

CS FOR SENATE BILL NO. 311(JUD)(efd fld)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Amended: 4/29/04

Offered: 4/15/04

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

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; stating the intent**
3 **of the legislature, and setting out limitations, concerning the interpretation,**
4 **construction, and implementation of workers' compensation laws; relating to**
5 **restructuring the Alaska workers' compensation system; eliminating the Alaska**
6 **Workers' Compensation Board; establishing a division of workers' compensation within**
7 **the Department of Labor and Workforce Development and assigning certain Alaska**
8 **Workers' Compensation Board functions to the division and the Department of Labor**
9 **and Workforce Development; establishing a Workers' Compensation Appeals**
10 **Commission; assigning certain functions of the Alaska Workers' Compensation Board**
11 **to the Workers' Compensation Appeals Commission and the Workers' Compensation**
12 **Hearings Board; relating to agreements that discharge workers' compensation liability;**

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

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

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

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

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

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

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

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

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

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

28 (e) In addition to any other deposit required under this section, an insurer who

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

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

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

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

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

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

29 (b) Members appointed shall serve staggered three-year terms and may be
 30 removed for cause by the director.

31 (c) Within 90 days after a vacancy occurs on the board, the director shall fill

1 the vacancy for the remaining period of the term of the vacating member.

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

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

6 * **Sec. 6.** AS 23.05.067(a) is amended to read:

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

12 (1) for each employer,

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

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

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

25 * **Sec. 7.** AS 23.05.067(e) is amended to read:

26 (e) Annual service fees and civil penalties collected under this section **and**
27 **fees collected by the Workers' Compensation Appeals Commission** shall be
28 deposited in the workers' safety and compensation administration account in the state
29 treasury. Under AS 37.05.146(c), the **Workers' Compensation Appeals**
30 **Commission fees,** service fees, and civil penalties shall be accounted for separately,
31 and appropriations from the account are not made from the unrestricted general fund.

1 The legislature may appropriate money from the account for expenditures by the
 2 department for necessary costs incurred by the department in the administration of the
 3 workers' safety programs contained in AS 18.60 and of the Alaska Workers'
 4 Compensation Act contained in AS 23.30. **The legislature may appropriate money**
 5 **from the account for expenditures by the department for necessary costs**
 6 **incurred by the Workers' Compensation Appeals Commission and for the**
 7 **administration of adjudication of claims and petitions arising under AS 23.30.**

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

11 * **Sec. 8.** AS 23.30 is amended by adding a new section to read:

12 **Sec. 23.30.001. Intent of the legislature and construction of chapter.** It is
 13 the intent of the legislature that

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

17 (2) workers' compensation cases shall be decided on their merits
 18 except where otherwise provided by law;

19 (3) this chapter may not be construed by the courts in favor of a party;

20 (4) hearings in workers' compensation cases shall be impartial and fair
 21 to all parties and that all parties shall be afforded due process and an opportunity to be
 22 heard and for their arguments and evidence to be fairly considered;

23 (5) evidence shall be carefully and rationally examined and, except in
 24 the application of the presumption in AS 23.30.120(a), doubt as to the substance of
 25 evidence may not be interpreted in favor of one party or the other.

26 * **Sec. 9.** AS 23.30.005 is repealed and reenacted to read:

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

1 compensation.

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

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

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

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

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

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

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

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

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

26 * **Sec. 10.** AS 23.30 is amended by adding new sections to read:

27 **Sec. 23.30.006. Workers' Compensation Hearings Board.** (a) There is
28 established in the Department of Labor and Workforce Development a Workers'
29 Compensation Hearings Board. The board consists of 14 members. Seven members
30 shall be representative of labor and seven members shall be representative of industry.
31 Two members shall sit for the second and fourth judicial districts; two members shall

1 sit for the first judicial district; and 10 members shall sit for the third judicial district.
2 A member may serve in another judicial district when necessary.

3 (b) Members of the board shall be appointed by the governor. Members shall
4 be citizens of the United States and a resident of this state for three years preceding
5 appointment. Members shall be appointed for a term of three years. The term of a
6 member sitting for a two-member judicial district may not expire in the same year as
7 the other member of the same judicial district. A vacancy arising in the board shall be
8 filled by appointment of the governor. Except as provided in AS 39.05.080(4), an
9 appointee selected to fill a vacancy shall hold office for the unexpired term of the
10 member whose vacancy is filled.

11 (c) Members are entitled to compensation in the amount of \$50 a day for each
12 day or portion of a day spent in actual hearing or on authorized official business
13 incidental to their duties and to transportation and per diem as provided by law.

14 (d) The chair of the commission shall serve as the administrative and
15 executive officer of the board and shall have authority in all administrative matters
16 relating to the members, including the assignment and distribution of cases and
17 assignment of members to hearing panels.

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

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

26 (2) conviction of a felony;

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

28 (4) inability to serve, neglect of duty, incompetence, or unavailability
29 to perform the duties of the member's office.

30 (f) A member of the board may not hear a claim or petition under this chapter
31 if

1 (1) a party is an employee or was, in the past seven years, an employee
2 of the board member or of a business that employs the board member;

3 (2) a party is a member or was, in the past seven years, a member of
4 the same union or employee association as the board member;

5 (3) a party has a contractual relationship with the board member, a
6 business that employs the board member, or a union or employee association of which
7 the board member is a member;

8 (4) the member is unable to be fair, impartial, and unbiased toward the
9 hearing participants; or

10 (5) participation in the hearing is a violation of AS 39.52.

11 (g) For purposes of holding hearings under this chapter, the members of the
12 board shall sit in panels of three members. Each panel must include a board member
13 representative of labor, a board member representative of industry, and a hearing
14 examiner employed under AS 23.30.112. A hearing may not proceed in the absence
15 of a board member.

16 **Sec. 23.30.007. Workers' Compensation Appeals Commission.** (a) There
17 is established in the Department of Labor and Workforce Development a Workers'
18 Compensation Appeals Commission. The commission has jurisdiction to hear appeals
19 from decisions and orders of hearing examiners, hearing panels, and the director.
20 Jurisdiction of the office is limited to administrative appeals arising under this chapter.

21 (b) The commission consists of three members appointed by the governor and
22 confirmed by a majority of the members of the legislature in joint session. Members
23 shall be appointed for a term of five years. At least one member shall be an individual
24 who, because of the individual's previous employment, practice, or affiliations, may be
25 classified as a representative of employers and at least one shall be an individual who,
26 because of the individual's previous employment, practice, or affiliations, may be
27 classified as a representative of employees. A member may act and receive
28 compensation from the date of appointment until confirmation or rejection by the
29 legislature.

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

31 (1) be a citizen of the United States, a resident of this state for five

1 years preceding appointment, licensed to practice law in this state, and a member in
2 good standing of the Alaska Bar Association; and

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

5 (d) The governor shall appoint one member of the commission to serve as
6 chair of the commission. The chair of the commission shall serve a term of three years
7 or the remainder of the chair's term as a member of the commission if less than three
8 years remains of the unexpired term as a member, unless the chair is appointed to a
9 successive term as a member of the commission before the expiration of the chair's
10 term as a member of the commission. A member of the commission may not be
11 appointed for successive terms as chair of the commission.

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

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

- 26 (1) misconduct in office or violation of AS 39.52;
27 (2) conviction of a felony;
28 (3) conviction of a misdemeanor related to workers' compensation;
29 (4) inability to serve, neglect of duty, incompetence, unjustified failure
30 to handle the caseload assigned, or similar nonfeasance of office; and
31 (5) failure to meet the requirements of this section relating to

1 qualification for office.

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

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

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

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

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

29 (c) The commission, in its administrative capacity, may adopt regulations
30 implementing its authority and duties under this chapter, including rules of procedure
31 and evidence for proceedings before the commission and before hearing panels, and

1 hearing examiners and in workers' compensation proceedings under AS 23.30.090 and
 2 23.30.110, and for the adjudication of all claims and petitions and appeals under this
 3 chapter. The provisions of AS 44.62 (Administrative Procedure Act) apply to the
 4 adoption of regulations by the commission.

