer, shall be paid on an expense incurred basis, and may not exceed **\$13,300** [\$10,000].

* **Sec. 6.** AS 23.30.041(n) is amended to read:

(n) After the employee has elected to participate in reemployment benefits, if the employer believes the employee has not cooperated, the employer may terminate reemployment benefits on the date of noncooperation. Noncooperation means

(1) unreasonable failure to

(A) [(1)] keep appointments;

(B) [(2)] maintain passing grades;

(C) [(3)] attend designated programs;

(D) [(4)] maintain contact with the rehabilitation specialist;

(E) [(5)] cooperate with the rehabilitation specialist in developing a reemployment plan and participating in activities relating to reemployability on a full-time basis;

(F) [(6)] comply with the employee's responsibilities outlined in the reemployment plan; or

(G) [(7)] participate in any planned reemployment activity as determined by the administrator; **or**

(2) failure to give written notice to the employer of the employee's choice of rehabilitation specialists within 15 days after receiving notice of eligibility for benefits from the administrator as required by (g) of this section.

* **Sec. 7.** AS 23.30.041 is amended by adding a new subsection to read:

(r) Notwithstanding AS 23.30.012, after medical stability has been determined, an employee may waive any benefits or rights under this section, including an eligibility evaluation and benefits related to a reemployment plan. To waive any benefits or rights under this section, an employee must file a statement under oath with the board to notify the parties of the waiver and to specify the scope of benefits or rights that the employee seeks to waive. The statement must be on a form prescribed or approved by the board. The board shall serve the notice of waiver on all parties to the claim within 10 days after filing. The waiver is effective upon service to the party. A waiver effective under this subsection discharges the liability of the employer for

the benefits or rights contained in this section. The waiver may not be modified under AS 23.30.130.

* **Sec. 8.** AS 23.30.095(f) is amended to read:

(f) All fees and other charges for medical treatment or service shall be subject to regulation by the board but may not exceed usual, customary, and reasonable fees for the treatment or service in the community in which it is rendered, as determined by the board. An employee may not be required to pay a fee or charge for medical treatment or service. **The board shall adopt updated usual, customary, and reasonable medical fee schedules at least once each year.**

* **Sec. 9.** AS 23.30.095 is amended by adding new subsections to read:

(l) An employer shall pay an employee's bills for medical treatment under this chapter, excluding prescription charges or transportation for medical treatment, within 30 days after the date that the employer receives the health care provider's bill or a completed report, whichever is later.

(m) Unless the employer controverts a charge, an employer shall reimburse an employee's prescription charges under this chapter within 30 days after the employer received the health care provider's completed report and an itemization of the prescription charges for the employee. Unless the employer controverts a charge, an employer shall reimburse any transportation expenses for medical treatment under this chapter within 30 days after the employer received the health care provider's completed report and an itemization of the dates, destination, and transportation expenses for each date of travel for medical treatment. If the employer does not plan to make or does not make payment or reimbursement in full as required by this subsection, the employer shall notify in writing the employee and the employee's health care provider that payment will not be timely made and the reasons for the nonpayment. The notification must be provided on or before the date that payment is due under this subsection or (l) of this section.

* **Sec. 10.** AS 23.30.105(a) is amended to read:

(a) The right to compensation for disability under this chapter is barred unless a claim for it is filed within two years after the employee has knowledge of the nature of the employee's disability and its relation to the employment and after disablement.

1 However, the maximum time for filing the claim in any event other than arising out
 2 of an occupational disease shall be four years from the date of injury, and the right to
 3 compensation for death is barred unless a claim therefor is filed within one year after
 4 the death, except that if payment of compensation has been made without an award on
 5 account of the injury or death, a claim may be filed within two years after the date of
 6 the last payment of benefits under AS 23.30.041, 23.30.180 [AS 23.30.180], 23.30.185,
 7 23.30.190, 23.30.200, or 23.30.215. It is additionally provided that, in the case of
 8 latent defects pertinent to and causing compensable disability, the injured employee has
 9 full right to claim as shall be determined by the board, time limitations
 10 notwithstanding.

