

HOUSE BILL NO. 450

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/9/04

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act providing for a special deposit for workers' compensation insurers; relating to**
2 **the board of governors of the Alaska Insurance Guaranty Association; relating to**
3 **covered workers' compensation claims paid by the Alaska Insurance Guaranty**
4 **Association; stating the intent of the legislature, and setting out limitations, concerning**
5 **the interpretation, construction, and implementation of workers' compensation laws;**
6 **relating to restructuring the Alaska workers' compensation system; eliminating the**
7 **Alaska Workers' Compensation Board; establishing a division of workers'**
8 **compensation within the Department of Labor and Workforce Development and**
9 **assigning certain Alaska Workers' Compensation Board functions to the division and**
10 **the Department of Labor and Workforce Development; establishing a Workers'**
11 **Compensation Appeals Commission; assigning certain functions of the Alaska Workers'**
12 **Compensation Board to the Workers' Compensation Appeals Commission; relating to**

1 agreements that discharge workers' compensation liability; providing for hearing
 2 officers in workers' compensation proceedings; relating to workers' compensation
 3 awards; relating to an employer's failure to insure and keep insured or provide security;
 4 providing for appeals from compensation orders; relating to workers' compensation
 5 proceedings; providing for supreme court jurisdiction of appeals from the Workers'
 6 Compensation Appeals Commission; providing for a maximum amount for the cost-of-
 7 living adjustment for workers' compensation benefits; providing for administrative
 8 penalties for employers uninsured or without adequate security for workers'
 9 compensation; relating to assigned risk pools and insurers; and providing for an
 10 effective date."

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

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

14 LEGISLATIVE INTENT. It is the intent of the legislature by secs. 3 - 6 of this Act

15 (1) to reform the workers' compensation system in Alaska to ensure the
 16 continued payment of benefits in the event of an insurer insolvency;

17 (2) to give parties affected by the insolvency of a workers' compensation
 18 insurer a voice on the board of governors of the Alaska Insurance Guaranty Association; and

19 (3) to reduce the overall costs of workers' compensation premiums to
 20 employers.

21 * **Sec. 2.** AS 08.18.101(1) is amended to read:

22 (1) to the extent required under AS 23.30, workers' compensation
 23 insurance that is purchased from a private insurer who is admitted to do business in the
 24 state and that shows coverage in this state, appropriate employee classifications, and
 25 rates applicable in this state, or a valid workers' compensation self-insurance
 26 certificate issued by the **director of the division of workers' compensation**
 27 [ALASKA WORKERS' COMPENSATION BOARD]; and

1 * **Sec. 3.** AS 21.09.090 is amended by adding a new subsection to read:

2 (e) In addition to any other deposit required under this section, an insurer who
 3 transacts workers' compensation insurance in this state shall maintain in the state a
 4 special deposit of cash or securities eligible for deposit under AS 21.24.030 in an
 5 amount not less than the basic capital or surplus required of an insurer under
 6 AS 21.09.070 for the protection of persons in this state covered under workers'
 7 compensation insurance. The insurer shall maintain the deposit under this subsection
 8 in this state as long as there is any outstanding liability of the insurer for workers'
 9 compensation in this state. If the insurer is unable to pay workers' compensation
 10 claims due under AS 23.30 because the insurer is an insolvent insurer, upon the
 11 director's request, the deposit is immediately available to the Alaska Insurance
 12 Guaranty Association (AS 21.80) for continuation of claims benefits to eligible
 13 workers. In this subsection, "insolvent insurer" has the meaning given in
 14 AS 21.80.180.

15 * **Sec. 4.** AS 21.24.130(d) is amended to read:

16 (d) **Except as provided in AS 21.09.090(e), if** [IF] the insurer is subject to
 17 delinquency proceedings as defined in AS 21.78, upon the order of a court of
 18 competent jurisdiction, the director shall yield the assets and securities held on deposit
 19 to the receiver, conservator, rehabilitator, or liquidator of the insurer, or to any other
 20 properly designated official or officials who succeed to the management and control of
 21 the insurer's assets.

22 * **Sec. 5.** AS 21.80.050 is repealed and reenacted to read:

23 **Sec. 21.80.050. Board of governors.** (a) The board of governors of the
 24 association consists of nine members appointed by the director. Terms are established
 25 in the plan of operation of the association. Membership of the board of governors
 26 consists of

- 27 (1) four members who represent member insurers;
- 28 (2) two members who represent employers;
- 29 (3) two members who represent labor;
- 30 (4) one member who represents licensees.

31 (b) Members appointed shall serve staggered three-year terms and may be

1 removed for cause by the director.

2 (c) Within 90 days after a vacancy occurs on the board, the director shall fill
3 the vacancy for the remaining period of the term of the vacating member.

4 (d) In appointing a member insurer to the board, the director shall consider,
5 among other things, whether all member insurers are fairly represented.

6 (e) Members of the board may be reimbursed from the assets of the
7 association for expenses incurred by them as members of the board of governors.

8 * **Sec. 6.** AS 21.80.180(6) is amended to read:

9 (6) "covered claim"

10 **(A)** means an unpaid claim, including one of unearned
11 premiums, that arises out of and is within the coverage and not in excess of the
12 applicable limits of an insurance policy issued by an insurer to which this
13 chapter applies if the insurer becomes an insolvent insurer and

14 **(i)** [(A)] the claimant or insured is a resident of this
15 state at the time of the insured event; [,] or

16 **(ii)** [(B)] the claim is a first party claim for damage to
17 property that is permanently located in this state;

18 **(B)** ["COVERED CLAIM"] does not include

19 **(i)** an amount awarded for punitive or exemplary
20 damages;

21 **(ii)** [,] an amount sought as a return of premium under a
22 retroactive rating plan;

23 **(iii)** [,] or an amount due a reinsurer, insurer, insurance
24 pool, or underwriting association, as subrogation recoveries or
25 otherwise; **or**

26 **(iv) a workers' compensation claim if the insured's**
27 **net worth exceeds \$25,000,000 on December 31 of the year**
28 **preceding the date the insurer becomes an insolvent insurer; in this**
29 **sub-subparagraph, "insured's net worth" includes the aggregate**
30 **net worth of the insured and all of its subsidiaries as calculated on**
31 **a consolidated basis;**

1 * **Sec. 7.** AS 23.05.067 (a) is amended to read:

2 (a) Each insurer providing workers' compensation insurance and each
3 employer who is self-insured or uninsured for purposes of AS 23.30 in this state shall
4 pay an annual service fee to the department for the administrative expenses of the state
5 for workers' safety programs under AS 18.60 and the workers' compensation program
6 under AS 23.30 as follows:

7 (1) for each employer,

8 (A) except as provided in (b) of this section, the service fee
9 shall be paid each year to the department at the time that the annual report is
10 required to be filed under AS 23.30.155(m) or (n); and

11 (B) the service fee is 2.9 percent of all payments reported to the
12 **director of the divisions of workers' compensation** [ALASKA WORKERS'
13 COMPENSATION BOARD] under AS 23.30.155(m) or (n), except second
14 injury fund payments; and

15 (2) for each insurer, the director of the division of insurance shall,
16 under (e) of this section, deposit from funds received from the insurer under
17 AS 21.09.210 a service fee of 1.82 percent of the direct premium income for workers'
18 compensation insurance received by the insurer during the year ending on the
19 preceding December 31, subject to all the deductions specified in AS 21.09.210(b).

20 * **Sec. 8.** AS 23.05.067(e) is amended to read:

21 (e) Annual service fees and civil penalties collected under this section **and**
22 **fees collected by the Workers' Compensation Appeals Commission** shall be
23 deposited in the workers' safety and compensation administration account in the state
24 treasury. Under AS 37.05.146(c), the **Workers' Compensation Appeals Commission**
25 **fees,** service fees, and civil penalties shall be accounted for separately, and
26 appropriations from the account are not made from the unrestricted general fund. The
27 legislature may appropriate money from the account for expenditures by the
28 department for necessary costs incurred by the department in the administration of the
29 workers' safety programs contained in AS 18.60 and of the Alaska Workers'
30 Compensation Act contained in AS 23.30. **The legislature may appropriate money**
31 **from the account for expenditures by the department for necessary costs**

1 **incurred by the Workers' Compensation Appeals Commission and for the**
 2 **administration of adjudication of claims and petitions arising under AS 23.30.**

3 Nothing in this subsection creates a dedicated fund or dedicates the money in the
 4 account for a specific purpose. Money deposited in the account does not lapse at the
 5 end of a fiscal year unless otherwise provided by an appropriation.

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

7 **Sec. 23.30.001. Intent of the legislature and construction of chapter.** It is
 8 the intent of the legislature that

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

12 (2) workers' compensation cases shall be decided on their merits and
 13 that the common law rule of liberal construction based on a remedial basis and
 14 beneficent purposes of workers' compensation legislation may not apply in workers'
 15 compensation cases; the workers' compensation system in Alaska is based on a mutual
 16 renunciation of common law rights and defenses by both employers and employees;
 17 the employees' rights to sue for damages are limited by the provisions of this chapter,
 18 and the employers' rights to raise defenses, such as lack of negligence and comparative
 19 negligence of the employee or others, are curtailed; workers' compensation laws may
 20 not be given a broad liberal construction in favor of the claimant or employee, nor
 21 may the interests of the employer be favored over those of the employee;

22 (3) hearings in workers' compensation cases shall be impartial and fair
 23 to all parties and that all parties shall be afforded due process and an opportunity to be
 24 heard and for their arguments and evidence to be fairly considered; doubt as to the
 25 substance of evidence may not be interpreted in favor of one party or the other, and
 26 evidence shall be carefully and rationally examined.

27 * **Sec. 10.** AS 23.30.005 is repealed and reenacted to read:

28 **Sec. 23.30.005. Alaska workers' compensation division; duties of**
 29 **department; regulations; notice of revocation of self-insurance.** (a) There is
 30 established in the Department of Labor and Workforce Development a division of
 31 workers' compensation. The commissioner shall appoint the director of the division.

1 The director shall have at least three years' experience in the field of workers'
2 compensation.

3 (b) The director is responsible to the commissioner for the execution of the
4 duties and responsibilities imposed by this chapter and the regulations adopted under
5 this chapter. The director shall

6 (1) direct and supervise the administrative, technical, investigative, and
7 enforcement activities of the division of workers' compensation;

8 (2) develop, in cooperation with others, programs for the improvement
9 of the workers' compensation system;

10 (3) prepare regulations, consistent with the responsibilities of the
11 division under this chapter, that are required to implement and administer this chapter
12 for adoption by the department;

13 (4) notify employees, employers, physicians, and rehabilitation
14 specialists of their rights and obligations under this chapter;

15 (5) perform other lawful acts necessary to carry out the purposes of
16 this chapter.

17 (c) The department shall adopt rules for the periodic selection, retention, and
18 removal of rehabilitation specialists and physicians under AS 23.30.041 and
19 23.30.095.

20 (d) The department may adopt regulations concerning the medical care
21 provided for in this chapter and, except as committed to the authority of the Workers'
22 Compensation Appeals Commission, may adopt regulations to carry out the provisions
23 of this chapter.

24 (e) The director shall notify the contracting agency of the state or of a political
25 subdivision of the state when it revokes the self-insurance certificate of an employer
26 holding a contract with the state or a political subdivision of the state.

27 * **Sec. 11.** AS 23.30 is amended by adding new sections to read:

28 **Sec. 23.30.007. Workers' Compensation Appeals Commission.** (a) There
29 is established in the Department of Labor and Workforce Development a Workers'
30 Compensation Appeals Commission. The commission has jurisdiction to hear appeals
31 from decisions and orders of hearing officers and the director. Jurisdiction of the

1 office is limited to administrative appeals arising under this chapter.

2 (b) The commission consists of three members appointed by the governor and
3 confirmed by a majority of the members of the legislature in joint session. Members
4 shall be appointed for a term of four years. A member may act and receive
5 compensation from the date of appointment until confirmation or rejection by the
6 legislature.

7 (c) A member of the commission shall, at the time of appointment,

8 (1) be a citizen of the United States, a resident of this state for five
9 years preceding appointment, licensed to practice law in this state, and a member in
10 good standing of the Alaska Bar Association; and

11 (2) have been in the active practice of law for least five years with
12 experience of workers' compensation law in this state.

13 (d) The governor shall appoint one member of the commission to serve as
14 chair of the commission. The chair of the commission shall serve a term of three years
15 but may not be appointed for successive terms as chair of the commission.

16 (e) A vacancy arising in the commission shall be filled by appointment of the
17 governor and confirmed by a majority of the members of the legislature in joint
18 session. Except as provided in AS 39.05.080(4), an appointee selected to fill a
19 vacancy shall hold office for the unexpired term of the member whose vacancy is
20 filled. A vacancy in the commission does not impair the authority of a quorum of
21 members to exercise all the powers and perform all the duties of the commission. A
22 majority of the members of the commission constitutes a quorum.

23 (f) A member of the commission may be removed from office by the governor
24 for good cause. A member of the commission, to be removed for cause, shall be given
25 a copy of the charges and afforded an opportunity to be heard in person or by counsel
26 in the member's own defense upon not less than 10 days' notice. If the member is
27 removed for cause, the governor shall file with the lieutenant governor a complete
28 statement of all charges made against the member, the governor's findings on the
29 charges, and the record of any proceedings. In this subsection, "good cause" includes

30 (1) misconduct in office or violation of AS 39.52;

31 (2) conviction of a felony;

1 (3) conviction of a misdemeanor related to workers' compensation;

2 (4) inability to serve, neglect of duty, incompetence, unjustified failure
3 to handle the caseload assigned, or similar nonfeasance of office; and

4 (5) failure to meet the requirements of this section relating to
5 qualification for office.