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

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

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

18 (1) employ and supervise commission staff and hearing examiners and
 19 appoint a commission clerk;

20 (2) establish and implement a time management system for the
 21 commission, staff, and hearing examiners and manage the calendar of hearings and
 22 appeals;

23 (3) assign the work of the commission members, hearing examiners
 24 and staff so that hearings and appeals are resolved as expeditiously and competently as
 25 possible, including designating hearing examiners to hear preliminary matters; and

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

27 (b) The chair of the commission shall, not later than March 15 of each year,
 28 make available to the public and file with the lieutenant governor, a report regarding
 29 the commission, including data regarding time periods between initial receipt and final
 30 decisions on appeals.

31 * **Sec. 11.** AS 23.30.011(c) is amended to read:

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

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

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

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

25 (4) if the employer's liability under the workers' compensation law of
26 another state is insured, the employer's carrier, as to the employee or the employee's
27 dependents only, shall be considered to be an insurer authorized to write insurance
28 under and be subject to this chapter; however, unless its contract with the employer
29 requires it to pay an amount equivalent to the compensation benefits provided by this
30 chapter, its liability for income benefits or medical and related benefits may not
31 exceed the amounts of the benefits for which the insurer would have been liable under

1 the workers' compensation law of the other state;

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

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

11 * **Sec. 12.** AS 23.30.012 is amended to read:

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

22 **(b) If the claimant or beneficiary is not represented by an attorney**
23 **licensed to practice in this state, or the beneficiary is a minor, the division shall**
24 **request review of the agreement by a hearing panel.** If approved by **a hearing**
25 **panel** [THE BOARD], the agreement is enforceable the same as an order or award of
26 **a hearing panel** [THE BOARD] and discharges the liability of the employer for the
27 compensation notwithstanding the provisions of AS 23.30.130, 23.30.160, and
28 23.30.245. The agreement shall be approved by **a hearing panel** [THE BOARD] only
29 when the terms conform to the provisions of this chapter and, if it involves or is likely
30 to involve permanent disability, **a hearing panel** [THE BOARD] may require an
31 impartial medical examination and a hearing in order to determine whether or not to

1 approve the agreement. A [THE BOARD MAY APPROVE] lump-sum **settlement**
 2 **may be approved** [SETTLEMENTS] when it appears to be to the best interest of the
 3 employee or beneficiary or beneficiaries.

4 * **Sec. 13.** AS 23.30.015(b) is amended to read:

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

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

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

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

15 (A) the expenses incurred by the employer with respect to the
 16 action or compromise, including [A] reasonable attorney **fees** [FEE]
 17 determined by **a hearing panel** [THE BOARD];

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

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

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

31 (2) the employer shall pay any excess to the person entitled to

1 compensation or to the representative of that person.

2 * **Sec. 15.** AS 23.30.015(j) is amended to read:

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

7 * **Sec. 16.** AS 23.30.025(a) is amended to read:

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

18 * **Sec. 17.** AS 23.30.030(5) is amended to read:

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

30 * **Sec. 18.** AS 23.30.030(6) is amended to read:

31 (6) All claims for compensation, death benefits, physician's fees,

1 nurse's charges, hospital services, hospital supplies, medicines, prosthetic devices,
 2 transportation charges to the nearest point where adequate medical facilities are
 3 available, and burial expenses [,] may be made directly against either the employer or
 4 the insurer, or both, and the order or award of **a hearing panel** [THE BOARD] may
 5 be made against either the employer or the insurer or both.

6 * **Sec. 19.** AS 23.30.040(a) is amended to read:

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

13 * **Sec. 20.** AS 23.30.040(d) is amended to read:

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

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

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

23 * **Sec. 22.** AS 23.30.041(b) is amended to read:

24 (b) The administrator shall
 25 (1) enforce regulations adopted by the **department** [BOARD] to
 26 implement this section;
 27 (2) recommend regulations for adoption by the **department** [BOARD]
 28 that establish performance and reporting criteria for rehabilitation specialists;
 29 (3) enforce the quality and effectiveness of reemployment benefits
 30 provided for under this section;
 31 (4) review on an annual basis the performance of rehabilitation

1 specialists to determine continued eligibility for delivery of rehabilitation services;

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

7 (A) the estimated and actual cost of each active rehabilitation
8 plan;

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

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

12 (D) the cost of reemployment benefits;

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

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

18 * **Sec. 23.** AS 23.30.041(d) is amended to read:

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

30 * **Sec. 24.** AS 23.30.041(h) is amended to read:

31 (h) Within 90 days after the rehabilitation specialist's selection under (g) of

1 this section, the reemployment plan must be formulated and approved. The
 2 reemployment plan must require continuous participation by the employee and must
 3 maximize the usage of the employee's transferable skills. The reemployment plan
 4 must include at least the following:

- 5 (1) a determination of the occupational goal in the labor market;
- 6 (2) an inventory of the employee's technical skills, transferable skills,
 7 physical and intellectual capacities, academic achievement, emotional condition, and
 8 family support;
- 9 (3) a plan to acquire the occupational skills to be employable;
- 10 (4) the cost estimate of the reemployment plan, including provider
 11 fees; and the cost of tuition, books, tools [,] and supplies, transportation, temporary
 12 lodging, or job modification devices;
- 13 (5) the estimated length of time that the plan will take;
- 14 (6) the date that the plan will commence;
- 15 (7) the estimated time of medical stability as predicted by a treating
 16 physician or by a physician who has examined the employee at the request of the
 17 employer or the **director** [BOARD], or by referral of the treating physician;
- 18 (8) a detailed description and plan schedule;
- 19 (9) a finding by the rehabilitation specialist that the inventory under (2)
 20 of this subsection indicates that the employee can be reasonably expected to
 21 satisfactorily complete the plan and perform in a new occupation within the time and
 22 cost limitations of the plan; and
- 23 (10) a provision requiring that, after a person has been assigned to
 24 perform medical management services for an injured employee, the person shall send
 25 written notice to the employee, the employer, and the employee's physician explaining
 26 in what capacity the person is employed, whom the person represents, and the scope of
 27 the services to be provided.

28 * **Sec. 25.** AS 23.30.041(j) is amended to read:

29 (j) The employee, rehabilitation specialist, and the employer shall sign the
 30 reemployment benefits plan. If the employer and employee fail to agree on a
 31 reemployment plan, either party may submit a reemployment plan for approval to the

1 administrator; the administrator shall approve or deny a plan within 14 days after the
 2 plan is submitted; within 10 days after [OF] the decision, either party may seek
 3 review of the decision by requesting a hearing under AS 23.30.110; a hearing panel
 4 [THE BOARD] shall uphold the decision of the administrator unless evidence is
 5 submitted supporting an allegation of abuse of discretion on the part of the
 6 administrator; a hearing panel [THE BOARD] shall render a decision within 30 days
 7 after completion of the hearing.

8 * **Sec. 26.** AS 23.30.041(o) is amended to read:

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

18 * **Sec. 27.** AS 23.30.041(p) is amended to read:

19 (p) When the United States Department of Labor publishes a new edition,
 20 revision, or replacement for the "Selected Characteristics of Occupations Defined in
 21 the Revised Dictionary of Occupational Titles" referred to in (e) of this section, the
 22 director [BOARD] shall, not later than 90 days after the last day of the month in
 23 which the new edition, revision, or replacement standard is published, hold an open
 24 meeting under AS 44.62.310 to select the proposed date on which the new edition,
 25 revision, or replacement standard will be implemented to make all eligibility
 26 determinations required under (e) of this section. The date selected by the
 27 department [BOARD] for implementing the new edition, revision, or replacement
 28 standard may not be later than 90 days after the last day of the month in which the new
 29 edition, revision, or replacement standard is published. After the meeting, the
 30 director [BOARD] shall issue a public notice announcing the date selected by the
 31 department. The requirements of AS 44.62.010 - 44.62.300 do not apply to the

1 selection or announcement of the date under this subsection.

