

SENATE BILL NO. 130

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/3/05

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to a special deposit for workers' compensation and employers' liability**
2 **insurers; relating to assigned risk pools; relating to workers' compensation insurers;**
3 **stating the intent of the legislature, and setting out limitations, concerning the**
4 **interpretation, construction, and implementation of workers' compensation laws;**
5 **relating to the Alaska Workers' Compensation Board; assigning certain Alaska**
6 **Workers' Compensation Board functions to the division of workers' compensation in the**
7 **Department of Labor and Workforce Development and to that department, and**
8 **authorizing the board to delegate administrative and enforcement duties to the division;**
9 **establishing a Workers' Compensation Appeals Commission; providing for workers'**
10 **compensation hearing officers in workers' compensation proceedings; relating to**
11 **workers' compensation medical benefits and to charges for and payment of fees for the**
12 **medical benefits; relating to agreements that discharge workers' compensation liability;**

1 relating to workers' compensation awards; relating to reemployment benefits and job
 2 dislocation benefits; relating to coordination of workers' compensation and certain
 3 disability benefits; relating to division of workers' compensation records; relating to
 4 release of treatment records; relating to an employer's failure to insure and keep
 5 insured or provide security; providing for appeals from compensation orders; relating
 6 to workers' compensation proceedings; providing for supreme court jurisdiction of
 7 appeals from the Workers' Compensation Appeals Commission; providing for a
 8 maximum amount for the cost-of-living adjustment for workers' compensation benefits;
 9 relating to attorney fees; providing for the department to enter into contracts with
 10 nonprofit organizations to provide information services and legal representation to
 11 injured employees; providing for administrative penalties for employers uninsured or
 12 without adequate security for workers' compensation; relating to fraudulent acts or
 13 false or misleading statements in workers' compensation and penalties for the acts or
 14 statements; providing for members of a limited liability company to be included as an
 15 employee for purposes of workers' compensation; establishing a workers' compensation
 16 benefits guaranty fund; relating to the second injury fund; making conforming
 17 amendments; providing for a study and report by the medical services review
 18 committee; and providing for an effective date."

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

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

22 **LEGISLATIVE INTENT.** It is the intent of the legislature by secs. 2 - 4 of this Act

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

25 (2) to reduce the overall costs of workers' compensation premiums to

1 employers.

2 * **Sec. 2.** AS 21.09.090 is amended by adding new subsections to read:

3 (e) In addition to and separate from the deposit required under (b) of this
4 section, an insurer that is authorized to transact workers' compensation and employer's
5 liability insurance as defined in AS 21.12.070(a)(3) shall deposit in this state, through
6 the director, for the protection of persons in this state covered by workers'
7 compensation insurance issued by the insurer, an amount no less than the greater of

8 (1) \$100,000; or

9 (2) an amount equal to the sum of the following less any credit for
10 reinsurance that the insurer may take under (f) of this section:

11 (A) the aggregate of the present value at four percent interest of
12 the total determined and estimated future loss and loss expense payment upon
13 each claim incurred under a policy written in this state more than three years
14 before the date of computation; and

15 (B) for each of the three years before the date of computation,
16 65 percent of the earned premium for the year less each loss and loss expense
17 payment made upon a claim incurred in the corresponding year, except that the
18 amount for any year may not be less than the present value at four percent
19 interest of the total determined and estimated future loss and loss expense
20 payment upon each claim incurred under a policy written in this state that year.

21 (f) In calculating the deposit amount required under (e)(2) of this section, an
22 insurer may take a credit for reinsurance if the reinsurer has deposited in trust in this
23 state, through the director, an amount at least equal to the credit to be taken, and no
24 less than the aggregate of all credits taken by each insurer under this subsection.

25 * **Sec. 3.** AS 21.24.130 is amended by adding a new subsection to read:

26 (f) If an insurer is found to be insolvent by a proceeding under AS 21.78 or by
27 a court of competent jurisdiction in any other state, the director shall take control of
28 the insurer's deposit made under AS 21.09.090(e). The deposit assets shall be
29 released, at the discretion of the director, to the Alaska Insurance Guaranty
30 Association (AS 21.80) to reimburse for a valid loss and loss expense claim payment
31 made by the association that is within the purpose of the deposit. The director shall

1 pay the remaining deposit assets to the receiver, conservator, rehabilitator, or
 2 liquidator of the insurer, or to any other properly designated official who succeeds to
 3 the management and control of the insurer's assets, after the director determines that
 4 all loss and loss expense liabilities have been paid that were incurred on the insurer's
 5 policies written in this state for which the deposit was required.