6 (g) The monthly base salary for a member of the commission shall be equal to
7 Step C, Range 29, of the salary schedule in AS 39.27.011(a) for Juneau, Alaska. The
8 chair of the commission shall receive a monthly salary equal to Step F, Range 30 of
9 the salary schedule in AS 39.27.011(a) for Juneau, Alaska. Members of the
10 commission are in the exempt service under AS 39.25.110.

11 (h) Each member of the commission, before entering upon the duties of office,
12 shall take and subscribe to the oath prescribed for principal officers of the state.

13 (i) The office and staff of the commission shall be physically separate from
14 office and staff of the division.

15 **Sec. 23.30.008. Powers and duties of the commission.** (a) The commission
16 shall be the exclusive and final authority for the hearing and determination of all
17 questions of law and fact arising under this chapter in those matters that have been
18 appealed to the commission, except for an appeal to the Alaska Supreme Court. The
19 commission may not have jurisdiction in any case that does not arise under this
20 chapter or in any criminal case. On any matter taken to the commission, the decision
21 of the commission is final and conclusive, unless appealed to the Alaska Supreme
22 Court, and shall stand in lieu of the order of the director or the hearing officer from
23 which the appeal was taken. Unless reversed by the Alaska Supreme Court, decisions
24 of the commission shall have the force of legal precedent.

25 (b) The commission, in its administrative capacity, shall maintain, index, and
26 make available for public inspection the final administrative decisions and orders of
27 the commission and of hearing officers. To promote consistency among legal
28 determinations, the chair of the commission may review and circulate among the other
29 members of the commission the drafts of formal decisions, decisions upon
30 reconsideration, and other legal opinions of the other members of the commission.
31 The drafts are confidential documents and are not subject to disclosure.

1 (c) The commission, in its administrative capacity, may adopt regulations
 2 implementing its authority and duties under this chapter, including rules of procedure
 3 and evidence for proceedings before the commission and before hearing officers in
 4 workers' compensation proceedings under AS 23.30.090 and 23.30.110, and for the
 5 adjudication of all claims and petitions and appeals under this chapter. The provisions
 6 of AS 44.62 (Administrative Procedure Act) apply to the adoption of regulations by
 7 the commission.

8 (d) The commission shall award a successful party reasonable costs and, if the
 9 party is represented by an attorney, attorney fees that the commission determines to be
 10 fully compensatory and reasonable. However, the commission may not make an
 11 award of attorney fees against an injured worker unless the commission finds that the
 12 worker's position on appeal was frivolous or unreasonable or the appeal was taken in
 13 bad faith.

14 (e) The commission, in its administrative capacity, may adopt and alter an
 15 official seal and do all things necessary, convenient, or desirable to carry out the
 16 powers expressly granted or necessarily implied in this chapter.

17 **Sec. 23.30.009. Powers and duties of the chair of the commission.** (a) The
 18 chair of the commission shall exercise general supervision of the office of the
 19 commission, appeals, and workers' compensation hearings and direct the
 20 administrative functions of the commission. The chair may

21 (1) employ and supervise commission staff and hearing officers and
 22 appoint a commission clerk;

23 (2) establish and implement a time management system for the
 24 commission, staff, and hearing officers and manage the calendar of hearings and
 25 appeals;

26 (3) assign the work of the commission members, hearing officers and
 27 staff so that hearings and appeals are resolved as expeditiously and competently as
 28 possible, including designating hearing officers to hear preliminary matters; and

29 (4) prepare an annual budget of the commission.

30 (b) The chair of the commission shall, not later than March 15 of each year,
 31 make available to the public and file with the lieutenant governor, a report regarding

1 the commission, including data regarding time periods between initial receipt and final
2 decisions on appeals.

3 * **Sec. 12.** AS 23.30.011(c) is amended to read:

4 (c) If an employee is entitled to the benefits of this chapter by reason of an
5 injury sustained in this state in employment by an employer who is domiciled in
6 another state and who has not secured the payment of compensation as required by
7 this chapter, the employer or the employer's carrier may file with the **division**
8 [BOARD] a certificate, issued by the commission or agency of the other state having
9 jurisdiction over workers' compensation claims, certifying that the employer has
10 secured the payment of compensation under the workers' compensation law of the
11 other state and that, with respect to that injury, the employee is entitled to the benefits
12 provided under that law. In that event,

13 (1) the filing of the certificate shall constitute an appointment by the
14 employer or the employer's carrier of the **director** [BOARD] as the employer's agent
15 for acceptance of the service of process in a proceeding brought by the employee or
16 the employee's dependents to enforce the employee's or their rights under this chapter
17 on account of the injury;

18 (2) the **director** [BOARD] shall send to the employer or carrier, by
19 registered or certified mail to the address shown on the certificate, a true copy of any
20 notice of claim or other process served on the director by the employee or the
21 employee's dependents in any proceeding brought to enforce the employee's or their
22 rights under this chapter;

23 (3) if the employer is a qualified self-insurer under the workers'
24 compensation law of the other state, the employer, upon submission of evidence
25 satisfactory to the **director** [BOARD] of the employer's ability to meet the employer's
26 liability to the employee under this chapter, shall be considered to be a qualified self-
27 insurer under this chapter;

28 (4) if the employer's liability under the workers' compensation law of
29 another state is insured, the employer's carrier, as to the employee or the employee's
30 dependents only, shall be considered to be an insurer authorized to write insurance
31 under and be subject to this chapter; however, unless its contract with the employer

1 requires it to pay an amount equivalent to the compensation benefits provided by this
 2 chapter, its liability for income benefits or medical and related benefits may not
 3 exceed the amounts of the benefits for which the insurer would have been liable under
 4 the workers' compensation law of the other state;

5 (5) if the amount for which the employer's insurance is liable under (3)
 6 and (4) of this subsection is less than the total of the compensation benefits to which
 7 the employee is entitled under this chapter, the **director** [BOARD] may, if **the**
 8 **director** [IT] considers it necessary, require the employer to file security satisfactory
 9 to the **director** [BOARD] to secure the payment of benefits due the employee or the
 10 employee's dependents under this chapter; and

11 (6) upon compliance with the preceding requirements of this
 12 subsection, the employer, as to the employee only, shall be considered to have secured
 13 the payment of compensation under this chapter.

14 * **Sec. 13.** AS 23.30.012 is amended to read:

15 **Sec. 23.30.012. Agreements in regard to claims. (a)** At any time after
 16 death, or after 30 days subsequent to the date of the injury, the employer and the
 17 employee or the beneficiary or beneficiaries, as the case may be, have the right to
 18 reach an agreement in regard to a claim for injury or death under this chapter [IN
 19 ACCORDANCE WITH THE APPLICABLE SCHEDULE IN THIS CHAPTER], but
 20 a memorandum of the agreement in a form prescribed by the **director** [BOARD] shall
 21 be filed with the **division** [BOARD]. Otherwise, the agreement is void for any
 22 purpose. **An agreement filed with the division discharges the liability of the**
 23 **employer for the compensation, notwithstanding the provisions of AS 23.30.130,**
 24 **23.30.160, and 23.30.245, and is enforceable as a compensation order.**

25 **(b) If the claimant or beneficiary is not represented by an attorney**
 26 **licensed to practice in this state, or the beneficiary is a minor, the division shall**
 27 **request review of the agreement by a hearing officer.** If approved by **a hearing**
 28 **officer** [THE BOARD], the agreement is enforceable the same as an order or award of
 29 **a hearing officer** [THE BOARD] and discharges the liability of the employer for the
 30 compensation notwithstanding the provisions of AS 23.30.130, 23.30.160, and
 31 23.30.245. The agreement shall be approved by **a hearing officer** [THE BOARD]

1 only when the terms conform to the provisions of this chapter and, if it involves or is
 2 likely to involve permanent disability, **a hearing officer** [THE BOARD] may require
 3 an impartial medical examination and a hearing in order to determine whether or not
 4 to approve the agreement. **A** [THE BOARD MAY APPROVE] lump-sum **settlement**
 5 **may be approved** [SETTLEMENTS] when it appears to be to the best interest of the
 6 employee or beneficiary or beneficiaries.

7 * **Sec. 14.** AS 23.30.015(b) is amended to read:

8 (b) Acceptance of compensation under [AN AWARD IN] a compensation
 9 order filed **with the office of the commission** [BY THE BOARD] operates as an
 10 assignment to the employer of all rights of the person entitled to compensation and the
 11 personal representative of a deceased employee to recover damages from the third
 12 person unless the person or representative entitled to compensation commences an
 13 action against the third person within one year after an **order** [AWARD].

14 * **Sec. 15.** AS 23.30.015(e) is amended to read:

15 (e) An amount recovered by the employer under an assignment, whether by
 16 action or compromise, shall be distributed as follows:

17 (1) the employer shall retain an amount equal to

18 (A) the expenses incurred by the employer with respect to the
 19 action or compromise, including [A] reasonable attorney **fees** [FEE]
 20 determined by **a hearing officer** [THE BOARD];

21 (B) the cost of all benefits actually furnished by the employer
 22 under this chapter;

23 (C) all amounts paid as compensation and **second injury**
 24 [SECOND-INJURY] fund payments, and, if the employer is self-insured or
 25 uninsured, all service fees paid under AS 23.05.067;

26 (D) the present value of all amounts payable later as
 27 compensation, computed from a schedule prepared by the **director** [BOARD];
 28 and the present value of the **estimated** cost of all benefits to be furnished later
 29 under AS 23.30.095 [AS ESTIMATED BY THE BOARD]; the amounts so
 30 computed and estimated **shall** [TO] be retained by the employer as a trust fund
 31 to pay compensation and the cost of benefits as they become due and to pay

1 any finally remaining excess sum to the person entitled to compensation or to
2 the representative; and

3 (2) the employer shall pay any excess to the person entitled to
4 compensation or to the representative of that person.

5 * **Sec. 16.** AS 23.30.015(j) is amended to read:

6 (j) Notice of the commencement of an action against a third party shall be
7 given to the **division** [BOARD] and to all interested parties within 30 days. **If a**
8 **request for a hearing under AS 23.30.110 has been filed, notice of the**
9 **commencement of the action shall also be filed with the commission.**

10 * **Sec. 17.** AS 23.30.025(a) is amended to read:

11 (a) An insurer may not enter into or issue a policy of insurance under this
12 chapter until its policy form has been submitted to and approved by the director of the
13 division of insurance. The director of the division of insurance may not approve the
14 policy form of an insurance company until the company files with it the certificate of
15 the director of the division of insurance showing that the company is authorized to
16 transact the business of workers' compensation insurance in the state. The filing of a
17 policy form by an insurance company with the **division of workers' compensation**
18 [BOARD] for approval constitutes, on the part of the company, a conclusive and
19 unqualified acceptance of the provisions of this chapter [,] and an agreement by it to
20 be bound by them.

21 * **Sec. 18.** AS 23.30.030(5) is amended to read:

22 (5) A termination of the policy by cancellation is not effective as to the
23 employees of the insured employer covered by it until 20 days after written notice of
24 the termination has been received by the **division** [BOARD]. If the employer has a
25 contract with the state or a home rule or other political subdivision of the state, and the
26 employer's policy is cancelled due to nonpayment of a premium, the termination of the
27 policy is not effective as to the employees of the insured employer covered by it until
28 20 days after written notice of the termination has been received by the contracting
29 agency, and the agency has the option of continuing the payments on behalf of the
30 employer in order to keep the policy in force. If, however, the employer has secured
31 insurance with another insurance carrier, cancellation is effective as of the date of the

1 new coverage.

2 * **Sec. 19.** AS 23.30.030(6) is amended to read:

3 (6) All claims for compensation, death benefits, physician's fees,
4 nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices,
5 transportation charges to the nearest point where adequate medical facilities are
6 available, and burial expenses [,] may be made directly against either the employer or
7 the insurer, or both, and the order or award of **a hearing officer** [THE BOARD] may
8 be made against either the employer or the insurer or both.

9 * **Sec. 20.** AS 23.30.040(a) is amended to read:

10 (a) There is created a second injury fund, administered by the **director**
11 [COMMISSIONER]. Money in the second injury fund may only be paid for the
12 benefit of those persons entitled to payment of benefits from the second injury fund
13 under this chapter. Payments from the second injury fund must be made by the
14 **director** [COMMISSIONER] in accordance with the orders [AND AWARDS] of the
15 **director** [BOARD].

16 * **Sec. 21.** AS 23.30.040(d) is amended to read:

17 (d) The **director** [BOARD] may refund a payment made into the second
18 injury fund if the employer or insurance carrier shows that it made the payment by
19 mistake or inadvertence, or if it shows there existed at the time of the death of the
20 employee a beneficiary entitled to benefits under AS 23.30.215.

21 * **Sec. 22.** AS 23.30.041(a) is amended to read:

22 (a) The **director** [BOARD] shall select and employ a reemployment benefits
23 administrator. The **director** [BOARD] may authorize the administrator to select and
24 employ additional staff. The administrator is in the partially exempt service under
25 AS 39.25.120.