2 * **Sec. 28.** AS 23.30.041(q) is amended to read:

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

17 * **Sec. 29.** AS 23.30.045(d) is amended to read:

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

1 subdivision is not liable, however, to the employee for workers' compensation if the
2 employee can recover from the employer under (a) and (b) of this section.

3 * **Sec. 30.** AS 23.30.045(e) is amended to read:

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

17 * **Sec. 31.** AS 23.30.065 is amended to read:

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

24 * **Sec. 32.** AS 23.30.070(a) is amended to read:

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

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

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

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

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

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

5 * **Sec. 33.** AS 23.30.070(b) is amended to read:

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

9 * **Sec. 34.** AS 23.30.070(d) is amended to read:

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

13 * **Sec. 35.** AS 23.30.070(f) is amended to read:

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

21 * **Sec. 36.** AS 23.30.075 is amended to read:

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

31 (b) If an employer fails to insure and keep insured employees subject to this

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

11 * **Sec. 37.** AS 23.30.080(d) is amended to read:

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

26 * **Sec. 38.** AS 23.30.080 is amended by adding new subsections to read:

27 (e) If an employer fails, refuses, or neglects to insure or provide security as
 28 required by AS 23.30.075(a), the director may petition a hearing examiner to order
 29 payment of a civil penalty to the state of an amount up to \$100 for each employee for
 30 each day an employee is employed while the employer is uninsured or does not
 31 provide the security required by AS 23.30.075(a). The failure of an employer to file

1 evidence of compliance as required by AS 23.30.085 creates a rebuttable presumption
 2 that the employer has failed to obtain and keep insurance or provide security as
 3 required by AS 23.30.075(a). If the director presents evidence with the petition that
 4 hazards in the employment constitute a danger that could reasonably be expected to
 5 immediately cause an employee death or serious physical harm, the petition may be
 6 heard on shortened notice.

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

17 * **Sec. 39.** AS 23.30.085(a) is amended to read:

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

25 * **Sec. 40.** AS 23.30.090 is amended to read:

26 **Sec. 23.30.090. Self-insurance certificates.** If an employer has complied
 27 with the provisions of this chapter relating to self-insurance and has paid annual
 28 service fees assessed under AS 23.05.067, the **director** [BOARD] shall issue the
 29 employer a certificate that shall remain in force for a period fixed by the **director**
 30 [BOARD]. The **director** [BOARD] may, upon at least 10 days' notice and a hearing,
 31 revoke a self-insurance certificate upon satisfactory proof that an employer is no

1 longer entitled to it. **The hearing shall be held by a hearing examiner. The**
 2 **hearing examiner shall make a proposed decision to the director, who may adopt,**
 3 **amend or reject it in the director's discretion.** After revocation, the **director**
 4 [BOARD] may grant a new certificate to an employer, upon the employer's petition
 5 and satisfactory proof of the employer's financial ability as provided in this chapter.
 6 An employer authorized as a self-insurer shall provide claims facilities through its
 7 own staffed adjusting facilities located within the state, or independent, licensed,
 8 resident adjusters with power to effect settlement within the state.

9 * **Sec. 41.** AS 23.30.090 is amended by adding a new subsection to read:

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

13 * **Sec. 42.** AS 23.30.095(a) is amended to read:

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

1 change in the attending physician shall be given before the change.

2 * **Sec. 43.** AS 23.30.095(c) is amended to read:

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

24 * **Sec. 44.** AS 23.30.095(d) is amended to read:

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

30 * **Sec. 45.** AS 23.30.095(e) is amended to read:

31 (e) The employee shall, after an injury, at reasonable times during the

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

31 * **Sec. 46.** AS 23.30.095(f) is amended to read:

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

8 * **Sec. 47.** AS 23.30.095(h) is amended to read:

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

17 * **Sec. 48.** AS 23.30.095(j) is amended to read:

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

22 * **Sec. 49.** AS 23.30.095(k) is amended to read:

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

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

5 * **Sec. 50.** AS 23.30.100(a) is amended to read:

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

9 * **Sec. 51.** AS 23.30.100(c) is amended to read:

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

17 * **Sec. 52.** AS 23.30.100(d) is amended to read:

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

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

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

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

28 * **Sec. 53.** AS 23.30.105(a) is amended to read:

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

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

11 * **Sec. 54.** AS 23.30.107 is amended to read:

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

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

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

30 (2) the quoting or discussing of medical or rehabilitation records
 31 contained in an employee's file during a hearing on a claim for compensation [,] or in

1 a decision and order of the hearing examiner, hearing panel, or commission
2 [BOARD].

3 * **Sec. 55.** AS 23.30.108 is amended to read:

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

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

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

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

17 * **Sec. 56.** AS 23.30.110 is amended to read:

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

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

30 (c) Before a hearing is scheduled, the party seeking a hearing shall file with
 31 the office of the commission a request for a hearing together with an affidavit stating

1 that the party has completed necessary discovery, **has** obtained necessary evidence,
 2 and is prepared for the hearing. An opposing party shall have 10 days after the
 3 hearing request is filed to file a response. If a party opposes the hearing request, **a**
 4 **hearing examiner** [THE BOARD OR A BOARD DESIGNEE] shall, within 30 days
 5 **after** [OF] the filing of the opposition, conduct a pre-hearing conference, **plan the**
 6 **timing and sequence of discovery and other preliminary matters**, and set a
 7 **reasonable** hearing date. If opposition is not filed, a **hearing examiner shall**
 8 **schedule a hearing not** [HEARING SHALL BE SCHEDULED NO] later than 60
 9 days after the receipt of the hearing request. The **commission clerk** [BOARD] shall
 10 give each party at least 10 days' notice of the hearing, either personally or by certified
 11 mail. After a hearing has been scheduled, the parties may not stipulate to change the
 12 hearing date or to cancel, postpone, or continue the hearing, except for good cause as
 13 determined by the **hearing examiner. The hearing shall be before a hearing panel**
 14 **unless otherwise provided by this chapter** [BOARD]. After completion of the
 15 hearing, the **hearing examiner** [BOARD] shall close the hearing record. If a
 16 settlement agreement is reached by the parties less than 14 days before the hearing, the
 17 parties shall appear at the time of the scheduled hearing to state the terms of the
 18 settlement agreement. **A decision by a majority of the hearing panel shall be the**
 19 **decision of the panel. After the hearing panel has reached a decision, the hearing**
 20 **examiner shall prepare a draft of the decision and circulate the decision to the**
 21 **other panel members for comment, revision, and approval. A panel member who**
 22 **does not agree, in whole or in part, with the decision of the hearing panel shall**
 23 **prepare a written dissent.** Within 30 days after the hearing record closes, the
 24 **hearing examiner** [BOARD] shall file **the hearing panel's** [ITS] decision **with any**
 25 **dissent.** If the employer controverts a claim on a **director-prescribed** [BOARD-
 26 PRESCRIBED] controversion notice and the employee does not request a hearing
 27 within two years following the filing of the controversion notice, the claim is denied.

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

31 (e) The order rejecting the claim **or petition**, or making the award, referred to

1 in this chapter as a compensation order, shall be filed in the office of the **commission**
 2 [BOARD], and a copy of it shall be sent by **certified** [REGISTERED] mail to the
 3 **parties** [CLAIMANT AND TO THE EMPLOYER] at the last known address of each.

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

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

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

22 * **Sec. 57.** AS 23.30.110 is amended by adding new subsections to read:

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

1 (j) At any time, a party may petition for a summary decision on all or part of a
 2 claim. The hearing panel shall grant the petition if (1) the hearing panel finds all
 3 reasonable discovery has been made on the issues presented; and (2) the record shows
 4 that there is no genuine issue of any material fact and that the petitioner is entitled to a
 5 decision as a matter of law. The hearing examiner may file a compensation order in
 6 favor of the petitioner if the hearing panel's summary decision adjudicates all issues in
 7 the claim with respect to the petitioner.