6 * **Sec. 4.** AS 21.39.155(a) is amended to read:

7 (a) The director may require insurers, except a reciprocal insurer formed [BY
 8 AND INSURING ONLY A GROUP OF MUNICIPALITIES OR NONPROFIT
 9 PUBLIC UTILITIES] under AS 21.75 [OR A RECIPROCAL INSURER FORMED
 10 UNDER AS 21.75 TO PROVIDE MARINE INSURANCE], as a condition of writing
 11 a line of insurance dealing with medical malpractice or workers' compensation, to
 12 participate in an assigned risk pool if the director finds that mandatory carrier
 13 participation is in the public interest.

14 * **Sec. 5.** AS 23.05.067(a) is amended to read:

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

20 (1) for each employer,

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

24 (B) the service fee is 2.9 percent of all payments reported to the
 25 Alaska Workers' Compensation Board under AS 23.30.155(m) or (n) [,
 26 EXCEPT SECOND INJURY FUND PAYMENTS]; and

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

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

2 **Sec. 23.30.001. Intent of the legislature and construction of chapter.** It is
3 the intent of the legislature that

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

7 (2) workers' compensation cases shall be decided on their merits
8 except where otherwise provided by statute;

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

10 (4) hearings in workers' compensation cases shall be impartial and fair
11 to all parties and that all parties shall be afforded due process and an opportunity to be
12 heard and for their arguments and evidence to be fairly considered.

13 * **Sec. 7.** AS 23.30.005(a) is amended to read:

14 (a) The Alaska Workers' Compensation Board consists of a southern panel of
15 three members sitting for the first judicial district, a northern panel of three members
16 sitting for the second and fourth judicial districts, four southcentral panels of three
17 members each sitting for the third judicial district, and one panel of three members
18 that may sit in any judicial district. Each panel must include the commissioner of
19 labor and workforce development or **a hearing officer designated to represent** [THE
20 DESIGNATED REPRESENTATIVE OF] the commissioner, a representative of
21 industry, and a representative of labor. The latter two members of each panel shall be
22 appointed by the governor and are subject to confirmation by a majority of the
23 members of the legislature in joint session. **The board shall by regulation provide**
24 **procedures to avoid conflicts and the appearance of impropriety in hearings.**

25 * **Sec. 8.** AS 23.30.005(b) is amended to read:

26 (b) The commissioner shall act as chairman and executive officer of the board
27 and chairman of each panel. **The commissioner may designate a representative to**
28 **act for the commissioner as chair and executive officer of the board. The**
29 **commissioner may designate hearing officers to serve as chairs of panels for**
30 **hearing claims.** [IF THE COMMISSIONER DESIGNATES A REPRESENTATIVE
31 TO ACT FOR THE COMMISSIONER, THE REPRESENTATIVE SHALL SERVE

1 IN THAT CAPACITY ON THE BOARD AND ON EACH PANEL.]

2 * **Sec. 9.** AS 23.30.005 is amended by adding new subsections to read:

3 (m) The department may in its discretion contract with a non-profit
4 organization to provide to employees information services and legal representation in
5 proceedings under this chapter.

6 (n) The board may by regulation delegate authority to the director to assist the
7 board in administering and enforcing this chapter.

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

9 **Sec. 23.30.007. Workers' Compensation Appeals Commission.** (a) There
10 is established in the Department of Labor and Workforce Development the Workers'
11 Compensation Appeals Commission. The commission has jurisdiction to hear appeals
12 from final decisions and orders of the board under this chapter. Jurisdiction of the
13 commission is limited to administrative appeals arising under this chapter.

14 (b) The commission consists of five members appointed by the governor and
15 confirmed by a majority of the members of the legislature in joint session. The
16 members shall be appointed as follows:

17 (1) a member appointed as chair who meets the requirements of (c)(2)
18 of this section;

19 (2) two members who, because of their employment or affiliations,
20 may be classified as a representative of employees covered by this chapter;

21 (3) two members who, because of their employment or affiliations,
22 may be classified as a representative of employers covered by this chapter.