26 * **Sec. 23.** AS 23.30.041(b) is amended to read:

27 (b) The administrator shall

- 28 (1) enforce regulations adopted by the **department** [BOARD] to
29 implement this section;
30 (2) recommend regulations for adoption by the **department** [BOARD]
31 that establish performance and reporting criteria for rehabilitation specialists;

1 (3) enforce the quality and effectiveness of reemployment benefits
2 provided for under this section;

3 (4) review on an annual basis the performance of rehabilitation
4 specialists to determine continued eligibility for delivery of rehabilitation services;

5 (5) submit to the department, on or before May 1 of each year, a report
6 of reemployment benefits provided under this section for the previous calendar year;
7 the report must include a general section, sections related to each rehabilitation
8 specialist employed under this section, and a statistical summary of all rehabilitation
9 cases, including

10 (A) the estimated and actual cost of each active rehabilitation
11 plan;

12 (B) the estimated and actual time of each rehabilitation plan;

13 (C) a status report on all individuals completing or terminating
14 a reemployment benefits program including a return to work date;

15 (D) the cost of reemployment benefits;

16 (6) maintain a list of rehabilitation specialists who meet the
17 qualifications established under this section;

18 (7) promote awareness among physicians, adjusters, injured workers,
19 employers, employees, attorneys, training providers, and rehabilitation specialists of
20 the reemployment program established in this subsection.

21 * **Sec. 24.** AS 23.30.041(d) is amended to read:

22 (d) Within 30 days after the referral by the administrator, the rehabilitation
23 specialist shall perform the eligibility evaluation and issue a report of findings. The
24 administrator may grant up to an additional 30 days for performance of the eligibility
25 evaluation upon notification of unusual and extenuating circumstances and the
26 rehabilitation specialist's request. Within 14 days after receipt of the report from the
27 rehabilitation specialist, the administrator shall notify the parties of the employee's
28 eligibility for reemployment preparation benefits. Within 10 days after the decision,
29 either party may seek review of the decision by requesting a hearing under
30 AS 23.30.110. The hearing shall be held within 30 days after it is requested. The
31 **hearing officer** [BOARD] shall uphold the decision of the administrator except for

1 abuse of discretion on the administrator's part.

2 * **Sec. 25.** AS 23.30.041(h) is amended to read:

3 (h) Within 90 days after the rehabilitation specialist's selection under (g) of
4 this section, the reemployment plan must be formulated and approved. The
5 reemployment plan must require continuous participation by the employee and must
6 maximize the usage of the employee's transferable skills. The reemployment plan must
7 include at least the following:

8 (1) a determination of the occupational goal in the labor market;

9 (2) an inventory of the employee's technical skills, transferable skills,
10 physical and intellectual capacities, academic achievement, emotional condition, and
11 family support;

12 (3) a plan to acquire the occupational skills to be employable;

13 (4) the cost estimate of the reemployment plan, including provider
14 fees; and the cost of tuition, books, tools [,] and supplies, transportation, temporary
15 lodging, or job modification devices;

16 (5) the estimated length of time that the plan will take;

17 (6) the date that the plan will commence;

18 (7) the estimated time of medical stability as predicted by a treating
19 physician or by a physician who has examined the employee at the request of the
20 employer or the **director** [BOARD], or by referral of the treating physician;

21 (8) a detailed description and plan schedule;

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

26 (10) a provision requiring that, after a person has been assigned to
27 perform medical management services for an injured employee, the person shall send
28 written notice to the employee, the employer, and the employee's physician explaining
29 in what capacity the person is employed, whom the person represents, and the scope of
30 the services to be provided.

31 * **Sec. 26.** AS 23.30.041(j) is amended to read:

1 (j) The employee, rehabilitation specialist, and the employer shall sign the
2 reemployment benefits plan. If the employer and employee fail to agree on a
3 reemployment plan, either party may submit a reemployment plan for approval to the
4 administrator; the administrator shall approve or deny a plan within 14 days after the
5 plan is submitted; within 10 days **after** [OF] the decision, either party may seek
6 review of the decision by requesting a hearing under AS 23.30.110; **a hearing officer**
7 [THE BOARD] shall uphold the decision of the administrator unless evidence is
8 submitted supporting an allegation of abuse of discretion on the part of the
9 administrator; **a hearing officer** [THE BOARD] shall render a decision within 30
10 days after completion of the hearing.

11 * **Sec. 27.** AS 23.30.041(o) is amended to read:

12 (o) Upon the request of either party, the administrator shall decide whether the
13 employee has not cooperated as provided under (n) of this section. A hearing before
14 the administrator shall be held within 30 days after it is requested. The administrator
15 shall issue a decision within 14 days after the hearing. Within 10 days after the
16 administrator files the decision, either party may seek review of the decision by
17 requesting a hearing under AS 23.30.110; **a hearing officer** [THE BOARD] shall
18 uphold the decision of the administrator unless evidence is submitted supporting an
19 allegation of abuse of discretion on the part of the administrator; **a hearing officer**
20 [THE BOARD] shall render a decision within 30 days after completion of the hearing.

21 * **Sec. 28.** AS 23.30.041(p) is amended to read:

22 (p) When the United States Department of Labor publishes a new edition,
23 revision, or replacement for the "Selected Characteristics of Occupations Defined in
24 the Revised Dictionary of Occupational Titles" referred to in (e) of this section, the
25 **director** [BOARD] shall, not later than 90 days after the last day of the month in
26 which the new edition, revision, or replacement standard is published, hold an open
27 meeting under AS 44.62.310 to select the **proposed** date on which the new edition,
28 revision, or replacement standard will be implemented to make all eligibility
29 determinations required under (e) of this section. The date selected by the **department**
30 [BOARD] for implementing the new edition, revision, or replacement standard may
31 not be later than 90 days after the last day of the month in which the new edition,

1 revision, or replacement standard is published. After the meeting, the **director**
2 [BOARD] shall issue a public notice announcing the date selected **by the**
3 **department**. The requirements of AS 44.62.010 - 44.62.300 do not apply to the
4 selection or announcement of the date under this subsection.

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

6 (q) Notwithstanding AS 23.30.012, after medical stability has been determined
7 and a physician has predicted that the employee may have a permanent impairment
8 that may cause the employee to have permanent physical capacities that are less than
9 the physical demands of the employee's job at the time of injury, an employee may
10 waive any benefits or rights under this section, including an eligibility evaluation and
11 benefits related to a reemployment plan. To waive any benefits or rights under this
12 section, an employee must file a statement under oath with the **division** [BOARD] to
13 notify the parties of the waiver and to specify the scope of benefits or rights that the
14 employee seeks to waive. The statement must be on a form prescribed or approved by
15 the **director** [BOARD]. The **division** [BOARD] shall serve the notice of waiver on
16 all parties to the claim within 10 days after filing. The waiver is effective upon service
17 to the party. A waiver effective under this subsection discharges the liability of the
18 employer for the benefits or rights contained in this section. The waiver may not be
19 modified under AS 23.30.130.

20 * **Sec. 30.** AS 23.30.045(d) is amended to read:

21 (d) A contract may not be awarded by the state or a home rule or other
22 political subdivision of the state unless the person to whom the contract is to be
23 awarded has submitted to the contracting agency proof, furnished by the insurance
24 carrier, of current coverage by workers' compensation insurance from an insurance
25 company or association authorized to transact the business of workers' compensation
26 insurance in this state or proof, furnished by the **division** [BOARD], of a current
27 certificate of self-insurance from the **director** [BOARD]. The person to whom the
28 contract is awarded shall keep the workers' compensation insurance policy in effect
29 during the life of the contract with the state or political subdivision. If the state or the
30 political subdivision of the state fails to obtain proof of coverage or self-insurance or
31 to protect itself under (e) of this section, and an employee of the contractor is injured

1 during the term of the contract, the state or the political subdivision is liable for
 2 workers' compensation to the employee if the employee is unable to recover from the
 3 employer because of the employer's lack of financial assets. The state or the political
 4 subdivision is not liable, however, to the employee for workers' compensation if the
 5 employee can recover from the employer under (a) and (b) of this section.

6 * **Sec. 31.** AS 23.30.045(e) is amended to read:

7 (e) When a contracting agency of the state or a political subdivision receives
 8 notice that the workers' compensation insurance policy of an employer to whom the
 9 agency has awarded a contract has been cancelled due to nonpayment of a premium,
 10 without being replaced by a comparable policy, the agency may either terminate the
 11 contract with the employer or continue the premium payments on behalf of the
 12 employer in order to keep the policy in force during the life of the agency's contract.
 13 If the agency chooses to keep the policy in force, it may deduct its payments from the
 14 contract price or bring an action against the employer to recover the amount of the
 15 payments. When the contracting agency receives notice that the **director** [BOARD]
 16 has revoked a certificate of self-insurance held by a person to whom a contract has
 17 been awarded, the agency may terminate the contract. This subsection does not limit
 18 the causes of action or remedies that the state or political subdivision may have against
 19 the employer.

20 * **Sec. 32.** AS 23.30.065 is amended to read:

21 **Sec. 23.30.065. Employer's record of injuries.** An employer shall keep a
 22 record in respect of an injury to an employee. The record must contain the
 23 information of disease, other disability, or death **with** [IN] respect to an injury that the
 24 **division** [BOARD] requires, and must be available to inspection by the **division**
 25 [BOARD] or by a state authority at the times and under the conditions that the
 26 **department** [BOARD] prescribes by regulation.

27 * **Sec. 33.** AS 23.30.070(a) is amended to read:

28 (a) Within 10 days from the date the employer has knowledge of an injury or
 29 death or from the date the employer has knowledge of a disease or infection, alleged
 30 by the employee or on behalf of the employee to have arisen out of and in the course
 31 of the employment, the employer shall send to the **division** [BOARD] a report setting

1 out

2 (1) the name, address, and business of the employer;

3 (2) the name, address, and occupation of the employee;

4 (3) the cause and nature of the alleged injury or death;

5 (4) the year, month, day, and hour when and the particular locality
6 where the alleged injury or death occurred; and

7 (5) the other information that the **division** [BOARD] may require.

8 * **Sec. 34.** AS 23.30.070(b) is amended to read:

9 (b) Additional reports **with** [IN] respect to the injury and to the condition of
10 the employee shall be sent by the employer to the **division** [BOARD] at the times and
11 in the manner that the **director** [BOARD] prescribes.

12 * **Sec. 35.** AS 23.30.070(d) is amended to read:

13 (d) Mailing of the report and copy to the **division** [BOARD] in a stamped
14 envelope, within the time prescribed in (a) or (b) of this section, is compliance with
15 this section.

16 * **Sec. 36.** AS 23.30.070(f) is amended to read:

17 (f) An employer who fails or refuses to send a report required of the employer
18 by this section or who fails or refuses to send the report required by (a) of this section
19 within the time required shall, if so required by **a hearing officer after a hearing**
20 [THE BOARD], pay the employee or the legal representative of the employee or other
21 person entitled to compensation by reason of the employee's injury or death an
22 additional award equal to 20 percent of the amounts that were unpaid when due. The
23 award shall be against either the employer or the insurance carrier, or both.

24 * **Sec. 37.** AS 23.30.075 is amended to read:

25 **Sec. 23.30.075. Employer's liability to pay.** (a) An employer under this
26 chapter, unless exempted, shall either insure and keep insured for the employer's
27 liability under this chapter in an insurance company or association duly authorized to
28 transact the business of workers' compensation insurance in this state, or shall furnish
29 the **division** [BOARD] satisfactory proof of the employer's financial ability to pay
30 directly the compensation provided for. If an employer elects to pay directly, the
31 **director** [BOARD] may, in **the director's** [ITS] discretion, require the deposit of an

1 acceptable security, indemnity, or bond to secure the payment of compensation
2 liabilities as they are incurred.

3 (b) If an employer fails to insure and keep insured employees subject to this
4 chapter or fails to obtain a certificate of self-insurance from the **division** [BOARD],
5 upon conviction, the court shall impose a fine of \$10,000 and may impose a sentence
6 of imprisonment for not more than one year. If an employer is a corporation, all
7 persons who, at the time of the injury or death, had authority to insure the corporation
8 or apply for a certificate of self-insurance, and the person actively in charge of the
9 business of the corporation shall be subject to the penalties prescribed in this
10 subsection and shall be personally, jointly, and severally liable together with the
11 corporation for the payment of all compensation or other benefits for which the
12 corporation is liable under this chapter if the corporation at that time is not insured or
13 qualified as a self-insurer.

14 * **Sec. 38.** AS 23.30.080(d) is amended to read:

15 (d) If an employer fails to insure or provide security as required by
16 AS 23.30.075, the **director** [BOARD] may **petition a hearing officer to** issue a stop
17 order prohibiting the use of employee labor by the employer until the employer insures
18 or provides security as required by AS 23.30.075. The failure of an employer to file
19 evidence of compliance as required by AS 23.30.085 creates a rebuttable presumption
20 that the employer has failed to insure or provide security as required by AS 23.30.075.
21 **If the director presents evidence with the petition that hazards in the employment**
22 **constitute a danger that could reasonably be expected to immediately cause an**
23 **employee death or serious physical harm, the petition may be heard on shortened**
24 **notice.** If an employer fails to comply with a stop order issued under this section, **a**
25 **hearing officer** [THE BOARD] shall assess a civil penalty of \$1,000 **a** [PER] day.
26 The employer may not obtain a public contract with the state or a political subdivision
27 of the state for three years following the violation of the stop order.

28 * **Sec. 39.** AS 23.30.080 is amended by adding new subsections to read:

29 (e) If an employer fails, refuses, or neglects to insure or provide security as
30 required by AS 23.30.075(a), the director may petition a hearing officer to order
31 payment of a civil penalty to the state of an amount up to \$100 for each employee for

1 each day an employee is employed while the employer is uninsured or does not
 2 provide the security required by AS 23.30.075(a). The failure of an employer to file
 3 evidence of compliance as required by AS 23.30.085 creates a rebuttable presumption
 4 that the employer has failed to obtain and keep insurance or provide security as
 5 required by AS 23.30.075(a). If the director presents evidence with the petition that
 6 hazards in the employment constitute a danger that could reasonably be expected to
 7 immediately cause an employee death or serious physical harm, the petition may be
 8 heard on shortened notice.