8 * **Sec. 58.** AS 23.30 is amended by adding a new section to read:

9 **Sec. 23.30.112. Hearing examiners.** (a) Unless otherwise provided in this
 10 chapter, hearings on claims and petitions shall be conducted by a hearing examiner
 11 employed by the commission. A hearing examiner shall be

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

15 (2) compensated at Range 24 of the schedule set out in
 16 AS 39.27.011(a), but is not a public employee for purposes of AS 23.40; and

17 (3) impartial and unbiased in all proceedings under this chapter,
 18 conduct hearings as a member of a hearing panel fairly and impartially on claims and
 19 petitions arising under this chapter, and file written decisions and orders.

20 (b) A hearing examiner may

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

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

30 (3) arrange to have hearings held by the commission, officer, or
 31 tribunal having authority to hear cases arising under the workers' compensation law of

1 any other state, of the District of Columbia, or of any territory of the United States,
 2 when a proceeding in this state so requires; the testimony and proceedings at the
 3 hearing shall be reported to the commission and are a part of the record in the case;
 4 evidence taken at the hearing is subject to rebuttal upon final hearing under this
 5 chapter.

6 **Sec. 23.30.113. Hearings before a hearing examiner or hearing panel.** (a)

7 The hearing examiner or hearing panel, in conducting a hearing under AS 23.30.110,
 8 is not bound by common law or statutory rules of evidence or by technical or formal
 9 rules of procedure, except as provided by this chapter and the regulations of the
 10 commission. The hearing may be conducted in the manner designed to best ascertain
 11 the rights of the parties. In proceedings before hearing examiners and hearing panels,
 12 the administrative adjudication procedures of AS 44.62 (Administrative Procedure
 13 Act) do not apply, except that AS 44.62.410(b), 44.62.460(a) - (d), 44.62.470,
 14 44.62.480, 44.62.510, and 44.62.590 shall apply to proceedings under this chapter.
 15 Declarations of a deceased employee concerning the injury with respect to which the
 16 investigation or inquiry is being made or the hearing conducted shall be received in
 17 evidence and are, if corroborated by other evidence, sufficient to establish the injury.

18 (b) The hearing examiner shall preside over hearings of a hearing panel and
 19 perform all other functions in an impartial manner with due regard for the rights of all
 20 parties and the facts and the law, and consistent with the orderly and prompt dispatch
 21 of proceedings under this chapter. The hearing examiner shall rule on questions of
 22 procedure, the admission and exclusion of evidence, and make rulings and instruct the
 23 board members on matters of law.

24 (c) A hearing examiner shall voluntarily seek disqualification and withdraw
 25 from a case in which the hearing examiner cannot accord a fair and impartial hearing
 26 or consideration. A request for disqualification of a hearing examiner for bias or
 27 partiality shall be determined by the hearing examiner concerned or, if the hearing is
 28 before a hearing panel, by the other members of the panel. Except as otherwise
 29 permitted by law, hearing examiners or a member of a hearing panel may not engage
 30 in interviews with or hear evidence or argument from, a party directly or indirectly,
 31 except upon opportunity for all parties to be present. Copies of all communications to

1 hearing examiners or a member of a hearing panel shall be served on all other parties.

2 (d) All testimony given during a hearing before a hearing examiner or a
3 hearing panel shall be recorded but need not be transcribed unless further review is
4 initiated. Hearings before a hearing examiner or hearing panel shall be open to the
5 public.

6 * **Sec. 59.** AS 23.30.115 is amended to read:

7 **Sec. 23.30.115. Attendance and fees of witnesses.** (a) A person is not
8 required to attend as a witness in a hearing [PROCEEDING] before the commission,
9 a hearing panel, or hearing examiner [BOARD] at a place more than 100 miles
10 from the person's place of residence, unless the person's lawful mileage and fee for
11 one day's attendance is first paid or tendered to the person; but the testimony of a
12 witness may be taken by deposition or interrogatories according to the Rules of Civil
13 Procedure.

14 (b) A witness summoned to testify in a hearing [PROCEEDING] before the
15 commission, a hearing panel, or hearing examiner [BOARD] or whose deposition
16 is taken shall receive the same fees and mileage as a witness in the superior court.
17 The commission clerk may issue subpoenas and subpoenas duces tecum to
18 summon a witness to testify in a hearing or deposition and to produce records.
19 The superior court shall enforce the subpoenas on application by the commission
20 in the manner provided in AS 44.62.590.

21 * **Sec. 60.** AS 23.30.120(b) is amended to read:

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

25 * **Sec. 61.** AS 23.30.122 is repealed and reenacted to read:

26 **Sec. 23.30.122. Credibility of witnesses.** The hearing panel has the sole
27 power to determine the credibility of testimony presented by a witness. When
28 credibility is disputed in a proceeding before the hearing panel, the hearing panel's
29 determination of credibility must be supported by specific findings.

30 * **Sec. 62.** AS 23.30 is amended by adding a new section to read:

31 **Sec. 23.30.124. Reconsideration of compensation order.** (a) A hearing

1 panel may order a reconsideration of all or part of a compensation order on the hearing
 2 panel's own motion or on petition of a party. A petition for reconsideration must be
 3 filed with the office of the commission within 15 days after mailing of the
 4 compensation order. The power to order reconsideration expires 30 days after the
 5 mailing of a compensation order. If an order of reconsideration is not filed with the
 6 office of the commission within the time allowed for ordering reconsideration, the
 7 petition is considered denied.

8 (b) If reconsideration is ordered under (a) of this section, the compensation
 9 order under reconsideration is stayed until the decision on reconsideration is filed.
 10 The case may be reconsidered by the hearing panel on of all the pertinent parts of the
 11 record and the additional arguments that are permitted by the hearing examiner. A
 12 written decision on reconsideration shall be filed with the commission within 30 days
 13 after the date the order of reconsideration was filed.

14 * **Sec. 63.** AS 23.30.125 is repealed and reenacted to read:

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

20 (b) Notwithstanding other provisions of law, a decision or order of a hearing
 21 examiner or hearing panel is subject to review by the commission as provided in this
 22 chapter.

23 (c) If a compensation order is not in accordance with law or fact, the order
 24 may be suspended or set aside, in whole or in part, through proceedings in the
 25 commission brought by a party in interest against all other parties to the proceedings
 26 before the hearing panel or hearing examiner. The payment of the amounts required
 27 by an award may not be stayed pending a final decision in the proceeding unless, upon
 28 application for a stay, the commission, on hearing, after not less than three days' notice
 29 to the parties in interest and the director, allows the stay of payment, in whole or in
 30 part, where the party filing the application would otherwise suffer irreparable damage.
 31 The order of the commission allowing a stay must contain a specific finding, based

1 upon evidence submitted to the commission and identified by reference to the
 2 evidence, that irreparable damage would result to the party applying for a stay and
 3 specifying the nature of the damage.

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

7 * **Sec. 64.** AS 23.30 is amended by adding new sections to read:

8 **Sec. 23.30.126. Review of director's decision.** (a) A decision by the director
 9 that affects a right, privilege, benefit, or duty that is imposed or conferred under this
 10 chapter is subject to review by the commission. A decision by the director becomes
 11 effective when filed with the division, and, unless proceedings to suspend or set aside
 12 the decision are instituted as provided in this section, the decision becomes final on the
 13 31st day after it is filed.

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

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

26 **Sec. 23.30.127. Appeals to commission.** (a) A party in interest may appeal a
 27 compensation order issued by a hearing examiner or a hearing panel to the
 28 commission within 30 days after the compensation order is filed with the office of the
 29 commission under AS 23.30.110. The director may intervene in an appeal. If a party
 30 in interest is not represented by counsel and the compensation order concerns an
 31 unsettled question of law, the director may file an appeal to obtain a ruling on the

1 question by the commission.

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

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

5 (1) a signed notice of appeal specifying the compensation order or
6 director's decision appealed from;

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

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

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

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

20 (f) If a request for reconsideration of a hearing panel's decision is timely filed
21 with the office of the commission, the notice of appeal must be filed within 30 days
22 after the reconsideration decision is mailed to the parties, or the date the request for
23 reconsideration is considered denied, in the absence of any action on the request,
24 whichever is earlier.

