

SENATE BILL NO. 278

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/18/00

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Alaska Workers' Compensation Act, including the weekly
2 rate of compensation and minimum and maximum compensation rates, specifying
3 components of a reemployment plan, adjusting benefits for permanent partial
4 impairment, for reemployment plans, for rehabilitation benefits, for widows,
5 widowers and orphans, and for funerals, calculation of gross weekly earnings for
6 seasonal and temporary workers and for workers with overtime or premium pay,
7 setting time limits for requesting a hearing or rehabilitation benefits, setting time
8 limits for claims for compensation and for the rehabilitation process, setting time
9 limits for payment of medical bills, waiver of rehabilitation benefits, obtaining
10 medical releases and resolving discovery disputes, setting an interest rate for late
11 compensation, and providing for updating the medical fee schedule; and providing
12 for an effective date."

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

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

4 LEGISLATIVE FINDINGS. (a) The legislature affirms its intent stated in sec. 1(a),
5 ch. 79, SLA 1988, that AS 23.30 be interpreted so as to ensure the quick, efficient, fair, and
6 predictable delivery of indemnity and medical benefits to injured workers at a reasonable cost
7 to the employers who are subject to the provisions of AS 23.30.

8 (b) The legislature affirms its intent stated in sec. 1(b), ch. 79, SLA 1988, that the
9 workers' compensation laws must not be construed by the courts in favor of any party and
10 it is the specific intent of the legislature that workers' compensation cases be decided on the
11 merits, except when otherwise provided by statute.

12 (c) It is the intent of the legislature to tie increases in benefits under AS 23.30 to the
13 State of Alaska's Alaska average weekly wage so as to more fairly compensate injured
14 workers. However, it is the intent of the legislature that the benefit rate in effect at the time
15 of injury remains the benefit rate for the life of the claim without regard to any changes that
16 may occur in the Alaska average weekly wage subsequent to the year of injury of the worker.

17 (d) It is the intent of the legislature in amending AS 23.30.041 to clarify existing
18 language and to mandate compliance by the Workers' Compensation Board, the reemployment
19 administrator, and the parties with deadlines contained in AS 23.30. It is further the intent
20 of the legislature to reinforce that vocational rehabilitation is a voluntary process under
21 AS 23.30 that allows claimants to waive their rights to receive reemployment benefits. It is
22 the intent of the legislature that claimants be entitled to permanent impairment benefits and
23 reduced compensation under AS 23.30 while involved in the reemployment process so as to
24 encourage injured workers to complete that process as quickly as possible and return to the
25 work place in an expeditious and efficient manner.

26 (e) It is the intent of the legislature that workers' compensation claimants provide
27 releases of information so that employers and insurers and their agents can promptly obtain
28 information needed to investigate and adjust claims under AS 23.30. It remains the
29 legislature's intent that medical information relevant to a claim is discoverable and should be
30 promptly provided. It is further the intent of the legislature to facilitate discovery and in so
31 doing encourage the quick and efficient resolution of discovery disputes under AS 23.30.

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

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

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

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

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

1 of this subsection indicates that the employee can be reasonably expected to
 2 satisfactorily complete the plan and perform in a new occupation within the time and
 3 cost limitations of the plan.

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

5 (k) Benefits related to the reemployment plan may not extend past two years
 6 from date of plan approval or acceptance, whichever date occurs first, at which time
 7 the benefits expire. If an employee reaches medical stability before completion of the
 8 plan, temporary total disability benefits shall cease and permanent impairment benefits
 9 shall then be paid at the employee's temporary total disability rate. If the employee's
 10 permanent impairment benefits are exhausted before the completion or termination of
 11 the reemployment plan, the employer shall provide **compensation** [WAGES] equal to
 12 **70** [60] percent of the employee's spendable weekly wages but not to exceed **105**
 13 **percent of the average weekly wage,** [\$525] until the completion or termination of
 14 the plan **except that any compensation paid under this subsection is reduced by**
 15 **wages earned by the employee while participating in the plan to the extent that**
 16 **the wages earned, when combined with the compensation paid under this**
 17 **subsection, exceed the employee's temporary total disability rate. If permanent**
 18 **partial disability benefits have been paid in a lump sum before the employee**
 19 **requested or was found eligible for reemployment benefits, payment of benefits**
 20 **under this subsection is suspended until permanent partial disability benefits**
 21 **would have ceased had those benefits been paid at the employee's temporary total**
 22 **disability rate, notwithstanding the provisions of AS 23.30.155(j).** A permanent
 23 impairment benefit remaining unpaid upon the completion or termination of the plan
 24 shall be paid to the employee in a single lump sum. **A employee may not be**
 25 **considered permanently totally disabled so long as the employee is involved in the**
 26 **rehabilitation process under this chapter.** The fees of the rehabilitation specialist
 27 or rehabilitation professional shall be paid by the employer and may not be included
 28 in determining the cost of the reemployment plan.

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

30 (l) The cost of the reemployment plan incurred under this section shall be the
 31 responsibility of the employer, shall be paid on an expense incurred basis, and may not

1 exceed **\$13,300** [\$10,000].