9 (f) If an employer fails to pay a civil penalty ordered under (d) or (e) of this
 10 section within seven days after the date of service of the order upon the employer, the
 11 director may declare the employer in default. The director shall file a certified copy of
 12 the penalty order and declaration of default with the clerk of the superior court. The
 13 court shall, upon the filing of the copy of the order and declaration, enter judgment for
 14 the amount declared in default if it is in accordance with law. Anytime after a
 15 declaration of default, the attorney general, when requested to do so by the director,
 16 shall take appropriate action to assure collection of defaulted payment. Review of the
 17 judgment may be had as provided under the Alaska Rules of Civil Procedure. Final
 18 proceedings to execute the judgment may be had by writ of execution.

19 * **Sec. 40.** AS 23.30.085(a) is amended to read:

20 (a) An employer subject to this chapter, unless exempted, shall initially file
 21 evidence of compliance with the insurance provisions of this chapter with the division
 22 [BOARD], in the form prescribed by the director [IT]. The employer shall also give
 23 evidence of compliance within 10 days after the termination of the employer's
 24 insurance by expiration or cancellation. These requirements do not apply to an
 25 employer who has certification from the division [BOARD] of the employer's
 26 financial ability to pay compensation directly without insurance.

27 * **Sec. 41.** AS 23.30.090 is amended to read:

28 **Sec. 23.30.090. Self-insurance certificates.** If an employer has complied
 29 with the provisions of this chapter relating to self-insurance and has paid annual
 30 service fees assessed under AS 23.05.067, the director [BOARD] shall issue the
 31 employer a certificate that shall remain in force for a period fixed by the director

1 [BOARD]. The **director** [BOARD] may, upon at least 10 days' notice and a hearing,
 2 revoke a self-insurance certificate upon satisfactory proof that an employer is no
 3 longer entitled to it. **The hearing shall be held by a hearing officer. The hearing**
 4 **officer shall make a proposed decision to the director, who may adopt, amend or**
 5 **reject it in the director's discretion.** After revocation, the **director** [BOARD] may
 6 grant a new certificate to an employer, upon the employer's petition and satisfactory
 7 proof of the employer's financial ability as provided in this chapter. An employer
 8 authorized as a self-insurer shall provide claims facilities through its own staffed
 9 adjusting facilities located within the state, or independent, licensed, resident adjusters
 10 with power to effect settlement within the state.

11 * **Sec. 42.** AS 23.30.090 is amended by adding a new subsection to read:

12 (b) All testimony given before a hearing officer under this section shall be
 13 recorded, but need not be transcribed unless further review is initiated. Hearings
 14 before a hearing officer shall be open to the public.

15 * **Sec. 43.** AS 23.30.095(a) is amended to read:

16 (a) The employer shall furnish medical, surgical, and other attendance or
 17 treatment, nurse and hospital service, medicine, crutches, and apparatus for the period
 18 **that** [WHICH] the nature of the injury or the process of recovery requires, not
 19 exceeding two years from and after the date of injury to the employee. However, if the
 20 condition requiring the treatment, apparatus, or medicine is a latent one, the two-year
 21 period runs from the time the employee has knowledge of the nature of the employee's
 22 disability and its relationship to the employment and after disablement. **If** [IT SHALL
 23 BE ADDITIONALLY PROVIDED THAT, IF] continued treatment or care or both
 24 beyond the two-year period is indicated, the injured employee has the right of review
 25 by **a hearing officer** [THE BOARD]. The **hearing officer** [BOARD] may authorize
 26 continued treatment or care or both as the process of recovery may require. When
 27 medical care is required, the injured employee may designate a licensed physician to
 28 provide all medical and related benefits. The employee may not make more than one
 29 change in the employee's choice of attending physician without the written consent of
 30 the employer. Referral to a specialist by the employee's attending physician is not
 31 considered a change in physicians. Upon procuring the services of a physician, the

1 injured employee shall give proper notification of the selection to the employer within
 2 a reasonable time after first being treated. Notice of a change in the attending
 3 physician shall be given before the change.

4 * **Sec. 44.** AS 23.30.095(c) is amended to read:

5 (c) A claim for medical or surgical treatment [,] or treatment requiring
 6 continuing and multiple treatments of a similar nature is not valid and enforceable
 7 against the employer unless, within 14 days following treatment, the physician or
 8 health care provider giving the treatment or the employee receiving it furnishes to the
 9 employer and the **division** [BOARD] notice of the injury and treatment, preferably on
 10 a form prescribed by the **director** [BOARD]. **A hearing officer** [THE BOARD]
 11 shall, however, excuse the failure to furnish notice within 14 days when **the hearing**
 12 **officer** [IT] finds it to be in the interest of justice to do so, and **the hearing officer**
 13 [IT] may, upon application by a party in interest, make an award for the reasonable
 14 value of the medical or surgical treatment so obtained by the employee. When a claim
 15 is made for a course of treatment requiring continuing and multiple treatments of a
 16 similar nature, in addition to the notice, the physician or health care provider shall
 17 furnish a written treatment plan if the course of treatment will require more frequent
 18 outpatient visits than the standard treatment frequency for the nature and degree of the
 19 injury and the type of treatments. The treatment plan shall be furnished to the
 20 employee and the employer within 14 days after treatment begins. The treatment plan
 21 must include objectives, modalities, frequency of treatments, and reasons for the
 22 frequency of treatments. If the treatment plan is not furnished as required under this
 23 subsection, neither the employer nor the employee may be required to pay for
 24 treatments that exceed the frequency standard. The **director shall propose and the**
 25 **department** [BOARD] shall adopt regulations establishing standards for frequency of
 26 treatment.

27 * **Sec. 45.** AS 23.30.095(d) is amended to read:

28 (d) If at any time during the period the employee unreasonably refuses to
 29 submit to medical or surgical treatment, **a hearing officer** [THE BOARD] may by
 30 order suspend the payment of further compensation while the refusal continues, and no
 31 compensation may be paid at any time during the period of suspension, unless the

1 circumstances justified the refusal.

2 * **Sec. 46.** AS 23.30.095(e) is amended to read:

3 (e) The employee shall, after an injury, at reasonable times during the
 4 continuance of the disability, if requested by the employer or when ordered by **a**
 5 **hearing officer** [THE BOARD], submit to an examination by a physician or surgeon
 6 of the employer's choice authorized to practice medicine under the laws of the
 7 jurisdiction in which the examination occurs, furnished and paid for by the employer.
 8 The employer may not make more than one change in the employer's choice of a
 9 physician or surgeon without the written consent of the employee. Referral to a
 10 specialist by the employer's physician is not considered a change in physicians. An
 11 examination requested by the employer not less than 14 days after injury, and every 60
 12 days thereafter, shall be presumed to be reasonable, and the employee shall submit to
 13 the examination without further request or order by **a hearing officer** [THE BOARD].
 14 Unless medically appropriate, the physician shall use existing diagnostic data to
 15 complete the examination. Facts relative to the injury or claim communicated to or
 16 otherwise learned by a physician or surgeon who may have attended or examined the
 17 employee [,] or who may have been present at an examination are not privileged,
 18 either in the hearings provided for in this chapter or an action to recover damages
 19 against an employer who is subject to the compensation provisions of this chapter. If
 20 an employee refuses to submit to an examination provided for in this section, the
 21 employee's rights to compensation shall be suspended until the obstruction or refusal
 22 ceases, and the employee's compensation during the period of suspension may, in the
 23 discretion of **a hearing officer** [THE BOARD] or the court determining an action
 24 brought for the recovery of damages under this chapter, be forfeited. **In** [THE
 25 BOARD IN] any case of death, **a hearing officer** may **order** [REQUIRE] an autopsy
 26 at the expense of the party requesting the autopsy. An autopsy may not be held
 27 without notice first being given to the widow or widower or next of kin if they reside
 28 in the state or their whereabouts can be reasonably ascertained, of the time and place
 29 of the autopsy and reasonable time and opportunity given the widow or widower or
 30 next of kin to have a representative present to witness the autopsy. If adequate notice
 31 is not given, the findings from the autopsy may be suppressed on **petition** [MOTION]

1 made to **a hearing officer** [THE BOARD] or to the superior court, as the case may be.

2 * **Sec. 47.** AS 23.30.095(f) is amended to read:

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

10 * **Sec. 48.** AS 23.30.095(h) is amended to read:

11 (h) Upon the filing with the **division** [BOARD] by a party in interest of an
12 application or other pleading, all parties to the proceeding must immediately, or in any
13 event within five days after service of the pleading, send to the **division** [BOARD] the
14 original signed reports of all physicians relating to the proceedings **that** [WHICH]
15 they may have in their possession or under their control, and copies of the reports shall
16 be served by the party immediately on **any** [THE] adverse party. There is a
17 continuing duty on **all** [THE] parties to [SO] file and serve all the reports during the
18 pendency of the proceeding.

19 * **Sec. 49.** AS 23.30.095(j) is amended to read:

20 (j) The **director** [BOARD] may appoint a medical services review committee,
21 or contract with an existing organization in the state or another state, to assist and
22 advise the **director** [BOARD] in matters involving the appropriateness, necessity, and
23 cost of medical and related services provided under this chapter.

24 * **Sec. 50.** AS 23.30.095(k) is amended to read:

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

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

7 * **Sec. 51.** AS 23.30.100(a) is amended to read:

8 (a) Notice of an injury or death **with** [IN] respect to which compensation is
 9 payable under this chapter shall be given within 30 days after the date of such injury
 10 or death to the **division** [BOARD] and to the employer.

11 * **Sec. 52.** AS 23.30.100(c) is amended to read:

12 (c) Notice shall be given to the **division** [BOARD] by delivering it or sending
 13 it by mail addressed to the **division's** [BOARD'S] office, and to the employer by
 14 delivering it to the employer or by sending it by mail addressed to the employer at the
 15 employer's last known place of business. If the employer is a partnership, the notice
 16 may be given to a partner, or, if a corporation, the notice may be given to an agent or
 17 officer upon whom legal process may be served or who is in charge of the business in
 18 the place where the injury occurred.

19 * **Sec. 53.** AS 23.30.100(d) is amended to read:

20 (d) Failure to give notice does not bar a claim under this chapter

21 (1) if the employer, an agent of the employer in charge of the business
 22 in the place where the injury occurred, or the carrier had knowledge of the injury or
 23 death and **a hearing officer** [THE BOARD] determines that the employer or carrier
 24 has not been prejudiced by failure to give notice;

25 (2) if **a hearing officer** [THE BOARD] excuses the failure on the
 26 ground that, for some satisfactory reason, notice could not be given;

27 (3) unless objection to the failure is raised before **a hearing officer**
 28 [THE BOARD] at the first hearing of a claim for compensation **with** [IN] respect to
 29 the injury or death.

30 * **Sec. 54.** AS 23.30.105(a) is amended to read:

31 (a) The right to compensation for disability under this chapter is barred unless

1 a claim for it is filed within two years after the employee has knowledge of the nature
 2 of the employee's disability and its relation to the employment and after disablement.
 3 However, the maximum time for filing the claim in any event other than arising out of
 4 an occupational disease shall be four years from the date of injury, and the right to
 5 compensation for death is barred unless a claim [THEREFOR] is filed within one year
 6 after the death, except that, if payment of compensation has been made without an
 7 award on account of the injury or death, a claim may be filed within two years after
 8 the date of the last payment of benefits under AS 23.30.041, 23.30.180, 23.30.185,
 9 23.30.190, 23.30.200, or 23.30.215. In [IT IS ADDITIONALLY PROVIDED THAT,
 10 IN] the case of latent defects pertinent to and causing compensable disability, the
 11 injured employee has the full right to claim compensation as shall be determined by a
 12 hearing officer [THE BOARD], time limitations notwithstanding.

13 * **Sec. 55.** AS 23.30.107 is amended to read:

14 **Sec. 23.30.107. Release of information.** (a) Upon written request, an
 15 employee shall provide written authority to the employer, carrier, rehabilitation
 16 specialist, or reemployment benefits administrator to obtain medical and rehabilitation
 17 information relative to the employee's injury. The request must include notice of the
 18 employee's right to file a petition for a protective order with the division [BOARD]
 19 and must be served by certified mail to the employee's address on the notice of injury
 20 or by hand delivery to the employee. This subsection may not be construed to
 21 authorize an employer, carrier, rehabilitation specialist, or reemployment benefits
 22 administrator to request medical or other information that is not applicable to the
 23 employee's injury.

24 (b) Medical or rehabilitation records in an employee's file maintained by the
 25 division [BOARD] are not public records subject to public inspection and copying
 26 under AS 40.25. This subsection does not prohibit

27 (1) the reemployment benefits administrator, the division, the office of
 28 the commission [BOARD], or the department from releasing medical or rehabilitation
 29 records in an employee's file, without the employee's consent, to a physician providing
 30 medical services under AS 23.30.095(k) or 23.30.110(g), a party to a claim filed by
 31 the employee, or a governmental agency; or

1 (2) the quoting or discussing of medical or rehabilitation records
 2 contained in an employee's file during a hearing on a claim for compensation [,] or in
 3 a decision and order of the **hearing officer or commission** [BOARD].

4 * **Sec. 56.** AS 23.30.108 is amended to read:

5 **Sec. 23.30.108. Prehearing conferences [PREHEARINGS] on discovery**
 6 **matters; objections to requests for release of information; sanctions for**
 7 **noncompliance.** (a) If an employee objects to a request for written authority under
 8 AS 23.30.107, the employee must file a petition with the **division** [BOARD] seeking a
 9 protective order within 14 days after service of the request. If the employee fails to file
 10 a petition and fails to deliver the written authority as required by AS 23.30.107 within
 11 14 days after service of the request, the employee's rights to benefits under this chapter
 12 are suspended until the written authority is delivered.