11 * **Sec. 11.** AS 23.30.107(a) is amended to read:

12 (a) Upon written request, an employee shall provide written authority to the
 13 employer, carrier, rehabilitation specialist, or reemployment benefits administrator to
 14 obtain medical and rehabilitation information relative to the employee's injury. The
 15 request must include notice of the employee's right to file a petition for a
 16 protective order with the board and must be served by certified mail to the
 17 employee's address on the notice of injury or by hand delivery to the employee.
 18 This subsection may not be construed to authorize an employer, carrier,
 19 rehabilitation specialist, or reemployment benefits administrator to request
 20 medical or other information that is not applicable to the employee's injury.

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

22 **Sec. 23.30.108. Prehearings on discovery matters; objections to requests**
 23 **for release of information; sanctions for noncompliance.** (a) If an employee
 24 objects to a request for written authority under AS 23.30.107, the employee must file
 25 a petition with the board seeking a protective order within 14 days after service of the
 26 request. If the employee fails to file a petition and fails to deliver the written authority
 27 as required by AS 23.30.107 within 14 days after service of the request, the
 28 employee's rights to benefits under this chapter are suspended until the written
 29 authority is delivered.

30 (b) If a petition seeking a protective order is filed, the board shall set a
 31 prehearing within 21 days after the filing date of the petition. At a prehearing

1 conducted by the board's designee, the board's designee has the authority to resolve
 2 disputes concerning the written authority. If the board or the board's designee orders
 3 delivery of the written authority and if the employee refuses to deliver it within 10
 4 days after being ordered to do so, the employee's rights to benefits under this chapter
 5 are suspended until the written authority is delivered. During any period of suspension
 6 under this subsection, the employee's benefits under this chapter are forfeited unless
 7 the board, or the court determining an action brought for the recovery of damages
 8 under this chapter, determines that good cause existed for the refusal to provide the
 9 written authority.

10 (c) At a prehearing on discovery matters conducted by the board's designee,
 11 the board's designee shall direct parties to sign releases or produce documents, or both,
 12 if the parties present releases or documents that are likely to lead to admissible
 13 evidence relative to an employee's injury. If a party refuses to comply with an order
 14 by the board's designee or the board concerning discovery matters, the board may
 15 impose appropriate sanctions in addition to any forfeiture of benefits, including
 16 dismissing the party's claim, petition, or defense. If a discovery dispute comes before
 17 the board for review of a determination by the board's designee, the board may not
 18 consider any evidence or argument that was not presented to the board's designee, but
 19 shall determine the issue solely on the basis of the written record. The decision by the
 20 board on a discovery dispute shall be made within 30 days. The board shall uphold
 21 the designee's decision except when the board's designee's determination is an abuse
 22 of discretion.

23 * **Sec. 13.** AS 23.30.110 is amended by adding a new subsection to read:

24 (h) The filing of a hearing request under (c) of this section suspends the
 25 running of the two-year time period specified in (c) of this section. However, if the
 26 employee subsequently requests a continuance of the hearing and the request is
 27 approved by the board, the granting of the continuance renders the request for hearing
 28 inoperative, and the two-year time period specified in (c) of this section continues to
 29 run again from the date of the board's notice to the employee of the board's granting
 30 of the continuance and of its effect. If the employee fails to again request a hearing
 31 before the conclusion of the two-year time period in (c) of this section, the claim is

1 denied.

2 * **Sec. 14.** AS 23.30.155 is amended by adding a new subsection to read:

3 (p) An employer shall pay interest on compensation that is not paid when due.
4 Interest required under this subsection accrues at the rate specified in AS 09.30.070(a)
5 that is in effect on the date the compensation is due.

6 * **Sec. 15.** AS 23.30.175(a) is amended to read:

7 (a) The weekly rate of compensation for disability or death may not exceed
8 the maximum compensation rate, may not be less than 22 percent of the
9 maximum compensation rate, [\$700] and initially may not be less than \$110.
10 However, if the board determines that the employee's spendable weekly wages are less
11 than \$110 a week as computed under AS 23.30.220, or less than 22 percent of the
12 maximum compensation rate [\$154] a week in the case of an employee who has
13 furnished documentary proof of the employee's wages, it shall issue an order adjusting
14 the weekly rate of compensation to a rate equal to the employee's spendable weekly
15 wages. If the employer can verify that the employee's spendable weekly wages are
16 less than 22 percent of the maximum compensation rate [\$154], the employer may
17 adjust the weekly rate of compensation to a rate equal to the employee's spendable
18 weekly wages without an order of the board. If the employee's spendable weekly
19 wages are greater than 22 percent of the maximum compensation rate [\$154], but
20 80 percent of the employee's spendable weekly wages is less than 22 percent of the
21 maximum compensation rate [\$154], the employee's weekly rate of compensation
22 shall be 22 percent of the maximum compensation rate [\$154]. Prior payments
23 made in excess of the adjusted rate shall be deducted from the unpaid compensation
24 in the manner the board determines. In any case, the employer shall pay timely
25 compensation. In this subsection, "maximum compensation rate" means 120
26 percent of the average weekly wage, calculated under (d) of this section,
27 applicable on the date of injury of the employee.