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

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

7 (1) keep appointments;

8 (2) maintain passing grades;

9 (3) attend designated programs;

10 (4) maintain contact with the rehabilitation specialist;

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

14 (6) comply with the employee's responsibilities outlined in the
15 reemployment plan; [OR]

16 (7) participate in any planned reemployment activity as determined by
17 the administrator; or

18 **(8) give written notice to the employer of the employee's choice of**
19 **rehabilitation specialist within 15 days after receiving notice of eligibility for**
20 **benefits from the administrator as required by (g) of this section.**

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

22 (r) Notwithstanding AS 23.30.012, an employee may waive, at any time, any
23 benefits or rights under this section, including an eligibility evaluation and benefits
24 related to a reemployment plan. To waive any benefits or rights under this section,
25 an employee must file a statement under oath with the board to notify the parties of
26 the waiver and to specify the scope of benefits or rights that the employee seeks to
27 waive. The statement must be on a form prescribed or approved by the board. The
28 board shall serve the notice of waiver on all parties to the claim within 10 days after
29 filing. The waiver is effective upon service to the party. A waiver effective under this
30 subsection discharges the liability of the employer for the benefits or rights contained
31 in this section. The waiver may not be modified under AS 23.30.130.

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

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

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

9 (l) An employer shall make payment for medical bills for an employee's
10 treatment under this chapter, excluding prescription charges or transportation for
11 medical treatment, within 30 days after the date that the employer received the later
12 of the medical provider's bill or a completed report. The report for an employee's
13 medical treatment should preferably be done by the medical provider on a form
14 prescribed by the board.

15 (m) Unless the employer controverts a charge, an employer shall reimburse an
16 employee's prescription charges under this chapter within 30 days after the employer
17 received the medical provider's completed report and an itemization of the prescription
18 charges for the employee. Unless the employer controverts a charge, an employer
19 shall reimburse any transportation expenses for medical treatment under this chapter
20 within 30 days after the employer received the medical provider's completed report
21 and an itemization of the dates, destination, and transportation expenses for each date
22 of travel for medical treatment. If the employer does not plan to make or does not
23 make payment or reimbursement in full in accordance with this subsection, the
24 employer shall notify in writing the employee and the employee's medical provider
25 that payment will not be timely made and the reasons for the nonpayment. The
26 notification must be provided on or before the date on which payment is due under this
27 section.

28 * **Sec. 10.** AS 23.30.105 is amended to read:

29 (a) The right to compensation for disability under this chapter is barred unless
30 a claim for it is filed within two years after the employee has knowledge of the nature
31 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 * **Sec. 12.** AS 23.30 is amended by adding a new section to read:

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

27 (b) If a petition seeking a protective order is filed, the board shall set a
 28 prehearing within 21 days after the filing date of the petition. At a prehearing
 29 conducted by the board's designee, the board's designee has the authority to resolve
 30 disputes concerning release of information. If the board or the board's designee orders
 31 delivery of the written authority and if the employee refuses to deliver it within 10

1 days after being ordered to do so, the employee's rights to benefits under this chapter
2 are suspended until the written authority is delivered. The employee's benefits under
3 this chapter during any period of suspension under this section are forfeited unless the
4 board, or the court determining an action brought for the recovery of damages under
5 this chapter, determines that good cause existed for the refusal to provide the written
6 authority.

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

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

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

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

30 (p) Interest is payable on all compensation that is not paid when due. Interest
31 shall be paid at the rate specified as AS 09.30.070(a).

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

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

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

24 (d) Before December 1 of each year, the commissioner of labor and workforce
 25 development shall determine the Alaska average weekly wage by dividing the Alaska
 26 average annual wage for the preceding calendar year by 52. The resulting figure is the
 27 Alaska average weekly wage applicable for the period beginning January 1, and
 28 ending December 31, of the following calendar year. In this subsection, "Alaska
 29 average annual wage" means the average annual wage, as computed by the Department
 30 of Labor and Workforce Development, of all employees in the state, both public and
 31 private, who are covered by this chapter.

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

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

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

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

14 (1) reasonable and necessary funeral expenses not exceeding **\$3,300**
15 [\$2,500];

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

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

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

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

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

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

27 (3) if the widow or widower remarries, the widow or widower is
28 entitled to be paid in one sum an amount equal to the compensation to which the
29 widow or widower would otherwise be entitled in the two years commencing on the
30 date of remarriage as full and final settlement of all sums due the widow or widower;

31 (4) if there is no widow or widower or child or children, then for the

1 support of father, mother, grandchildren, brothers and sisters, if dependent upon the
2 deceased at the time of injury, 42 percent of the spendable weekly wage of the
3 deceased to such beneficiaries, share and share alike, not to exceed \$20,000 in the
4 aggregate.

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

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

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

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

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

17 (4) if at the time of injury the

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

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

31 (5) if at the time of injury the employee's earnings have not been fixed

1 or cannot be ascertained, the employee's earnings for the purpose of calculating
2 compensation are the usual wage for similar services when the services are rendered
3 by paid employees;

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

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

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

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

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

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

3 **APPLICABILITY.** The changes made by secs. 3 - 5 and 14 - 19 of this Act apply
4 only to an injury sustained on or after the effective date of secs. 3 - 5 and 14 - 19 of this Act.

5 * **Sec. 21.** 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. 22.** Section 21 of this Act takes effect immediately under AS 01.10.070(c).

12 * **Sec. 23.** Except as provided in sec. 22 of this Act, this Act takes effect July 1, 2000.