13 (b) If a petition seeking a protective order is filed, **the division shall**
 14 **promptly notify the office of the commission, and** the **office of the commission**
 15 [BOARD] shall set a prehearing **conference** within 21 days after the filing date of the
 16 petition. At a prehearing **conference** conducted by **a hearing officer** [THE
 17 BOARD'S DESIGNEE], the **hearing officer** [BOARD'S DESIGNEE] has the
 18 authority to resolve disputes concerning the written authority. If the **hearing officer**
 19 [BOARD OR THE BOARD'S DESIGNEE] orders delivery of the written authority
 20 and if the employee refuses to deliver it within 10 days after being ordered to do so,
 21 the employee's rights to benefits under this chapter are suspended until the written
 22 authority is delivered. During any period of suspension under this subsection, the
 23 employee's benefits under this chapter are forfeited unless **a hearing officer** [THE
 24 BOARD], or the court determining an action brought for the recovery of damages
 25 under this chapter, determines that good cause existed for the refusal to provide the
 26 written authority.

27 (c) At a prehearing **conference** on discovery matters conducted by **a hearing**
 28 **officer** [THE BOARD'S DESIGNEE], the **hearing officer** [BOARD'S DESIGNEE]
 29 shall direct parties to sign releases or produce documents, or both, if the parties
 30 present releases or **requests for** documents that are likely to lead to admissible
 31 evidence relative to an employee's injury. If a party refuses to comply with an order by

1 **a hearing officer** [THE BOARD'S DESIGNEE OR THE BOARD] concerning
 2 discovery matters, **a hearing officer** [THE BOARD] may impose appropriate
 3 sanctions in addition to any forfeiture of benefits, including dismissing the party's
 4 claim, petition, or defense. **A party may petition the commission for expedited**
 5 **review of an order of a hearing officer on discovery matters within seven days**
 6 **after the date of service of the challenged order, and a party opposing the petition**
 7 **shall respond within seven days after service of the petition. The commission**
 8 **shall determine whether to grant or deny a petition for review within 10 days**
 9 **after a response is due.** If [A DISCOVERY DISPUTE COMES BEFORE] the
 10 **commission grants a petition** [BOARD] for **expedited** review of a **discovery**
 11 determination by **a hearing officer** [THE BOARD'S DESIGNEE], the **commission**
 12 [BOARD] may not consider any evidence or argument that was not presented to the
 13 **hearing officer** [BOARD'S DESIGNEE], but shall determine the issue solely on the
 14 basis of the written record. The decision by the **commission** [BOARD] on a discovery
 15 dispute shall be made within 30 days. The **commission** [BOARD] shall uphold **a**
 16 **hearing officer's** [THE DESIGNEE'S] decision except when the **hearing officer's**
 17 [BOARD'S DESIGNEE'S] determination is an abuse of discretion.

18 * **Sec. 57.** AS 23.30.110 is amended to read:

19 **Sec. 23.30.110. Procedure on claims and petitions.** (a) Subject to the
 20 provisions of AS 23.30.105, a claim for **or petition relating to** compensation **or**
 21 **benefits or both** may be filed with the **division** [BOARD] in accordance with its
 22 regulations at any time after the first seven days of disability following an injury, or at
 23 any time after death, and **a hearing officer** [THE BOARD] may hear and determine
 24 all questions **with** [IN] respect to the claim **or petition.**

25 (b) Within 10 days after a claim **or petition** is filed, the **division** [BOARD], in
 26 accordance with its regulations, shall notify the **opposing party,** employer, and any
 27 other person, other than the claimant **or petitioner,** whom the **director** [BOARD]
 28 considers an interested party that a claim **or petition** has been filed. The notice may
 29 be served personally [UPON THE EMPLOYER OR OTHER PERSON,] or sent by
 30 **certified** [REGISTERED] mail.

31 (c) Before a hearing is scheduled, the party seeking a hearing shall file **with**

1 **the office of the commission** a request for a hearing together with an affidavit stating
 2 that the party has completed necessary discovery, **has** obtained necessary evidence,
 3 and is prepared for the hearing. An opposing party shall have 10 days after the hearing
 4 request is filed to file a response. If a party opposes the hearing request, **a hearing**
 5 **officer** [THE BOARD OR A BOARD DESIGNEE] shall, within 30 days **after** [OF]
 6 the filing of the opposition, conduct a pre-hearing conference, **plan the timing and**
 7 **sequence of discovery and other preliminary matters**, and set a **reasonable** hearing
 8 date. If opposition is not filed, a **hearing officer designated by the office of the**
 9 **commission shall schedule a hearing not** [HEARING SHALL BE SCHEDULED
 10 NO] later than 60 days after the receipt of the hearing request. The **hearing officer**
 11 [BOARD] shall give each party at least 10 days' notice of the hearing, either
 12 personally or by certified mail. After a hearing has been scheduled, the parties may
 13 not stipulate to change the hearing date or to cancel, postpone, or continue the hearing,
 14 except for good cause as determined by the **hearing officer** [BOARD]. After
 15 completion of the hearing, the **hearing officer** [BOARD] shall close the hearing
 16 record. If a settlement agreement is reached by the parties less than 14 days before the
 17 hearing, the parties shall appear at the time of the scheduled hearing to state the terms
 18 of the settlement agreement. Within 30 days after the hearing record closes, the
 19 **hearing officer** [BOARD] shall file **the hearing officer's** [ITS] decision. If the
 20 employer controverts a claim on a **director-prescribed** [BOARD-PRESCRIBED]
 21 controversion notice and the employee does not request a hearing within two years
 22 following the filing of the controversion notice, the claim is denied.

23 (d) At the hearing, the **parties** [CLAIMANT AND THE EMPLOYER] may
 24 each present evidence **with** [IN] respect to the claim **or petition** and may be
 25 represented by any person authorized in writing for that purpose.

26 (e) The order rejecting the claim **or petition**, or making the award, referred to
 27 in this chapter as a compensation order, shall be filed in the office of the **commission**
 28 [BOARD], and a copy of it shall be sent by **certified** [REGISTERED] mail to the
 29 **parties** [CLAIMANT AND TO THE EMPLOYER] at the last known address of each.

30 (f) An award of compensation for disability **or an order dismissing a claim**
 31 may be made after the death of an injured employee.

1 (g) An injured employee claiming or entitled to compensation shall submit to
 2 the physical examination by a duly qualified physician **that a hearing officer**
 3 [WHICH THE BOARD] may require. The place or places shall be reasonably
 4 convenient for the employee. The physician or physicians as the employee, employer,
 5 or carrier may select and pay for may participate in an examination if the employee,
 6 employer, or carrier so requests. Proceedings shall be suspended and no compensation
 7 may be payable for a period during which the employee refuses to submit to
 8 examination.

9 (h) The filing of a hearing request under (c) of this section suspends the
 10 running of the two-year time period specified in (c) of this section. However, if the
 11 employee subsequently requests a continuance of the hearing and the request is
 12 **granted** [APPROVED BY THE BOARD], the granting of the continuance renders the
 13 request for hearing inoperative, and the two-year time period specified in (c) of this
 14 section continues to run again from the date of **a hearing officer's** [THE BOARD'S]
 15 notice to the employee of [THE BOARD'S GRANTING OF] the continuance and of
 16 its effect. If the employee fails to again request a hearing before the conclusion of the
 17 two-year time period in (c) of this section, the claim is denied.

18 * **Sec. 58.** AS 23.30.110 is amended by adding new subsections to read:

19 (i) An order dismissing a claim in whole or in part may be made before a
 20 hearing on the merits of the claim when (1) the claim requests relief that cannot be
 21 granted under this chapter; (2) there is a lack of jurisdiction over the subject matter of
 22 the claim or the person under this chapter; (3) division process or service of process
 23 was insufficient; (4) the claim has not been prosecuted or a hearing was not requested
 24 within the time allowed in (c) of this section; or (5) the claim is barred by a statute of
 25 limitation. If, within 60 days after service of an order dismissing a claim under (1) -
 26 (3) of this subsection, the defects stated in the order are cured, the dismissal may be
 27 vacated. Otherwise, the order of dismissal is a final compensation order.

28 (j) At any time, a party may petition for a summary decision on all or part of a
 29 claim. The hearing officer shall grant the petition if (1) the hearing officer finds all
 30 reasonable discovery has been made on the issues presented; and (2) the record shows
 31 that there is no genuine issue of any material fact and that the petitioner is entitled to a

1 decision as a matter of law. The hearing officer may file a compensation order in
 2 favor of the petitioner if the summary decision adjudicates all issues in the claim with
 3 respect to the petitioner.

4 * **Sec. 59.** AS 23.30 is amended by adding a new section to read:

5 **Sec. 23.30.112. Hearing officers.** (a) Unless otherwise provided in this
 6 chapter, hearings on claims and petitions shall be conducted by a hearing officer
 7 employed by the commission. A hearing officer shall be

8 (1) licensed to practice law in this state at the time of appointment and
 9 have three years experience in this state in the field of workers' compensation or in a
 10 similar field of practice;

11 (2) appointed to the partially exempt service under AS 39.25.120 and
 12 compensated at Range 24 of the schedule set out in AS 39.27.011(a), but is not a
 13 public employee for purposes of AS 23.40; and

14 (3) impartial and unbiased in all proceedings, hold fair and impartial
 15 hearings on claims and petitions arising under this chapter, and issue written decisions
 16 and orders.

17 (b) A hearing officer may

18 (1) for the purposes of this chapter, subpoena witnesses, administer or
 19 cause to be administered oaths, and order production of parts of the books and records
 20 of the parties to a proceeding or other records, documents, or papers that relate to
 21 questions in dispute; the superior court, on application of the hearing officer under
 22 AS 44.62.590, shall enforce the attendance and testimony of witnesses and the
 23 production and examination of books, papers, and records;

24 (2) direct a physician or hospital rendering medical treatment or
 25 service under this chapter to furnish to the division periodic reports of treatment or
 26 services on forms prescribed by the division;

27 (3) arrange to have hearings held by the commission, officer, or
 28 tribunal having authority to hear cases arising under the workers' compensation law of
 29 any other state, of the District of Columbia, or of any territory of the United States,
 30 when a proceeding in this state so requires; the testimony and proceedings at the
 31 hearing shall be reported to the commission and are a part of the record in the case;

1 evidence taken at the hearing is subject to rebuttal upon final hearing before the
2 hearing officer.

3 (c) The hearing officer, in conducting a hearing under AS 23.30.110, is not
4 bound by common law or statutory rules of evidence or by technical or formal rules of
5 procedure, except as provided by this chapter and the regulations of the commission.
6 The hearing may be conducted in the manner designed to best ascertain the rights of
7 the parties. In proceedings before hearing officers, the administrative adjudication
8 procedures of AS 44.62 (Administrative Procedure Act) do not apply, except that
9 AS 44.62.410(b), 44.62.450(c), 44.62.460(a) - (d), 44.62.470, 44.62.480, 44.62.510,
10 and 44.62.590 shall apply to proceedings under this chapter. Declarations of a
11 deceased employee concerning the injury with respect to which the investigation or
12 inquiry is being made or the hearing conducted shall be received in evidence and are,
13 if corroborated by other evidence, sufficient to establish the injury.

14 (d) The hearing officer shall conduct hearings and perform all other functions
15 in an impartial manner with due regard for the rights of all parties and the facts and the
16 law, and consistent with the orderly and prompt dispatch of proceedings under this
17 chapter. A hearing officer shall voluntarily seek disqualification and withdraw from a
18 case in which the hearing officer cannot accord a fair and impartial hearing or
19 consideration. A request for disqualification of a hearing officer for bias or partiality
20 shall be determined by the hearing officer concerned. Except as otherwise permitted
21 by law, hearing officers may not engage in interviews with or hear evidence or
22 argument from, a party directly or indirectly, except upon opportunity for all parties to
23 be present. Copies of all communications to hearing officers shall be served on all
24 other parties.

25 (e) All testimony given during a hearing before a hearing officer shall be
26 recorded but need not be transcribed unless further review is initiated. Hearings
27 before a hearing officer shall be open to the public.

28 * **Sec. 60.** AS 23.30.115 is amended to read:

29 **Sec. 23.30.115. Attendance and fees of witnesses.** (a) A person is not
30 required to attend as a witness in a hearing [PROCEEDING] before the commission
31 or hearing officer [BOARD] at a place more than 100 miles from the person's place

1 of residence, unless the person's lawful mileage and fee for one day's attendance is
 2 first paid or tendered to the person; but the testimony of a witness may be taken by
 3 deposition or interrogatories according to the Rules of Civil Procedure.

4 (b) A witness summoned **to testify** in a **hearing** [PROCEEDING] before the
 5 **commission or hearing officer** [BOARD] or whose deposition is taken shall receive
 6 the same fees and mileage as a witness in the superior court. **The commission clerk**
 7 **may issue subpoenas and subpoenas duces tecum to summon a witness to testify**
 8 **in a hearing or deposition and to produce records. The superior court shall**
 9 **enforce the subpoenas on application by the commission in the manner provided**
 10 **in AS 44.62.590.**

11 * **Sec. 61.** AS 23.30.120(b) is amended to read:

12 (b) If delay in giving notice is excused by the **hearing officer** [BOARD]
 13 under AS 23.30.100(d)(2), the burden of proof of the validity of the claim shifts to the
 14 employee, notwithstanding the provisions of (a) of this section.