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

28 **Sec. 23.30.128. Commission proceedings.** (a) The commission may review
29 de novo all discretionary actions, findings of fact, and conclusions of law by the
30 hearing examiner, hearing panel, or the director in hearing, determining, or otherwise
31 acting on any compensation claim or petition. A hearing panel's findings regarding

1 the credibility of testimony of a witness are binding on the commission. The findings
2 of the hearing panel, if not set aside by the commission, are conclusive.

3 (b) The matter on appeal shall be decided by the commission on the record
4 made before the director, hearing examiner, or hearing panel, a transcript or recording
5 of the proceedings before the director, hearing examiner, or hearing panel, and oral
6 argument and written briefs allowed by the commission. Except as provided in (c) of
7 this section, new or additional evidence may not be received with respect to the
8 appeal.

9 (c) The commission may hold hearings and receive evidence on applications
10 for (1) stays under AS 23.30.125; (2) attorney fees and costs of appeal; (3) waiver of
11 fees by indigent appellants; or (4) dismissal of appeals for failure to prosecute or upon
12 settlement. The commission may rely on new or additional evidence presented during
13 the hearing in making its decision on the application.

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

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

28 (f) A party or the director may request reconsideration of a decision issued
29 under (e) of this section within 30 days after the date of service shown in the
30 certificate of service of the decision. The request must state specific grounds for
31 reconsideration. Reconsideration may be granted if, in reaching the decision, the

1 commission (1) overlooked, misapplied, or failed to consider a statute, regulation,
 2 court or administrative decision, or legal principle directly controlling; (2) overlooked
 3 or misconceived a material fact; (3) misconceived a material question in the case; or
 4 (4) applied law in the ruling that has subsequently changed. The commission may
 5 issue an order for reconsideration of all or part of the decision upon request of a party
 6 or the director. Reconsideration is based on the record, unless the commission allows
 7 additional argument. The power to order reconsideration expires 60 days after the
 8 date of service, as shown on the certificate of service, of a decision issued under (e) of
 9 this section. If the commission does not issue an order for reconsideration within the
 10 time allowed for ordering reconsideration, a request for reconsideration is considered
 11 denied. If reconsideration is ordered, the commission shall issued a decision within 30
 12 days after the close of the record on reconsideration. The commission shall serve each
 13 party in the case with a copy of the decision upon reconsideration. The decision upon
 14 reconsideration is the final commission decision.

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

16 (1) 31st day after the date of service of a decision if reconsideration is
 17 not requested; or

18 (2) 61st day after the date of service of a decision if reconsideration is
 19 requested but an order for reconsideration is not issued; or

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

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

28 (b) A finding by the commission concerning the weight to be accorded a
 29 witness's testimony, including medical testimony and reports, is conclusive even if the
 30 evidence is conflicting or susceptible to contrary conclusions. The commission's
 31 findings of fact may be reversed on appeal if not supported by substantial evidence in

1 light of the whole record.

2 * **Sec. 65.** AS 23.30.130 is amended to read:

3 **Sec. 23.30.130. Modification of awards.** (a) **A party in interest or the**
 4 **director may petition to modify a compensation order** [UPON ITS OWN
 5 INITIATIVE, OR UPON THE APPLICATION OF ANY PARTY IN INTEREST] on
 6 the ground of a change in conditions, including, for the purposes of AS 23.30.175, a
 7 change in residence, or because of a mistake in **a** [ITS] determination of a **material**
 8 **fact.** **A hearing panel** [, THE BOARD] may, before one year after the date of the last
 9 payment of compensation benefits under AS 23.30.180, 23.30.185, 23.30.190,
 10 23.30.200, or 23.30.215, whether or not a compensation order has been issued, or
 11 before one year after the rejection of a claim, **act on the petition and** review a
 12 compensation case under the procedure prescribed **with** [IN] respect **to** [OF] claims in
 13 AS 23.30.110. Under AS 23.30.110, **a hearing panel** [THE BOARD] may issue a
 14 new compensation order **that** [WHICH] terminates, continues, reinstates, increases, or
 15 decreases the compensation, or award compensation.

16 (b) A new order does not affect compensation previously paid, except that an
 17 award increasing the compensation rate may be made effective from the date of the
 18 injury, and, if part of the compensation due or to become due is unpaid, an award
 19 decreasing the compensation rate may be made effective from the date of the injury,
 20 and payment made earlier in excess of the decreased rate shall be deducted from the
 21 unpaid compensation, in the manner the **hearing panel** [BOARD] determines.

22 * **Sec. 66.** AS 23.30.135 is amended to read:

23 **Sec. 23.30.135. Procedure before the division [BOARD].** (a) **The director**
 24 **in** [IN] making **a decision on** an investigation or inquiry or conducting a hearing,
 25 [THE BOARD] is not bound by common law or statutory rules of evidence or by
 26 technical or formal rules of procedure, except as provided by this chapter. The
 27 **director** [BOARD] may make **an** [ITS] investigation or inquiry or conduct **a** [ITS]
 28 hearing in the manner **that** [BY WHICH IT] may best ascertain the rights of the
 29 parties. **For purposes of investigation under AS 23.30.011, 23.30.040, 23.30.075,**
 30 **23.30.080, 23.30.085, 23.30.090, 23.30.140, 23.30.155(i), 23.30.155(k),**
 31 **23.30.155(m), 23.30.170, and 23.30.240, the director may subpoena witnesses,**

1 **administer or cause to be administered oaths, and may examine or cause to be**
 2 **examined books, papers and records relating to the questions under**
 3 **investigation. The superior court shall enforce the subpoenas on application by**
 4 **the director in the manner provided in AS 44.62.590.** Declarations of a deceased
 5 employee concerning the injury **with** [IN] respect to which the investigation or inquiry
 6 is being made or the hearing conducted shall be received in evidence and are, if
 7 corroborated by other evidence, sufficient to establish the injury.

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

11 * **Sec. 67.** AS 23.30.140 is amended to read:

12 **Sec. 23.30.140. Appointment of guardian by court.** The **director**
 13 [BOARD] may require the appointment of a guardian or other representative by a
 14 competent court for any person who is mentally incompetent or a minor to receive
 15 compensation payable to the person under this chapter and to exercise the powers
 16 granted to or to perform the duties required of the person under this chapter. If the
 17 **director** [BOARD] does not require the appointment of a guardian to receive the
 18 compensation of a minor, appointment for this purpose is not necessary.

19 * **Sec. 68.** AS 23.30.145(a) is amended to read:

20 (a) Fees for legal services rendered **with** [IN] respect to a claim are not valid
 21 unless approved by the **hearing panel** [BOARD, AND THE FEES MAY NOT BE
 22 LESS THAN 25 PER CENT ON THE FIRST \$1,000 OF COMPENSATION OR
 23 PART OF THE FIRST \$1,000 OF COMPENSATION, AND 10 PER CENT OF ALL
 24 SUMS IN EXCESS OF \$1,000 OF COMPENSATION]. When [THE BOARD
 25 ADVISES THAT] a claim has been controverted, in whole or in part, [THE BOARD
 26 MAY DIRECT THAT THE] fees for legal services **may** be paid by the employer or
 27 carrier in addition to compensation awarded; the fees may be allowed only on the
 28 amount of compensation controverted and awarded. When [THE BOARD ADVISES
 29 THAT] a claim has not been controverted, but [FURTHER ADVISES THAT] bona
 30 fide legal services have been rendered **with** [IN] respect to the claim, then the **hearing**
 31 **panel** [BOARD] shall direct the payment of the fees out of the compensation awarded.

1 In determining the amount of fees the **hearing panel** [BOARD] shall take into
 2 consideration the nature, length, and complexity of the services performed,
 3 transportation charges, and the benefits resulting from the services to the
 4 compensation beneficiaries.

5 * **Sec. 69.** AS 23.30.145(b) is amended to read:

6 (b) If an employer fails to file timely notice of controversy or fails to pay
 7 compensation or medical and related benefits within 15 days after it becomes due or
 8 otherwise resists the payment of compensation or medical and related benefits and if
 9 the claimant has employed an attorney in the successful prosecution of the claim, **a**
 10 **hearing panel** [THE BOARD] shall make an award to reimburse the claimant for the
 11 costs in the proceedings, including [A] reasonable attorney **fees** [FEE]. The award is
 12 in addition to the compensation or medical and related benefits ordered.