28 * **Sec. 16.** AS 23.30.175 is amended by adding a new subsection to read:

29 (d) By December 1 of each year, the commissioner shall determine the average
30 weekly wage in this state by dividing the average annual wage in this state for the
31 preceding calendar year by 52. The resulting figure is the average weekly wage in this

1 state applicable for the period beginning January 1 and ending December 31 of the
 2 following calendar year. The average annual wage calculation required under this
 3 subsection shall include the wages of all employees in the state, both public and
 4 private, who are covered by this chapter.

5 * **Sec. 17.** AS 23.30.190(a) is amended to read:

6 (a) In case of impairment partial in character but permanent in quality, and not
 7 resulting in permanent total disability, the compensation is **\$177,000** [\$135,000]
 8 multiplied by the employee's percentage of permanent impairment of the whole person.
 9 The percentage of permanent impairment of the whole person is the percentage of
 10 impairment to the particular body part, system, or function converted to the percentage
 11 of impairment to the whole person as provided under (b) of this section. The
 12 compensation is payable in a single lump sum, except as otherwise provided in
 13 AS 23.30.041, but the compensation may not be discounted for any present value
 14 considerations.

15 * **Sec. 18.** AS 23.30.215(a) is amended to read:

16 (a) If the injury causes death, the compensation is known as a death benefit
 17 and is payable in the following amounts to or for the benefit of the following persons:

18 (1) reasonable and necessary funeral expenses not exceeding **\$3,300**
 19 [\$2,500];

20 (2) if there is a widow or widower or a child or children of the
 21 deceased, the following percentages of the spendable weekly wages of the deceased:

22 (A) 80 percent for the widow or widower with no children;

23 (B) **50** [40] percent for the widow or widower with one child
 24 and 40 percent for the child;

25 (C) **30** [25] percent for the widow or widower with two or more
 26 children and **70** [55] percent divided equally among the children;

27 (D) **100** [80] percent for an only child when there is no widow
 28 or widower;

29 (E) **100** [80] percent, divided equally, if there are two or more
 30 children and no widow or widower;

31 (3) if the widow or widower remarries, the widow or widower is

entitled to be paid in one sum an amount equal to the compensation to which the widow or widower would otherwise be entitled in the two years commencing on the date of remarriage as full and final settlement of all sums due the widow or widower;

(4) if there is no widow or widower or child or children, then for the support of father, mother, grandchildren, brothers and sisters, if dependent upon the deceased at the time of injury, 42 percent of the spendable weekly wage of the deceased to such beneficiaries, share and share alike, not to exceed \$20,000 in the aggregate.

* **Sec. 19.** AS 23.30.220(a) is amended to read:

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

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

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

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

(4) if at the time of injury the

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

(B) employee has been employed for less than 13 calendar weeks immediately preceding the injury, then, notwithstanding (1) - (3) of this subsection and (A) of this paragraph, the employee's gross weekly earnings are computed by determining the amount that the employee would have earned,

[NOT] including overtime or premium pay, had the employee been employed by the employer for 13 calendar weeks immediately preceding the injury and dividing this sum by 13;

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

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

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

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

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

(10) if an employee is entitled to compensation under AS 23.30.180 and the board determines that calculation of the employee's gross weekly earnings under (1) - (7) of this subsection does not fairly reflect the employee's earnings during

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

5 * **Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section
6 to read:

7 TRANSITION: REGULATIONS. The agency affected by the changes made by this
8 Act may proceed to adopt regulations under AS 23.30.005 to implement the changes. The
9 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the
10 effective date of secs. 2 - 19 of this Act.

11 * **Sec. 21.** Section 20 of this Act takes effect immediately under AS 01.10.070(c).

12 * **Sec. 22.** Except as provided in sec. 21 of this Act, this Act takes effect July 1, 2000.