15 * **Sec. 62.** AS 23.30.122 is repealed and reenacted to read:

16 **Sec. 23.30.122. Credibility of witnesses.** The hearing officer has the sole
 17 power to determine the credibility of testimony presented by a witness who appears in
 18 a hearing. When credibility is disputed, the hearing officer's determination of
 19 credibility must be supported by specific findings.

20 * **Sec. 63.** AS 23.30 is amended by adding a new section to read:

21 **Sec. 23.30.124. Reconsideration of compensation order.** (a) A hearing
 22 officer may order a reconsideration of all or part of a compensation order on the
 23 hearing officer's own motion or on petition of a party. A petition for reconsideration
 24 must be filed with the office of the commission within 15 days after mailing of the
 25 compensation order. The power to order reconsideration expires 30 days after the
 26 mailing of a compensation order. If an order of reconsideration is not filed with the
 27 office of the commission within the time allowed for ordering reconsideration, the
 28 petition is considered denied.

29 (b) If reconsideration is ordered under (a) of this section, the compensation
 30 order under reconsideration is stayed until the decision on reconsideration is filed.
 31 The case may be reconsidered by the hearing officer on of all the pertinent parts of the

1 record and the additional arguments that are permitted by the hearing officer. A
 2 written decision on reconsideration shall be filed with the commission within 30 days
 3 after the date the order of reconsideration was filed.

4 * **Sec. 64.** AS 23.30.125 is repealed and reenacted to read:

5 **Sec. 23.30.125. Administrative review of compensation order.** (a) A
 6 compensation order becomes effective when filed with the office of the commission as
 7 provided in AS 23.30.110, and, unless proceedings to reconsider, suspend, or set aside
 8 the order are instituted as provided in this chapter, the order becomes final on the 31st
 9 day after it is filed.

10 (b) Notwithstanding other provisions of law, a decision or order of a hearing
 11 officer is subject to review by the commission as provided in this chapter.

12 (c) If a compensation order is not in accordance with law or fact, the order
 13 may be suspended or set aside, in whole or in part, through proceedings in the
 14 commission brought by a party in interest against all other parties to the proceedings
 15 before the hearing officer. The payment of the amounts required by an award may not
 16 be stayed pending a final decision in the proceeding unless, upon application for a
 17 stay, the commission, on hearing, after not less than three days' notice to the parties in
 18 interest and the director, allows the stay of payment, in whole or in part, where the
 19 party filing the application would otherwise suffer irreparable damage. The order of
 20 the commission allowing a stay must contain a specific finding, based upon evidence
 21 submitted to the commission and identified by reference to the evidence, that
 22 irreparable damage would result to the party applying for a stay and specifying the
 23 nature of the damage.

24 (d) Proceedings for reconsidering, suspending, setting aside, or enforcing a
 25 compensation order, whether rejecting a claim or making an award, may not be
 26 instituted, except as provided in this chapter.

27 * **Sec. 65.** AS 23.30 is amended by adding new sections to read:

28 **Sec. 23.30.126. Review of director's decision.** (a) A decision by the director
 29 that affects a right, privilege, benefit, or duty that is imposed or conferred under this
 30 chapter is subject to review by the commission. A decision by the director becomes
 31 effective when filed with the division, and, unless proceedings to suspend or set aside

1 the decision are instituted as provided in this section, the decision becomes final on the
2 31st day after it is filed.

3 (b) If a decision of the director is not in accordance with law or fact, the
4 decision may be suspended or set aside, in whole or in part, through proceedings in the
5 commission brought by a party in interest against the director and all other parties to
6 the proceedings. The decision may not be stayed pending final decision in the
7 proceeding unless, upon application for a stay, the commission, on hearing, after not
8 less than three days notice to the parties in interest and the director, allows the stay, in
9 whole or in part, where irreparable damage would otherwise result. The order of the
10 commission allowing the stay shall contain a specific finding, based upon evidence
11 submitted to the commission and identified by reference to it, that irreparable damage
12 would result to the party applying for a stay, and specifying the nature of the damage.

13 (c) Proceedings for suspending, setting aside, or enforcing a director's decision
14 or determination may not be instituted except as provided in this chapter.

15 **Sec. 23.30.127. Appeals to commission.** (a) A party in interest may appeal a
16 compensation order issued by a hearing officer to the commission within 30 days after
17 the compensation order is filed with the office of the commission under AS 23.30.110.
18 The director may intervene in an appeal. If a party in interest is not represented by
19 counsel and the compensation order concerns an unsettled question of law, the director
20 may file an appeal on behalf of the unrepresented party.

21 (b) A party in interest may appeal a decision of the director to the commission
22 within 30 days after the decision is filed with the division.

23 (c) An appeal shall be initiated by filing with the office of the commission

24 (1) a signed notice of appeal specifying the compensation order
25 appealed from;

26 (2) a statement of the grounds upon which the appeal is taken; and

27 (3) other materials the commission may by regulation require.

28 (d) A cross-appeal may be initiated by filing with the office of the commission
29 a signed notice of cross-appeal within 30 days after the decision is filed or within 15
30 days after service of notice of an appeal, whichever is later. The notice of cross-
31 appeal shall specify the compensation order appealed from and the grounds upon

1 which the cross-appeal is taken.

2 (e) The office of the commission may charge a fee not to exceed \$100, for
3 filing appeals and cross-appeals, except that the office of the commission may not
4 charge a fee if the appellant is the state or a political subdivision of the state. The
5 commission may require an appellant to pay the costs of the transcript of hearing and
6 the preparation of the record on appeal. The commission may require cross-appellants
7 or intervenors to share in the costs.

8 (f) If a request for reconsideration of a hearing officer's decision is timely filed
9 with the office of the commission, the notice of appeal must be filed within 30 days
10 after the reconsideration decision is mailed to the parties, or the date the request for
11 reconsideration is considered denied, in the absence of any action on the request,
12 whichever is earlier.

13 (g) The commission may require written briefs and make other rules and
14 orders to facilitate the business of the commission and advance the prompt, fair, and
15 just disposition of appeals.

16 **Sec. 23.30.128. Commission proceedings.** (a) The commission may review
17 de novo all discretionary actions, findings of fact, and conclusions of law by the
18 hearing officer or the director in hearing, determining or otherwise acting on any
19 compensation claim or petition. A hearing officer's findings regarding the credibility
20 of testimony of a witness who appeared in the hearing is binding on the commission,
21 but all other findings by a hearing officer, including the weight to be accorded medical
22 testimony and reports, may be set aside by the commission. The findings of the
23 hearing officer, if not set aside by the commission, are conclusive.

24 (b) The matter on appeal shall be decided by the commission on the record
25 made before the director or hearing officer, a transcript or recording of the
26 proceedings before the director or hearing officer, and oral argument and written briefs
27 allowed by the commission. Except as provided in (c) of this section, new or
28 additional evidence may not be received with respect to the appeal.

29 (c) The commission may hold hearings and receive evidence on applications
30 for (1) stays under AS 23.30.125; (2) attorney fees and costs of appeal; (3) waiver of
31 fees by indigent appellants; or (4) dismissal of appeals for failure to prosecute or upon

1 settlement. The commission may rely on new or additional evidence presented during
2 the hearing in making its decision on the application.

3 (d) The commission may affirm, reverse, or modify a decision or order upon
4 review and issue other orders as appropriate. The commission may remand matters it
5 determines were improperly, incompletely, or otherwise insufficiently developed. The
6 commission may remand for further proceedings and appropriate action with or
7 without relinquishing the commission's jurisdiction of the appeal. The administrative
8 adjudication procedures of AS 44.62 (Administrative Procedure Act) do not apply to
9 the proceedings of the commission.

10 (e) Within 90 days after written briefing on the appeal is completed or oral
11 argument is held, whichever is later, the commission shall issue a decision in writing.
12 The decision must contain a concise statement of reasons for the decision, including
13 findings of fact, if required, and conclusions of law. The commission shall serve each
14 party and the director with a copy of the decision. Appeals may be expedited for good
15 cause by the commission. Unless reconsideration is ordered under (f) of this section, a
16 decision under this subsection is the final commission decision.

17 (f) A party or the director may request reconsideration of a decision issued
18 under (e) of this section within 30 days after the date of service shown in the
19 certificate of service of the decision. The request must state specific grounds for
20 reconsideration. Reconsideration may be granted if, in reaching the decision, the
21 commission (1) overlooked, misapplied, or failed to consider a statute, regulation,
22 court or administrative decision, or legal principle directly controlling; (2) overlooked
23 or misconceived a material fact; (3) misconceived a material question in the case; or
24 (4) applied law in the ruling that has subsequently changed. The commission may
25 issue an order for reconsideration of all or part of the decision upon request of a party
26 or the director. Reconsideration is based on the record, unless the commission allows
27 additional argument. The power to order reconsideration expires 60 days after the
28 date of service, as shown on the certificate of service, of a decision issued under (e) of
29 this section. If the commission does not issue an order for reconsideration within the
30 time allowed for ordering reconsideration, a request for reconsideration is considered
31 denied. If reconsideration is ordered, the commission shall issued a decision within 30

1 days after the close of the record on reconsideration. The commission shall serve each
 2 party in the case with a copy of the decision upon reconsideration. The decision upon
 3 reconsideration is the final commission decision.

4 (g) A decision of the commission becomes final on the

5 (1) 31st day after the date of service of a decision if reconsideration is
 6 not requested; or

7 (2) 61st day after the date of service of a decision if reconsideration is
 8 requested but an order for reconsideration is not issued; or

9 (3) date of service of the commission decision upon reconsideration
 10 under (f) of this section if reconsideration is requested and an order for reconsideration
 11 is issued.

12 **Sec. 23.30.129. Judicial review of commission orders.** (a) Notwithstanding
 13 the provisions of AS 44.62.560, orders of the commission may not be appealed to the
 14 superior court. Consistent with AS 22.05.010(b), final decisions of the commission
 15 may be appealed to the supreme court, and other orders may be reviewed by the
 16 supreme court as provided by the Alaska Rules of Appellate Procedure.

17 (b) A finding by the commission concerning the weight to be accorded a
 18 witness's testimony, including medical testimony and reports, is conclusive even if the
 19 evidence is conflicting or susceptible to contrary conclusions. The commission's
 20 findings of fact may be reversed on appeal if not supported by substantial evidence in
 21 light of the whole record.

22 * **Sec. 66.** AS 23.30.130 is amended to read:

23 **Sec. 23.30.130. Modification of awards.** (a) **A party in interest or the**
 24 **director may petition to modify a compensation order** [UPON ITS OWN
 25 INITIATIVE, OR UPON THE APPLICATION OF ANY PARTY IN INTEREST] on
 26 the ground of a change in conditions, including, for the purposes of AS 23.30.175, a
 27 change in residence, or because of a mistake in **a** [ITS] determination of a **material**
 28 **fact.** **A hearing officer** [, THE BOARD] may, before one year after the date of the
 29 last payment of compensation benefits under AS 23.30.180, 23.30.185, 23.30.190,
 30 23.30.200, or 23.30.215, whether or not a compensation order has been issued, or
 31 before one year after the rejection of a claim, **act on the petition and** review a

1 compensation case under the procedure prescribed with [IN] respect to [OF] claims in
 2 AS 23.30.110. Under AS 23.30.110, a hearing officer [THE BOARD] may issue a
 3 new compensation order that [WHICH] terminates, continues, reinstates, increases, or
 4 decreases the compensation, or award compensation.

5 (b) A new order does not affect compensation previously paid, except that an
 6 award increasing the compensation rate may be made effective from the date of the
 7 injury, and, if part of the compensation due or to become due is unpaid, an award
 8 decreasing the compensation rate may be made effective from the date of the injury,
 9 and payment made earlier in excess of the decreased rate shall be deducted from the
 10 unpaid compensation, in the manner the hearing officer [BOARD] determines.

11 * **Sec. 67.** AS 23.30.135 is amended to read:

12 **Sec. 23.30.135. Procedure before the division [BOARD].** (a) **The director**
 13 **in** [IN] making **a decision on** an investigation or inquiry or conducting a hearing,
 14 [THE BOARD] is not bound by common law or statutory rules of evidence or by
 15 technical or formal rules of procedure, except as provided by this chapter. The
 16 **director** [BOARD] may make **an** [ITS] investigation or inquiry or conduct **a** [ITS]
 17 hearing in the manner **that** [BY WHICH IT] may best ascertain the rights of the
 18 parties. **For purposes of investigation under AS 23.30.011, 23.30.040, 23.30.075,**
 19 **23.30.080, 23.30.085, 23.30.090, 23.30.140, 23.30.155(i), 23.30.155(k),**
 20 **23.30.155(m), 23.30.170, and 23.30.240 the director may subpoena witnesses,**
 21 **administer or cause to be administered oaths, and may examine or cause to be**
 22 **examined books, papers and records relating to the questions under**
 23 **investigation. The superior court shall enforce the subpoenas on application by**
 24 **the director in the manner provided in AS 44.62.590.** Declarations of a deceased
 25 employee concerning the injury with [IN] respect to which the investigation or inquiry
 26 is being made or the hearing conducted shall be received in evidence and are, if
 27 corroborated by other evidence, sufficient to establish the injury.

28 (b) All testimony given during a hearing before the **director** [BOARD] shall
 29 be recorded, but need not be transcribed unless further review is initiated. Hearings
 30 before the **director** [BOARD] shall be open to the public.

31 * **Sec. 68.** AS 23.30.140 is amended to read:

1 **Sec. 23.30.140. Appointment of guardian by court.** The **director**
 2 [BOARD] may require the appointment of a guardian or other representative by a
 3 competent court for any person who is mentally incompetent or a minor to receive
 4 compensation payable to the person under this chapter and to exercise the powers
 5 granted to or to perform the duties required of the person under this chapter. If the
 6 **director** [BOARD] does not require the appointment of a guardian to receive the
 7 compensation of a minor, appointment for this purpose is not necessary.