13 * **Sec. 70.** AS 23.30.155(a) is amended to read:

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

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

19 (2) the name of the employee;

20 (3) the name of the employer;

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

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

24 * **Sec. 71.** AS 23.30.155(b) is amended to read:

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

30 * **Sec. 72.** AS 23.30.155(c) is amended to read:

31 (c) The insurer or adjuster shall notify the **division** [BOARD] and the

1 employee on a form prescribed by the **director** [BOARD] that the payment of
 2 compensation has begun or has been increased, decreased, suspended, terminated,
 3 resumed, or changed in type. An initial report shall be filed with the **division**
 4 [BOARD] and sent to the employee within 28 days after the date of issuing the first
 5 payment of compensation. If at any time 21 days or more pass and no compensation
 6 payment is issued, a report notifying the **division** [BOARD] and the employee of the
 7 termination or suspension of compensation shall be filed with the **division** [BOARD]
 8 and sent to the employee within 28 days after the date the last compensation payment
 9 was issued. A report shall also be filed with the **division** [BOARD] and sent to the
 10 employee within 28 days after the date of issuing a payment increasing, decreasing,
 11 resuming, or changing the type of compensation paid. If the **division** [BOARD] and
 12 the employee are not notified within the 28 days prescribed by this subsection for
 13 reporting, the insurer or adjuster shall pay a civil penalty of \$100 for the first day plus
 14 \$10 for each day **after the first day** [THEREAFTER] that the notice was not given.
 15 Total penalties under this subsection may not exceed \$1,000 for a failure to file a
 16 required report. Penalties assessed under this subsection are eligible for reduction
 17 under (m) of this section. A penalty assessed under this subsection after penalties
 18 have been reduced under (m) of this section shall be increased by 25 percent and shall
 19 bear interest at the rate established under AS 45.45.010.

20 * **Sec. 73.** AS 23.30.155(d) is amended to read:

21 (d) If the employer controverts the right to compensation, the employer shall
 22 file with the **division** [BOARD] and send to the employee a notice of controversion on
 23 or before the 21st day after the employer has knowledge of the alleged injury or death.
 24 If the employer controverts the right to compensation after payments have begun, the
 25 employer shall file with the **division** [BOARD] and send to the employee a notice of
 26 controversion within seven days after an installment of compensation payable without
 27 an award is due. When payment of temporary disability benefits is controverted solely
 28 on the grounds that another employer or another insurer of the same employer may be
 29 responsible for all or a portion of the benefits, the most recent employer or insurer
 30 who is party to the claim and who may be liable shall make the payments during the
 31 pendency of the dispute. When a final determination of liability is made, any

1 reimbursement required, including interest at the statutory rate, and all costs and
 2 **attorney** [ATTORNEYS'] fees incurred by the prevailing employer, shall be made
 3 within 14 days **after** [OF] the determination.

4 * **Sec. 74.** AS 23.30.155(e) is amended to read:

5 (e) If any installment of compensation payable without an award is not paid
 6 within seven days after it becomes due, as provided in (b) of this section, there shall be
 7 added to the unpaid installment an amount equal to 25 percent of it. This additional
 8 amount shall be paid at the same time as, and in addition to, the installment, unless
 9 notice is filed under (d) of this section or unless the nonpayment is excused by **a**
 10 **hearing panel** [THE BOARD] after a showing by the employer that, owing to
 11 conditions over which the employer had no control, the installment could not be paid
 12 within the period prescribed for the payment.

13 * **Sec. 75.** AS 23.30.155(f) is amended to read:

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

21 * **Sec. 76.** AS 23.30.155(h) is amended to read:

22 (h) The **director may initiate an investigation, have a medical examination**
 23 **performed at the division's expense, or file a petition on a disputed matter for**
 24 **hearing** [BOARD MAY UPON ITS OWN INITIATIVE] at any time in a case in
 25 which payments are being made with or without an award, where right to
 26 compensation is controverted, or where payments of compensation have been
 27 increased, reduced, terminated, changed, or suspended, upon receipt of notice from a
 28 person entitled to compensation, or from the employer, that the right to compensation
 29 is controverted, or that payments of compensation have been increased, reduced,
 30 terminated, changed, or suspended. **The director may then** [, MAKE THE
 31 INVESTIGATIONS, CAUSE THE MEDICAL EXAMINATIONS TO BE MADE,

1 OR HOLD THE HEARINGS, AND] take the further action **considered necessary to**
 2 [WHICH IT CONSIDERS WILL] properly protect the rights of all parties.

3 * **Sec. 77.** AS 23.30.155(i) is amended to read:

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

8 * **Sec. 78.** AS 23.30.155(j) is amended to read:

9 (j) If an employer has made advance payments or overpayments of
 10 compensation, the employer is entitled to be reimbursed by withholding up to 20
 11 percent out of each unpaid installment or installments of compensation due. More
 12 than 20 percent of unpaid installments of compensation due may be withheld from an
 13 employee only on approval of **a hearing panel** [THE BOARD].

14 * **Sec. 79.** AS 23.30.155(k) is amended to read:

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

19 * **Sec. 80.** AS 23.30.155(m) is amended to read:

20 (m) On or before March 1 of each year, the insurer or adjuster shall file a
 21 verified annual report on a form prescribed by the **director** [BOARD] stating the total
 22 amount of all compensation by type, the number of claims received and the percentage
 23 controverted, medical, and related benefits, vocational rehabilitation expenses, legal
 24 fees, including a separate total of fees paid to attorneys and fees paid for the other
 25 costs of litigation, and penalties paid on all claims during the preceding calendar year.
 26 If the annual report is timely and complete when received by the **division** [BOARD]
 27 and provides accurate information about each category of payments, the **director**
 28 [COMMISSIONER] shall review the timeliness of the insurer's or adjuster's reports
 29 filed during the preceding year under (c) of this section. If, during the preceding year,
 30 the insurer or adjuster filed at least 99 percent of the reports on time, the penalties
 31 assessed under (c) of this section shall be waived. If, during the preceding year, the

1 insurer or adjuster filed at least 97 percent of the reports on time, 75 percent of the
 2 penalties assessed under (c) of this section shall be waived. If, during the preceding
 3 year, the insurer or adjuster filed 95 percent of the reports on time, 50 percent of the
 4 penalties assessed under (c) of this section shall be waived. If, during the preceding
 5 year, the insurer's or adjuster's reports have not been filed on time at least 95 percent
 6 of the time, none of the penalties assessed under (c) of this section shall be waived.
 7 The penalties that are not waived are due and payable when the insurer or adjuster
 8 receives notification from the **director** [COMMISSIONER] regarding the timeliness
 9 of the reports. If the annual report is not filed by March 1 of each year, the insurer or
 10 adjuster shall pay a civil penalty of \$100 for the first day the annual report is late [,]
 11 and \$10 for each additional day the report is late. If the annual report is incomplete
 12 when filed, the insurer or adjuster shall pay a civil penalty of \$1,000.

13 * **Sec. 81.** AS 23.30.155(o) is amended to read:

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

19 * **Sec. 82.** AS 23.30.170(a) is amended to read:

20 (a) In case of default by the employer in the payment of compensation due
 21 under an award of compensation for a period of 30 days after the compensation is due,
 22 the person to whom the compensation is payable may, within one year after the
 23 default, **file a petition with the division** [APPLY TO THE BOARD MAKING THE
 24 COMPENSATION ORDER] for a supplementary order declaring the amount of the
 25 default. After **completion of any** investigation **the director considers necessary,**
 26 **and upon** [,] notice [,] and hearing, as provided in AS 23.30.110, **a hearing examiner**
 27 **may** [THE BOARD SHALL] make a supplementary order declaring the amount of the
 28 default. The order shall be filed in the same manner as the compensation order.