23 (c) To be eligible for appointment under this section

24 (1) the member must

25 (A) be a citizen of the United States;

26 (B) be a resident of the state for the five years preceding the
27 appointment; and

28 (C) have not been convicted of either a

29 (i) felony; or

30 (ii) misdemeanor related to workers' compensation;

31 (2) the chair must

- 1 (A) meet the criteria specified in (1) of this subsection;
- 2 (B) be licensed to practice law in this state and be a member in
3 good standing with the Alaska Bar Association; and
- 4 (C) have engaged in the active practice of law for at least five
5 years with experience in workers' compensation in this state.
- 6 (d) A member may act and receive compensation under this section from the
7 date of appointment until confirmation or rejection by the legislature.
- 8 (e) The term of service on the commission is five years. A member may be
9 reappointed so long as the reappointment complies with the provisions of this section.
- 10 (f) The chair of the commission is in the exempt service under AS 39.25.110
11 and shall receive a monthly salary that is not less than Step A nor more than Step F of
12 Range 27 of the salary schedule in AS 39.27.011(a) for Anchorage, Alaska.
- 13 (g) A vacancy arising in the commission shall be filled by appointment by the
14 governor and confirmed by a majority of the members of the legislature in joint
15 session. Except as provided in AS 39.05.080(4), an appointee selected to fill a
16 vacancy shall hold office for the unexpired term of the member whose vacancy is
17 filled. A vacancy in the commission does not impair the authority of a quorum of
18 members to exercise all the powers and perform all the duties of the commission.
- 19 (h) An appeal to the commission shall be heard and decided by a three-
20 member panel of the commission. An appeal panel shall consist of the chair of the
21 commission and two members of the commission assigned by the chair, one member
22 classified as representing employees, and one member classified as representing
23 employers. At other meetings to conduct commission business, the number of
24 commission members classified as representing employees must equal the number of
25 commission members classified as representing employers. The chair of the
26 commission and two representative members of the commission, one classified as
27 representing employees and one classified as representing employers, constitutes a
28 quorum.
- 29 (i) A member of the commission may be removed from office by the governor
30 for good cause. To be removed for cause, a member of the commission shall be given
31 a copy of the charges and afforded an opportunity to be heard in person or by counsel

1 in the member's own defense upon not less than 10 days' notice. If the member is
 2 removed for cause, the governor shall file with the lieutenant governor a complete
 3 statement of all charges made against the member, the governor's findings on the
 4 charges, and the record of any proceedings. In this subsection, "good cause" includes

- 5 (1) misconduct in office or violation of AS 39.52;
- 6 (2) conviction of a felony;
- 7 (3) conviction of a misdemeanor related to workers' compensation;
- 8 (4) inability to serve, neglect of duty, incompetence, unjustified failure
 9 to handle the caseload assigned, or similar nonfeasance of office; and
- 10 (5) failure to continue to meet the requirements of this section relating
 11 to qualification for office.

12 (j) Representative members are entitled to compensation in the amount of
 13 \$200 a day for each day spent in actual hearing of appeals or on authorized official
 14 business incidental to their duties, and to transportation and per diem as provided by
 15 law. Compensation shall be paid pro rata for each portion of a day spent in actual
 16 hearing of appeals or on authorized official business.

17 (k) A member of the commission may not hear an appeal under this chapter if

18 (1) a party is an employee or was, in the past seven years, an employee
 19 of the commission member or of a business that employs the commission member;
 20 this paragraph does not apply to the chair of the commission when the State of Alaska
 21 is or was the employer of a party;

22 (2) a party is a member or was, in the past seven years, a member of
 23 the same union or employee association as the commission member;

24 (3) a party has a contractual relationship with the commission member,
 25 a business that employs the commission member, or a union or employee association
 26 of which the commission member is a member;

27 (4) the commission member is unable to be fair, impartial, and
 28 unbiased toward the appeal participants; or

29 (5) participation in the appeal is a violation of AS 39.52.

30 (l) If the chair of the commission is unable to hear an appeal for reasons of
 31 absence or illness in excess of 10 days, or for reasons set out in (k) of this section, the

1 commissioner of the department shall appoint a person who meets the qualifications of
 2 this section to serve as chair to hear the appeal as chair pro tem. The person shall
 3 receive the compensation provided in (j) of this section. Appointment of a chair pro
 4 tem does not require legislative confirmation.

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

7 (n) The offices of the commission shall be physically separate from the offices
 8 of the division.