8 * **Sec. 69.** AS 23.30.145(a) is amended to read:

9 (a) Fees for legal services rendered **with** [IN] respect to a claim are not valid
 10 unless approved by the **hearing officer** [BOARD, AND THE FEES MAY NOT BE
 11 LESS THAN 25 PER CENT ON THE FIRST \$1,000 OF COMPENSATION OR
 12 PART OF THE FIRST \$1,000 OF COMPENSATION, AND 10 PER CENT OF ALL
 13 SUMS IN EXCESS OF \$1,000 OF COMPENSATION]. When [THE BOARD
 14 ADVISES THAT] a claim has been controverted, in whole or in part, [THE BOARD
 15 MAY DIRECT THAT THE] fees for legal services **may** be paid by the employer or
 16 carrier in addition to compensation awarded; the fees may be allowed only on the
 17 amount of compensation controverted and awarded. When [THE BOARD ADVISES
 18 THAT] a claim has not been controverted, but [FURTHER ADVISES THAT] bona
 19 fide legal services have been rendered **with** [IN] respect to the claim, then the **hearing**
 20 **officer** [BOARD] shall direct the payment of the fees out of the compensation
 21 awarded. In determining the amount of fees the **hearing officer** [BOARD] shall take
 22 into consideration the nature, length, and complexity of the services performed,
 23 transportation charges, and the benefits resulting from the services to the
 24 compensation beneficiaries, **but a fee may not be less than 25 percent of the first**
 25 **\$1,000 of controverted compensation awarded and 10 percent of controverted**
 26 **compensation in excess of \$1,000.**

27 * **Sec. 70.** AS 23.30.145(b) is amended to read:

28 (b) If an employer fails to file timely notice of controversy or fails to pay
 29 compensation or medical and related benefits within 15 days after it becomes due or
 30 otherwise resists the payment of compensation or medical and related benefits and if
 31 the claimant has employed an attorney in the successful prosecution of the claim, **a**

1 **hearing officer** [THE BOARD] shall make an award to reimburse the claimant for the
 2 costs in the proceedings, including [A] reasonable attorney **fees** [FEE]. The award is
 3 in addition to the compensation or medical and related benefits ordered.

4 * **Sec. 71.** AS 23.30.155(a) is amended to read:

5 (a) Compensation under this chapter shall be paid periodically, promptly, and
 6 directly to the person entitled to it, without an award, except where liability to pay
 7 compensation is controverted by the employer. To controvert a claim, the employer
 8 must file a notice, on a form prescribed by the **director** [BOARD], stating

9 (1) that the right of the employee to compensation is controverted;

10 (2) the name of the employee;

11 (3) the name of the employer;

12 (4) the date of the alleged injury or death; and

13 (5) the type of compensation and all grounds upon which the right to
 14 compensation is controverted.

15 * **Sec. 72.** AS 23.30.155(b) is amended to read:

16 (b) The first installment of compensation becomes due on the 14th day after
 17 the employer has knowledge of the injury or death. On this date all compensation then
 18 due shall be paid. Subsequent compensation shall be paid in installments, every 14
 19 days, except where **a hearing officer** [THE BOARD] determines that payment in
 20 installments should be made monthly or at some other period.

21 * **Sec. 73.** AS 23.30.155(c) is amended to read:

22 (c) The insurer or adjuster shall notify the **division** [BOARD] and the
 23 employee on a form prescribed by the **director** [BOARD] that the payment of
 24 compensation has begun or has been increased, decreased, suspended, terminated,
 25 resumed, or changed in type. An initial report shall be filed with the **division**
 26 [BOARD] and sent to the employee within 28 days after the date of issuing the first
 27 payment of compensation. If at any time 21 days or more pass and no compensation
 28 payment is issued, a report notifying the **division** [BOARD] and the employee of the
 29 termination or suspension of compensation shall be filed with the **division** [BOARD]
 30 and sent to the employee within 28 days after the date the last compensation payment
 31 was issued. A report shall also be filed with the **division** [BOARD] and sent to the

1 employee within 28 days after the date of issuing a payment increasing, decreasing,
 2 resuming, or changing the type of compensation paid. If the **division** [BOARD] and
 3 the employee are not notified within the 28 days prescribed by this subsection for
 4 reporting, the insurer or adjuster shall pay a civil penalty of \$100 for the first day plus
 5 \$10 for each day **after the first day** [THEREAFTER] that the notice was not given.
 6 Total penalties under this subsection may not exceed \$1,000 for a failure to file a
 7 required report. Penalties assessed under this subsection are eligible for reduction
 8 under (m) of this section. A penalty assessed under this subsection after penalties have
 9 been reduced under (m) of this section shall be increased by 25 percent and shall bear
 10 interest at the rate established under AS 45.45.010.

11 * **Sec. 74.** AS 23.30.155(d) is amended to read:

12 (d) If the employer controverts the right to compensation, the employer shall
 13 file with the **division** [BOARD] and send to the employee a notice of controversion on
 14 or before the 21st day after the employer has knowledge of the alleged injury or death.
 15 If the employer controverts the right to compensation after payments have begun, the
 16 employer shall file with the **division** [BOARD] and send to the employee a notice of
 17 controversion within seven days after an installment of compensation payable without
 18 an award is due. When payment of temporary disability benefits is controverted solely
 19 on the grounds that another employer or another insurer of the same employer may be
 20 responsible for all or a portion of the benefits, the most recent employer or insurer
 21 who is party to the claim and who may be liable shall make the payments during the
 22 pendency of the dispute. When a final determination of liability is made, any
 23 reimbursement required, including interest at the statutory rate, and all costs and
 24 **attorney** [ATTORNEYS'] fees incurred by the prevailing employer, shall be made
 25 within 14 days **after** [OF] the determination.

26 * **Sec. 75.** AS 23.30.155(e) is amended to read:

27 (e) If any installment of compensation payable without an award is not paid
 28 within seven days after it becomes due, as provided in (b) of this section, there shall be
 29 added to the unpaid installment an amount equal to 25 percent of it. This additional
 30 amount shall be paid at the same time as, and in addition to, the installment, unless
 31 notice is filed under (d) of this section or unless the nonpayment is excused by the **a**

1 **hearing officer** [THE BOARD] after a showing by the employer that, owing to
 2 conditions over which the employer had no control, the installment could not be paid
 3 within the period prescribed for the payment.

4 * **Sec. 76.** AS 23.30.155(f) is amended to read:

5 (f) If compensation payable under the terms of an award is not paid within 14
 6 days after it becomes due, there shall be added to that unpaid compensation an amount
 7 equal to 25 percent of it, which shall be paid at the same time as, but in addition to, the
 8 compensation, unless review of the compensation order making the award is had as
 9 provided in AS 23.30.125 and **payment is stayed by an order of the commission**
 10 [INTERLOCUTORY INJUNCTION STAYING PAYMENTS IS ALLOWED BY
 11 THE COURT].

12 * **Sec. 77.** AS 23.30.155(h) is amended to read:

13 (h) The **director may initiate an investigation, have a medical examination**
 14 **performed at the division's expense, or file a petition on a disputed matter for**
 15 **hearing by a hearing officer** [BOARD MAY UPON ITS OWN INITIATIVE] at any
 16 time in a case in which payments are being made with or without an award, where
 17 right to compensation is controverted, or where payments of compensation have been
 18 increased, reduced, terminated, changed, or suspended, upon receipt of notice from a
 19 person entitled to compensation, or from the employer, that the right to compensation
 20 is controverted, or that payments of compensation have been increased, reduced,
 21 terminated, changed, or suspended. **The director may then** [, MAKE THE
 22 INVESTIGATIONS, CAUSE THE MEDICAL EXAMINATIONS TO BE MADE,
 23 OR HOLD THE HEARINGS, AND] take the further action **considered necessary to**
 24 [WHICH IT CONSIDERS WILL] properly protect the rights of all parties.

25 * **Sec. 78.** AS 23.30.155(i) is amended to read:

26 (i) When the **director** [BOARD] considers it advisable, **the director** [IT] may
 27 require an employer to make a deposit with the Department of Revenue to secure the
 28 prompt and convenient payment of the compensation, and payments from the deposit
 29 upon an award shall be made upon order of the **director** [BOARD].

30 * **Sec. 79.** AS 23.30.155(j) is amended to read:

31 (j) If an employer has made advance payments or overpayments of

1 compensation, the employer is entitled to be reimbursed by withholding up to 20
 2 percent out of each unpaid installment or installments of compensation due. More
 3 than 20 percent of unpaid installments of compensation due may be withheld from an
 4 employee only on approval of **a hearing officer** [THE BOARD].

5 * **Sec. 80.** AS 23.30.155(k) is amended to read:

6 (k) An injured employee [,] or, in case of death, the employee's dependents or
 7 personal representative [,] shall give receipts for payment of compensation to the
 8 employer paying **the compensation**, [IT] and the employer shall produce **the receipts**
 9 [THEM] for inspection by the **director** [BOARD], whenever required.

10 * **Sec. 81.** AS 23.30.155(m) is amended to read:

11 (m) On or before March 1 of each year, the insurer or adjuster shall file a
 12 verified annual report on a form prescribed by the **director** [BOARD] stating the total
 13 amount of all compensation by type, the number of claims received and the percentage
 14 controverted, medical, and related benefits, vocational rehabilitation expenses, legal
 15 fees, including a separate total of fees paid to attorneys and fees paid for the other
 16 costs of litigation, and penalties paid on all claims during the preceding calendar year.
 17 If the annual report is timely and complete when received by the **division** [BOARD]
 18 and provides accurate information about each category of payments, the **director**
 19 [COMMISSIONER] shall review the timeliness of the insurer's or adjuster's reports
 20 filed during the preceding year under (c) of this section. If, during the preceding year,
 21 the insurer or adjuster filed at least 99 percent of the reports on time, the penalties
 22 assessed under (c) of this section shall be waived. If, during the preceding year, the
 23 insurer or adjuster filed at least 97 percent of the reports on time, 75 percent of the
 24 penalties assessed under (c) of this section shall be waived. If, during the preceding
 25 year, the insurer or adjuster filed 95 percent of the reports on time, 50 percent of the
 26 penalties assessed under (c) of this section shall be waived. If, during the preceding
 27 year, the insurer's or adjuster's reports have not been filed on time at least 95 percent
 28 of the time, none of the penalties assessed under (c) of this section shall be waived.
 29 The penalties that are not waived are due and payable when the insurer or adjuster
 30 receives notification from the **director** [COMMISSIONER] regarding the timeliness
 31 of the reports. If the annual report is not filed by March 1 of each year, the insurer or

1 adjuster shall pay a civil penalty of \$100 for the first day the annual report is late [.]
 2 and \$10 for each additional day the report is late. If the annual report is incomplete
 3 when filed, the insurer or adjuster shall pay a civil penalty of \$1,000.

4 * **Sec. 82.** AS 23.30.155(o) is amended to read:

5 (o) The **director** [BOARD] shall promptly notify the division of insurance if **a**
 6 **hearing officer** [THE BOARD] determines that the employer's insurer has frivolously
 7 or unfairly controverted compensation due under this chapter. After receiving notice
 8 from the **director** [BOARD], the division of insurance shall determine if the insurer
 9 has committed an unfair claim settlement practice under AS 21.36.125.

10 * **Sec. 83.** AS 23.30.170(a) is amended to read:

11 (a) In case of default by the employer in the payment of compensation due
 12 under an award of compensation for a period of 30 days after the compensation is due,
 13 the person to whom the compensation is payable may, within one year after the
 14 default, **file a petition with the division** [APPLY TO THE BOARD MAKING THE
 15 COMPENSATION ORDER] for a supplementary order declaring the amount of the
 16 default. After **completion of any** investigation **the director considers necessary,**
 17 **and upon** [.] notice [.] and hearing, as provided in AS 23.30.110, **a hearing officer**
 18 **may** [THE BOARD SHALL] make a supplementary order declaring the amount of the
 19 default. The order shall be filed in the same manner as the compensation order.

20 * **Sec. 84.** AS 23.30.170(b) is amended to read:

21 (b) If the payment in default is an installment of the award, **a hearing officer**
 22 **has** [THE BOARD MAY, IN ITS] discretion **to** [.] declare the whole of the award as
 23 the amount in default. The **petitioner** [APPLICANT] may file a certified copy of the
 24 supplementary order with the clerk of the superior court. The supplementary order is
 25 final. The court shall, upon the filing of the copy, enter judgment for the amount
 26 declared in default by the supplementary order if it is in accordance with law. Any
 27 time after a supplementary order **is filed** [BY THE BOARD], the attorney general,
 28 when requested to do so by the **director** [COMMISSIONER], shall take appropriate
 29 action to **ensure** [ASSURE] collection of the defaulted payments.

30 * **Sec. 85.** AS 23.30.175(a) is amended to read:

31 (a) The weekly rate of compensation for disability or death may not exceed

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

21 * **Sec. 86.** AS 23.30.175(b) is amended to read:

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

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

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

31 (3) if the gross weekly earnings of the recipient and the resulting

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

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

6 **(5) application of (1) - (4) of this subsection may not result in**
 7 **raising a recipient's weekly compensation rate to an amount that exceeds the**
 8 **weekly compensation rate that the recipient would have received if the recipient**
 9 **had been residing in the state.**

10 * **Sec. 87.** AS 23.30.175(c) is amended to read:

11 (c) The **department** [BOARD] shall provide by regulation for the
 12 determination and comparison of living costs for this state and the other areas in which
 13 recipients reside and for the annual redetermination and comparison of these costs.