29 * **Sec. 83.** AS 23.30.170(b) is amended to read:

30 (b) If the payment in default is an installment of the award, **a hearing**
 31 **examiner has** [THE BOARD MAY, IN ITS] discretion **to** [,] declare the whole of the

1 award as the amount in default. The **petitioner** [APPLICANT] may file a certified
 2 copy of the supplementary order with the clerk of the superior court. The
 3 supplementary order is final. The court shall, upon the filing of the copy, enter
 4 judgment for the amount declared in default by the supplementary order if it is in
 5 accordance with law. Any time after a supplementary order **is filed** [BY THE
 6 BOARD], the attorney general, when requested to do so by the **director**
 7 [COMMISSIONER], shall take appropriate action to **ensure** [ASSURE] collection of
 8 the defaulted payments.

9 * **Sec. 84.** AS 23.30.175(a) is amended to read:

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

31 * **Sec. 85.** AS 23.30.175(b) is amended to read:

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

3 (1) the weekly rate of compensation shall be calculated by multiplying
4 the recipient's weekly compensation rate calculated under AS 23.30.180, 23.30.185,
5 23.30.190, 23.30.200, or 23.30.215 [,] by the ratio of the cost of living of the area in
6 which the recipient resides to the cost of living in this state;

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

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

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

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

20 * **Sec. 86.** AS 23.30.175(c) is amended to read:

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

24 * **Sec. 87.** AS 23.30.180(a) is amended to read:

25 (a) In case of total disability adjudged to be permanent, 80 percent of the
26 injured employee's spendable weekly wages shall be paid to the employee during the
27 continuance of the total disability. If a permanent partial disability award has been
28 made before a permanent total disability determination, permanent total disability
29 benefits must be reduced by the amount of the permanent partial disability award,
30 adjusted for inflation, in a manner determined by **a hearing panel** [THE BOARD].
31 Loss of both hands, [OR] both arms, [OR] both feet, [OR] both legs, or both eyes, or

1 of any two of them, in the absence of conclusive proof to the contrary, constitutes
 2 permanent total disability. In all other cases, permanent total disability is determined
 3 in accordance with the facts. In making this determination the market for the
 4 employee's services shall be **the**

- 5 (1) area of residence;
- 6 (2) area of last employment;
- 7 (3) [THE] state of residence; and
- 8 (4) [THE] State of Alaska.

9 * **Sec. 88.** AS 23.30.190(b) is amended to read:

10 (b) All determinations of the existence and degree of permanent impairment
 11 shall be made strictly and solely under the whole person determination as set out in the
 12 American Medical Association Guides to the Evaluation of Permanent Impairment,
 13 except that an impairment rating may not be rounded to the next five percent. The
 14 **department** [BOARD] shall adopt a supplementary recognized schedule for injuries
 15 that cannot be rated by use of the American Medical Association Guides.

16 * **Sec. 89.** AS 23.30.190(d) is amended to read:

17 (d) When a new edition of the American Medical Association Guides
 18 described in (b) of this section is published, the **director** [BOARD] shall, not later
 19 than 90 days after the last day of the month in which the new edition is published, hold
 20 an open meeting under AS 44.62.310 to select the date on which the new edition will
 21 be used to make all determinations required under (b) of this section. The date selected
 22 by the **director** [BOARD] for using the new edition may not be later than 90 days
 23 after the last day of the month in which the new edition is published. After the
 24 meeting, the **director** [BOARD] shall issue a public notice announcing the date
 25 selected. The requirements of AS 44.62.010 - 44.62.300 do not apply to the selection
 26 or announcement of the date under this subsection.

27 * **Sec. 90.** AS 23.30.200(b) is amended to read:

28 (b) The wage-earning capacity of an injured employee is determined by the
 29 actual spendable weekly wage of the employee if the actual spendable weekly wage
 30 fairly and reasonably represents the wage-earning capacity of the employee. **A**
 31 **hearing panel** [THE BOARD] may, in the interest of justice, fix the wage-earning

1 capacity that is reasonable, having due regard **for** [TO] the nature of the injury, the
 2 degree of physical impairment, the usual employment, and other factors or
 3 circumstances in the case that may affect the capacity of the employee to earn wages
 4 in a disabled condition, including the effect of disability as it may naturally extend into
 5 the future.

6 * **Sec. 91.** AS 23.30.205(e) is amended to read:

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

12 * **Sec. 92.** AS 23.30.205(f) is amended to read:

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

18 * **Sec. 93.** AS 23.30.215(d) is amended to read:

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

31 * **Sec. 94.** AS 23.30.220(a) is amended to read:

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

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

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

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

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

13 (A) employee's earnings are calculated by the day, by the hour,
 14 or by the output of the employee, the employee's gross weekly earnings are the
 15 employee's earnings most favorable to the employee computed by dividing by
 16 13 the employee's earnings, including overtime or premium pay, earned during
 17 any period of 13 consecutive calendar weeks within the 52 weeks immediately
 18 preceding the injury;

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

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

30 (6) if at the time of injury, the employment is exclusively seasonal or
 31 temporary, then, notwithstanding (1) - (5) of this subsection, the gross weekly earnings

1 are 1/50 of the total wages that the employee has earned from all occupations during
2 the 12 calendar months immediately preceding the injury;

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

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

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

21 (10) if an employee is entitled to compensation under AS 23.30.180
22 and a hearing panel [THE BOARD] determines that calculation of the employee's
23 gross weekly earnings under (1) - (7) of this subsection does not fairly reflect the
24 employee's earnings during the period of disability, the hearing panel [BOARD] shall
25 determine gross weekly earnings by considering the nature of the employee's work,
26 work history, and resulting disability, but compensation calculated under this
27 paragraph may not exceed the employee's gross weekly earnings at the time of injury.

28 * **Sec. 95.** AS 23.30.240 is amended to read:

29 **Sec. 23.30.240. Officers of corporations, municipal corporations, and**
30 **nonprofit corporations as employees.** An executive officer elected or appointed and
31 empowered in accordance with the charter and bylaws of a corporation, other than an

1 official of a municipal corporation or a charitable, religious, educational, or other
 2 nonprofit corporation, is an employee of the corporation under this chapter. However,
 3 an executive officer of a corporation may waive coverage under this chapter, subject
 4 to the approval of the **director** [COMMISSIONER OF LABOR AND WORKFORCE
 5 DEVELOPMENT], notwithstanding AS 23.30.245(b). Notwithstanding any other
 6 provision of this chapter, an executive officer of a municipal corporation or of a
 7 charitable, religious, educational, or other nonprofit corporation may be brought
 8 within the coverage of its insurance contract by the corporation by specifically
 9 including the officer in the contract of insurance. The election to bring an executive
 10 officer within the coverage continues in force for the period the contract of insurance
 11 is in effect. During that period, an executive officer brought within the coverage of
 12 the insurance contract is an employee of the corporation under this chapter.

13 * **Sec. 96.** AS 23.30.250(b) is amended to read:

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

26 * **Sec. 97.** AS 23.30.260 is amended to read:

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

31 (1) receives a fee, other consideration, or a gratuity on account of **any**

1 services rendered **for representation or advice with** [IN] respect to a claim, unless
 2 the consideration or gratuity is approved by the **hearing panel, the commission,**
 3 [BOARD] or the court; or

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

6 * **Sec. 98.** AS 23.30.260 is amended by adding a new subsection to read:

7 (b) Notwithstanding AS 23.30.145 and (a) of this section, approval of a fee is
 8 not required if the fee does not exceed \$300 and is a one-time-only charge to an
 9 employee by an attorney licensed in this state who performed legal services with
 10 respect to the employee's claim but did not enter an appearance.