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

19 (b) The commission, in its administrative capacity, shall maintain, index, and
 20 make available for public inspection the final administrative decisions and orders of
 21 the commission and of the board. The chair of the commission may review and
 22 circulate among the other members of the relevant commission appeal panel the drafts
 23 of the panel's formal decisions and decisions upon reconsideration. The drafts are
 24 confidential documents and are not subject to disclosure.

25 (c) The chair of the commission shall draft and propose, and the commission
 26 in its administrative capacity may adopt, regulations implementing the commission's
 27 authority and duties under this chapter, including rules of procedure and evidence for
 28 proceedings before the commission under this chapter. The provisions of AS 44.62
 29 (Administrative Procedure Act) apply to the adoption of regulations by the
 30 commission.

31 (d) In an appeal, the commission shall award a successful party reasonable

1 costs and, if the party is represented by an attorney, attorney fees that the commission
 2 determines to be fully compensatory and reasonable. However, the commission may
 3 not make an award of attorney fees against an injured worker unless the commission
 4 finds that the worker's position on appeal was frivolous or unreasonable or the appeal
 5 was taken in bad faith.

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

9 **Sec. 23.30.009. Powers and duties of the chair of the commission.** (a) The
 10 chair of the commission shall exercise general supervision over the office of the
 11 commission and over appeals, and shall direct the administrative functions of the
 12 commission. The chair of the commission shall serve as the executive officer of the
 13 commission and shall have authority in all administrative matters relating to the
 14 members. The chair may

15 (1) employ and supervise commission staff and appoint a commission
 16 clerk;

17 (2) establish and implement a time management system for the
 18 commission members and staff and manage the calendar of appeals;

19 (3) assign the work of the commission members and staff so that
 20 appeals are resolved as expeditiously and competently as possible;

21 (4) advise and cooperate with the board to develop appropriate
 22 procedures for maintenance and transfer of hearing files and the preservation and
 23 transfer of records on appeal; and

24 (6) prepare an annual budget of the commission.

25 (b) The chair of the commission shall preside over hearings and arguments on
 26 appeals. The chair of the commission shall ensure that all functions of the commission
 27 are performed with due regard for the rights of all parties and consistent with the
 28 orderly and prompt resolution of appeals. The chair of the commission shall rule on
 29 questions of procedure and advise the representative members of the commission on
 30 matters of law.

31 (c) The chair of the commission shall, not later than March 15 of each year,

1 make available to the public and file with the lieutenant governor, a report regarding
 2 the commission, including data regarding time periods between initial receipt and final
 3 decisions on appeals.

4 (d) The chair of the commission shall devote full time to the duties of the chair
 5 of the commission and may not engage in any other employment or business. The
 6 chair of the commission may not hold any other office or position under the United
 7 States, this state, any municipality or political subdivision of this state, or any tribal
 8 government or corporation. The chair of the commission may not hold office or
 9 position in a partisan political organization or party.

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

11 **Sec. 23.30.012. Agreements in regard to claims.** **(a)** At any time after
 12 death, or after 30 days subsequent to the date of the injury, the employer and the
 13 employee or the beneficiary or beneficiaries, as the case may be, have the right to
 14 reach an agreement in regard to a claim for injury or death under this chapter [IN
 15 ACCORDANCE WITH THE APPLICABLE SCHEDULE IN THIS CHAPTER], but
 16 a memorandum of the agreement in a form prescribed by the **director** [BOARD] shall
 17 be filed with the **division** [BOARD]. Otherwise, the agreement is void for any
 18 purpose. **Except as provided in (b) of this section, an agreement filed with the**
 19 **division discharges the liability of the employer for the compensation,**
 20 **notwithstanding the provisions of AS 23.30.130, 23.30.160, and 23.30.245, and is**
 21 **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 or incompetent, the**
 24 **agreement shall be reviewed by a panel of the board.** If approved by the board, the
 25 agreement is enforceable the same as an order or award of the board and discharges
 26 the liability of the employer for the compensation notwithstanding the provisions of
 27 AS 23.30.130, 23.30.160, and 23.30.245. The agreement shall be approved by the
 28 board only when the terms conform to the provisions of this chapter and, if it involves
 29 or is likely to involve permanent disability, the board may require an impartial medical
 30 examination and a hearing in order to determine whether or not to approve the
 31 agreement. **A** [THE BOARD MAY APPROVE] lump-sum **settlement may be**

1 **approved** [SETTLEMENTS] when it appears to be to the best interest of the
2 employee or beneficiary or beneficiaries.