14 * **Sec. 88.** AS 23.30.180(a) is amended to read:

15 (a) In case of total disability adjudged to be permanent, 80 percent of the
 16 injured employee's spendable weekly wages shall be paid to the employee during the
 17 continuance of the total disability. If a permanent partial disability award has been
 18 made before a permanent total disability determination, permanent total disability
 19 benefits must be reduced by the amount of the permanent partial disability award,
 20 adjusted for inflation, in a manner determined by **a hearing officer** [THE BOARD].
 21 Loss of both hands, [OR] both arms, [OR] both feet, [OR] both legs, or both eyes, or
 22 of any two of them, in the absence of conclusive proof to the contrary, constitutes
 23 permanent total disability. In all other cases, permanent total disability is determined
 24 in accordance with the facts. In making this determination the market for the
 25 employee's services shall be **the**

- 26 (1) area of residence;
 27 (2) area of last employment;
 28 (3) [THE] state of residence; and
 29 (4) [THE] State of Alaska.

30 * **Sec. 89.** AS 23.30.190(b) is amended to read:

31 (b) All determinations of the existence and degree of permanent impairment

1 shall be made strictly and solely under the whole person determination as set out in the
2 American Medical Association Guides to the Evaluation of Permanent Impairment,
3 except that an impairment rating may not be rounded to the next five percent. The
4 **department** [BOARD] shall adopt a supplementary recognized schedule for injuries
5 that cannot be rated by use of the American Medical Association Guides.

6 * **Sec. 90.** AS 23.30.190(d) is amended to read:

7 (d) When a new edition of the American Medical Association Guides
8 described in (b) of this section is published, the **director** [BOARD] shall, not later
9 than 90 days after the last day of the month in which the new edition is published, hold
10 an open meeting under AS 44.62.310 to select the date on which the new edition will
11 be used to make all determinations required under (b) of this section. The date selected
12 by the **director** [BOARD] for using the new edition may not be later than 90 days
13 after the last day of the month in which the new edition is published. After the
14 meeting, the **director** [BOARD] shall issue a public notice announcing the date
15 selected. The requirements of AS 44.62.010 - 44.62.300 do not apply to the selection
16 or announcement of the date under this subsection.

17 * **Sec. 91.** AS 23.30.200(b) is amended to read:

18 (b) The wage-earning capacity of an injured employee is determined by the
19 actual spendable weekly wage of the employee if the actual spendable weekly wage
20 fairly and reasonably represents the wage-earning capacity of the employee. **A**
21 **hearing officer** [THE BOARD] may, in the interest of justice, fix the wage-earning
22 capacity that is reasonable, having due regard **for** [TO] the nature of the injury, the
23 degree of physical impairment, the usual employment, and other factors or
24 circumstances in the case that may affect the capacity of the employee to earn wages
25 in a disabled condition, including the effect of disability as it may naturally extend into
26 the future.

27 * **Sec. 92.** AS 23.30.205(e) is amended to read:

28 (e) The second injury fund may not be bound as to any question of law or fact
29 by reason of an award or an adjudication to which it was not a party or in relation to
30 which the **director** [COMMISSIONER] was not notified at least three weeks before
31 the award or adjudication, that the fund might be subject to liability for the injury or

1 death.

2 * **Sec. 93.** AS 23.30.205(f) is amended to read:

3 (f) An employer or the employer's carrier shall notify the **director**
4 [COMMISSIONER OF LABOR AND WORKFORCE DEVELOPMENT] of any
5 possible claim against the second injury fund as soon as practicable, but in no event
6 later than 100 weeks after the employer or the employer's carrier have knowledge of
7 the injury or death.

8 * **Sec. 94.** AS 23.30.215(d) is amended to read:

9 (d) Compensation under this chapter to aliens not residents, or about to
10 become nonresidents, of the United States or Canada is the same in amount as
11 provided for residents, except that dependents in a foreign country are limited to
12 widow or widower and child or children, or, if there is no widow or widower and child
13 or children, to surviving father or mother whom the employee has supported, either
14 wholly or in part, for a period of one year before the date of injury. **A hearing officer,**
15 **upon petition of the director, the employer, or** [THE BOARD, AT ITS OPTION,
16 OR UPON THE APPLICATION OF] the insurance carrier, may commute all future
17 installments of compensation to be paid to an alien dependent who is not a resident of
18 the United States or Canada by paying or causing to be paid to the alien dependent
19 one-half of the commuted amount of the future installments of compensation as
20 determined by the **hearing officer** [BOARD].

21 * **Sec. 95.** AS 23.30.220(a) is amended to read:

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

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

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

31 (3) if, at the time of injury, the employee's earnings are calculated by

1 the year, the employee's gross weekly earnings are the yearly earnings divided by 52;

2 (4) if, at the time of injury, the

3 (A) employee's earnings are calculated by the day, **by the** hour,
4 or by the output of the employee, the employee's gross weekly earnings are the
5 employee's earnings most favorable to the employee computed by dividing by
6 13 the employee's earnings, including overtime or premium pay, earned during
7 any period of 13 consecutive calendar weeks within the 52 weeks immediately
8 preceding the injury;

9 (B) employee has been employed for less than 13 calendar
10 weeks immediately preceding the injury, then, notwithstanding (1) - (3) of this
11 subsection and (A) of this paragraph, the employee's gross weekly earnings are
12 computed by determining the amount that the employee would have earned,
13 including overtime or premium pay, had the employee been employed by the
14 employer for 13 calendar weeks immediately preceding the injury and dividing
15 this sum by 13;

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

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

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

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

1 (9) if the employee is injured while performing duties as a volunteer
 2 ambulance attendant, volunteer police officer, or volunteer fire fighter, then,
 3 notwithstanding (1) - (6) of this subsection, the gross weekly earnings for calculating
 4 compensation shall be the minimum gross weekly earnings paid a full-time ambulance
 5 attendant, police officer, or fire fighter employed in the political subdivision where the
 6 injury occurred, or, if the political subdivision has no full-time ambulance attendants,
 7 police officers, or fire fighters, at a reasonable figure previously set by the political
 8 subdivision to make this determination, but, in no case, may the gross weekly earnings
 9 for calculating compensation be less than the minimum wage computed on the basis of
 10 40 hours work a [PER] week;

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

18 * **Sec. 96.** AS 23.30.240 is amended to read:

19 **Sec. 23.30.240. Officers of corporations, municipal corporations, and**
 20 **nonprofit corporations as employees.** An executive officer elected or appointed and
 21 empowered in accordance with the charter and bylaws of a corporation, other than an
 22 official of a municipal corporation or a charitable, religious, educational, or other
 23 nonprofit corporation, is an employee of the corporation under this chapter. However,
 24 an executive officer of a corporation may waive coverage under this chapter, subject
 25 to the approval of the director [COMMISSIONER OF LABOR AND WORKFORCE
 26 DEVELOPMENT], notwithstanding AS 23.30.245(b). Notwithstanding any other
 27 provision of this chapter, an executive officer of a municipal corporation or of a
 28 charitable, religious, educational, or other nonprofit corporation may be brought
 29 within the coverage of its insurance contract by the corporation by specifically
 30 including the officer in the contract of insurance. The election to bring an executive
 31 officer within the coverage continues in force for the period the contract of insurance

1 is in effect. During that period, an executive officer brought within the coverage of
2 the insurance contract is an employee of the corporation under this chapter.

3 * **Sec. 97.** AS 23.30.250(b) is amended to read:

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

17 * **Sec. 98.** AS 23.30.260 is amended to read:

18 **Sec. 23.30.260. Penalty for receiving unapproved fees and soliciting.** A
19 person is guilty of a misdemeanor [,] and, upon conviction, is punishable for each
20 offense by a fine of not more than \$1,000 [,] or by imprisonment for not more than one
21 year, or by both, if the person

22 (1) receives a fee, other consideration, or a gratuity on account of **any**
23 services rendered **for representation or advice with** [IN] respect to a claim, unless
24 the consideration or gratuity is approved by the **hearing officer, the commission,**
25 [BOARD] or the court; or

26 (2) makes it a business to solicit employment for a lawyer or for **the**
27 **person with** [ONESELF IN] respect to a claim or award for compensation.

28 * **Sec. 99.** AS 23.30.395(28) is amended to read:

29 (28) "self-insurer" means an employer who, instead of insuring
30 liability under this chapter as it provides, elects to pay directly the compensation
31 provided for, and who has furnished to the **division** [BOARD] satisfactory proof of

1 the employer's financial ability to make the direct payments;

2 * **Sec. 100.** AS 23.30.395 is amended by adding new paragraphs to read:

3 (35) "commission" means the Workers' Compensation Appeals
4 Commission;

5 (36) "director" means the director of the division of workers'
6 compensation;

7 (37) "division" means the division of workers' compensation;

8 (38) "hearing officer" means a hearing officer employed under
9 AS 23.30.112 to hear workers' compensation claims and petitions under this chapter.

10 * **Sec. 101.** AS 39.25.120(c)(14) is amended to read:

11 (14) the rehabilitation administrator of the **division of workers'**
12 **compensation** [WORKERS' COMPENSATION BOARD];

13 * **Sec. 102.** AS 39.25.120(c) is amended by adding new paragraphs to read:

14 (20) hearing officers of the Workers' Compensation Appeals
15 Commission;

16 (21) the reemployment benefits administrator of the division of
17 workers' compensation in the Department of Labor and Workforce Development.

18 * **Sec. 103.** AS 39.50.200(b)(31) is amended to read:

19 (31) Workers' Compensation **Appeals Commission (AS 23.30.007)**
20 [BOARD (AS 23.30.005)];

21 * **Sec. 104.** AS 44.62.330(a)(15) is amended to read:

22 (15) **division of workers' compensation and its director** [ALASKA
23 WORKERS' COMPENSATION BOARD], where procedures are not otherwise
24 expressly provided by **AS 23.30** ([THE] Alaska Workers' Compensation Act);

25 * **Sec. 105.** AS 21.39.155(c) and AS 23.30.395(3) are repealed.

26 * **Sec. 106.** The uncodified law of the State of Alaska is amended by adding a new section
27 to read:

28 APPLICABILITY. The amendment to AS 23.30.175(b) made by sec. 86 of this Act
29 applies to an injury occurring on or after the effective date of sec. 86 of this Act.

30 * **Sec. 107.** The uncodified law of the State of Alaska is amended by adding a new section
31 to read:

1 TRANSITION: TERMS OF BOARD OF GOVERNORS MEMBERS. (a)
 2 Notwithstanding sec. 5 of this Act, the director of insurance in the Department of Community
 3 and Economic Development shall designate members of the board of governors for the Alaska
 4 Insurance Guaranty Association to serve staggered initial terms in the manner provided in
 5 AS 39.05.055.

6 (b) Terms of members of the board of governors for the Alaska Insurance Guaranty
 7 Association serving on July 1, 2004, expire on July 2, 2004, but a member of the board of
 8 governors on July 1, 2004, may continue to serve until a successor is appointed if the member
 9 meets the standards set out in sec. 5 of this Act for the position in which the member was
 10 serving on July 1, 2004. Members of the board of governors for the Alaska Insurance
 11 Guaranty Association serving on July 1, 2004, may apply for reappointment to the board by
 12 submitting a request to the director of insurance.

13 * **Sec. 108.** The uncodified law of the State of Alaska is amended by adding a new section
 14 to read:

15 TRANSITION: TERMS OF MEMBERS OF WORKERS' COMPENSATION
 16 APPEALS COMMISSION. The governor shall designate members of the Workers'
 17 Compensation Appeals Commission to serve staggered terms in the manner provided in
 18 AS 39.05.055.

19 * **Sec. 109.** The uncodified law of the State of Alaska is amended by adding a new section
 20 to read:

21 TRANSITIONAL PROVISIONS. The terms of the members of the Alaska Workers'
 22 Compensation Board who are serving on the effective date of this section expire 45 days after
 23 the effective date of this section. All cases heard by and awaiting a decision by the board on
 24 the effective date of this section shall be decided by the board before the expiration of the
 25 members' terms, and the board's decision or order shall be issued within 45 days after the
 26 effective date of this section. Litigation, investigations, and other proceedings pending under
 27 a law amended or repealed by this Act, or in connection with functions transferred by this
 28 Act, continue in effect and may be continued and completed, notwithstanding a transfer or
 29 amendment or repeal provided for in this Act. Certificates, decisions, orders, and regulations
 30 issued or adopted under authority of a law amended or repealed by this Act remain in effect
 31 for the term issued, or until revoked, vacated, or otherwise modified under the provisions of

1 this Act. Contracts, rights, liabilities, and obligations created by or under a law amended or
2 repealed by this Act, and in effect on the effective date of this section, remain in effect
3 notwithstanding this Act's taking effect. Records, equipment, appropriations, and other
4 property of agencies of the state whose functions are transferred under this Act shall be
5 transferred to implement the provisions of this Act.

6 * **Sec. 110.** The uncodified law of the State of Alaska is amended by adding a new section
7 to read:

8 TRANSITION: REGULATIONS. The Department of Labor and Workforce
9 Development and the director of insurance in the Department of Community and Economic
10 Development each may proceed to adopt regulations necessary to implement their respective
11 provisions of this Act. The regulations take effect under AS 44.62 (Administrative Procedure
12 Act), but not before the effective date of the statutory changes.

13 * **Sec. 111.** Section 110 of this Act takes effect immediately under AS 01.10.070(c).

14 * **Sec. 112.** Except as provided in sec. 111 of this Act, this Act takes effect July 1, 2004.