11 * **Sec. 99.** AS 23.30.395(3) is amended to read:

12 (3) "board" means the [ALASKA] Workers' Compensation **Hearings**
 13 Board;

14 * **Sec. 100.** AS 23.30.395(28) is amended to read:

15 (28) "self-insurer" means an employer who, instead of insuring
 16 liability under this chapter as it provides, elects to pay directly the compensation
 17 provided for, and who has furnished to the **division** [BOARD] satisfactory proof of
 18 the employer's financial ability to make the direct payments;

19 * **Sec. 101.** AS 23.30.395 is amended by adding new paragraphs to read:

20 (35) "commission" means the Workers' Compensation Appeals
 21 Commission;

22 (36) "director" means the director of the division of workers'
 23 compensation;

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

25 (38) "hearing examiner" means a hearing examiner employed under
 26 AS 23.30.112 to preside over hearings of hearing panels in workers' compensation
 27 claims and petitions and conduct other hearings under this chapter;

28 (39) "hearing panel" means a panel formed to hear workers'
 29 compensation claims and petitions under this chapter, and that consists of a member of
 30 the board representative of industry, a member of the board representative of labor,
 31 and a hearing examiner employed under AS 23.30.112.

1 * **Sec. 102.** AS 39.25.120(c)(14) is amended to read:

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

4 * **Sec. 103.** AS 39.25.120(c) is amended by adding a new paragraph to read:

5 (20) the reemployment benefits administrator of the division of
6 workers' compensation in the Department of Labor and Workforce Development.

7 * **Sec. 104.** AS 39.50.200(b)(31) is amended to read:

8 (31) Workers' Compensation **Appeals Commission (AS 23.30.007)**
9 **and Workers' Compensation Hearings** Board **(AS 23.30.006)** [(AS 23.30.005)];

10 * **Sec. 105.** AS 44.62.330(a)(15) is amended to read:

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

14 * **Sec. 106.** AS 21.39.155(c) is repealed.

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

17 APPLICABILITY. The amendment to AS 23.30.175(b) made by sec. 85 of this Act
18 applies to an injury occurring on or after the effective date of sec. 85 of this Act.

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

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

26 (b) Terms of members of the board of governors for the Alaska Insurance Guaranty
27 Association serving on July 1, 2004, expire on July 2, 2004, but a member of the board of
28 governors on July 1, 2004, may continue to serve until a successor is appointed if the member
29 meets the standards set out in sec. 5 of this Act for the position in which the member was
30 serving on July 1, 2004. Members of the board of governors for the Alaska Insurance
31 Guaranty Association serving on July 1, 2004, may apply for reappointment to the board by

1 submitting a request to the director of insurance.

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

4 TRANSITION: CONTINUANCE OF ALASKA WORKERS' COMPENSATION
5 BOARD; PENDING CASES. (a) Notwithstanding the repeal and reenactment of
6 AS 23.30.005 by sec. 9 of this Act, the Alaska Workers' Compensation Board, established
7 under AS 23.30.005 as it existed on the day before the effective date of sec. 9 of this Act,
8 continues in existence for 45 days after the effective date of sec. 9 of this Act for the limited
9 purpose described in (b) of this section. Members serving on the Alaska Workers'
10 Compensation Board on the day before the effective date of sec. 9 of this Act continue to
11 serve as members of that board for the 45 days after the effective date of sec. 9 of this Act.
12 Appointments may not be made to that board on or after the effective date of sec. 9 of this
13 Act.

14 (b) A case heard by the board before the effective date of sec. 9 of this Act and
15 awaiting a decision by the board on the day before the effective date of sec. 9 of this Act shall
16 be decided by the board, and a decision or order shall be issued, not later than the 45th day
17 after the effective date of sec. 9 of this Act, under the applicable statutes and regulations in
18 effect on the day before the effective date of sec. 9 of this Act.

19 (c) In this section, "board" means the Alaska Workers' Compensation Board
20 established under AS 23.30.005 as that section existed on the day before the effective date of
21 sec. 9 of this Act.

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

24 TRANSITION: INITIAL TERMS OF MEMBERS OF WORKERS'
25 COMPENSATION APPEALS COMMISSION AND THE WORKERS' COMPENSATION
26 HEARINGS BOARD. (a) Notwithstanding AS 23.30.007(b), enacted by sec. 10 of this Act,
27 the terms of the initially appointed members of the Workers' Compensation Appeals
28 Commission, established by AS 23.30.007 as enacted by sec. 10 of this Act, shall be set by
29 the governor to achieve staggered terms in the manner provided in AS 39.05.055.

30 (b) Notwithstanding AS 23.30.006(a) and (b), enacted by sec. 10 of this Act, members
31 of the former Alaska Workers' Compensation Board whose terms have not expired as of the

1 effective date of this section become members of the Workers' Compensation Hearings
 2 Board, established by AS 23.30.006 as enacted by sec. 10 of this Act, on the effective date of
 3 this section, and may complete their original appointed terms as members of the Workers'
 4 Compensation Hearings Board. Notwithstanding AS 23.30.006(b), enacted by sec. 10 of this
 5 Act, the terms of the additional members initially appointed to the Workers' Compensation
 6 Hearings Board shall be set by the governor so that approximately one-third of the members
 7 serve terms of one year, one-third serve terms of two years, and one-third serve terms of three
 8 years, taking into account the appointed terms of the members of the former Alaska Workers'
 9 Compensation Board who became members of the Workers' Compensation Hearings Board
 10 under this section.

11 * **Sec. 111.** The uncodified law of the State of Alaska is amended by adding a new section
 12 to read:

13 TRANSITION: STAFF. (a) In order to ensure the smooth transfer of functions in the
 14 shortest possible time, for a period of one year after the effective date of this section, the
 15 director may, with the approval of the commissioner of labor and workforce development and
 16 the chair of the commission, temporarily assign division employees to the commission and the
 17 commission may reimburse the division for the temporarily assigned employees. Division
 18 employees temporarily assigned to the commission shall continue in the same position and
 19 rate of pay for the duration of the temporary assignment as the employees held at the division.

20 (b) Notwithstanding AS 23.30.112(a)(1), added by sec. 58 of this Act, a workers'
 21 compensation hearing officer employed by the division on the day before the effective date of
 22 sec. 58 of this Act who applies for and is otherwise eligible for employment as a hearing
 23 examiner, is exempt for a period not exceeding 18 months after the effective date of sec. 58 of
 24 this Act, from the requirement to be licensed to practice law in this state.

25 (c) In this section,

26 (1) "commission" means the Workers' Compensation Appeals Commission
 27 established by AS 23.30.007, enacted by sec. 10 of this Act;

28 (2) "director" means the director of the division of workers' compensation in
 29 the Department of Labor and Workforce Development;

30 (3) "division" means the division of workers' compensation in the Department
 31 of Labor and Workforce Development.

1 * **Sec. 112.** The uncodified law of the State of Alaska is amended by adding a new section
2 to read:

3 TRANSITIONAL PROVISIONS. (a) Litigation, investigations, and other
4 proceedings pending under a law amended or repealed by this Act, or in connection with
5 functions transferred by this Act, continue in effect and may be continued and completed,
6 notwithstanding a transfer or amendment or repeal provided for in this Act.

7 (b) Certificates, decisions, and orders issued under authority of a law amended or
8 repealed by this Act remain in effect for the term issued, or until revoked, vacated, or
9 otherwise modified under the provisions of this Act. Contracts, rights, liabilities, and
10 obligations created by or under a law amended or repealed by this Act, and in effect on the
11 day before the effective date of this section, remain in effect notwithstanding this Act's taking
12 effect. Records, equipment, appropriations, and other property of agencies of the state whose
13 functions are transferred under this Act shall be transferred to implement the provisions of
14 this Act.

15 (c) Regulations adopted under AS 23.30 and in effect on the day before the effective
16 date of this Act continue in effect, and may be applied by the Alaska Workers' Compensation
17 Board, during the 45 days after the effective date of sec. 9 of this Act as provided in sec. 108
18 of this Act.

19 * **Sec. 113.** The uncodified law of the State of Alaska is amended by adding a new section
20 to read:

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

26 (b) In order to provide for the procedures and other administrative matters necessary
27 to ensure the on-going implementation of the state's workers' compensation laws to meet the
28 urgent needs of injured workers, and thus ensure the preservation of the public peace, health,
29 safety, or general welfare, the Workers' Compensation Appeals Commission established by
30 AS 23.30.007, enacted by sec. 10 of this Act, may adopt under AS 23.30.008, enacted by sec.
31 10 of this Act, as emergency regulations, the regulations necessary to implement the changes

1 made by this Act.