3 * **Sec. 12.** AS 23.30.015(e) is amended to read:

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

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

7 (A) the expenses incurred by the employer with respect to the
8 action or compromise, including a reasonable attorney fee determined by the
9 board;

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

12 (C) all amounts paid as compensation [AND SECOND-
13 INJURY FUND] payments, and, if the employer is self-insured or uninsured,
14 all service fees paid under AS 23.05.067;

15 (D) the present value of all amounts payable later as
16 compensation, computed from a schedule prepared by the board; and the
17 present value of the cost of all benefits to be furnished later under
18 AS 23.30.095 as estimated by the board; the amounts so computed and
19 estimated to be retained by the employer as a trust fund to pay compensation
20 and the cost of benefits as they become due and to pay any finally remaining
21 excess sum to the person entitled to compensation or to the representative; and

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

24 * **Sec. 13.** AS 23.30.041(a) is amended to read:

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

29 * **Sec. 14.** AS 23.30.041(c) is repealed and reenacted to read:

30 (c) An employee and an employer may stipulate to the employee's eligibility
31 for reemployment benefits at any time. If an employee suffers a compensable injury

1 and, as a result of the injury, the employee for 45 consecutive days is totally unable to
 2 return to the employee's employment at the time of injury, the administrator shall
 3 notify the employee of the employee's rights under this section within 14 days after the
 4 45th day. If the employee is totally unable to return to the employee's employment for
 5 60 consecutive days as a result of the injury, the employee or employer may request an
 6 eligibility evaluation. The administrator may approve the request if the employee's
 7 injury may permanently preclude the employee's return to the employee's occupation
 8 at the time of the injury. If the employee is totally unable to return to the employee's
 9 employment at the time of the injury for 90 consecutive days as a result of the injury,
 10 the administrator shall order an eligibility evaluation, without a request, unless a
 11 stipulation of eligibility was submitted. If the administrator approves a request or
 12 orders an evaluation, the administrator shall, on a rotating and geographic basis, select
 13 a rehabilitation specialist from the list maintained under (b)(6) of this section to
 14 perform the eligibility evaluation.

15 * **Sec. 15.** AS 23.30.041(f) is amended to read:

16 (f) An employee is not eligible for reemployment benefits if

17 (1) the employer offers employment within the employee's predicted
 18 post-injury physical capacities at a wage equivalent to at least the state minimum wage
 19 under AS 23.10.065 or 75 percent of the worker's gross hourly wages at the time of
 20 injury, whichever is greater, and the employer prepares the employee to be
 21 employable in other jobs that exist in the labor market;

22 (2) **the employee previously declined the development of a**
 23 **reemployment benefits plan under (g) of this section, received a job dislocation**
 24 **benefit under (g)(2) of this section, and returned to work in the same or similar**
 25 **occupation in terms of physical demands required of the employee at the time of**
 26 **the previous injury;**

27 (3) the employee has been previously rehabilitated in a former
 28 worker's compensation claim and returned to work in the same or similar occupation
 29 in terms of physical demands required of the employee at the time of the previous
 30 injury; or

31 (4) [(3)] at the time of medical stability no permanent impairment is

1 identified or expected.

2 * **Sec. 16.** AS 23.30.041(g) is amended to read:

3 (g) Within 15 days after the employee receives the administrator's notification
 4 of eligibility for benefits, an employee [WHO DESIRES TO USE THESE
 5 BENEFITS] shall give written notice under oath, on a form provided by the
 6 division, to the administrator and the employer of the employee's election to
 7 either use the reemployment benefits or to accept a job dislocation benefit under
 8 (2) of this subsection. The following apply to an election under this subsection:

9 (1) An employee who elects to use the reemployment benefits also
 10 shall notify the employer of the employee's selection of a rehabilitation specialist who
 11 shall provide a complete reemployment benefits plan. Failure to give notice of
 12 selection of a rehabilitation specialist required by this paragraph [SUBSECTION]
 13 constitutes noncooperation under (n) of this section. If the employer disagrees with
 14 the employee's choice of rehabilitation specialist to develop the plan and the
 15 disagreement cannot be resolved, then the administrator shall assign a rehabilitation
 16 specialist. The employer and employee each have one right of refusal of a
 17 rehabilitation specialist.

18 (2) An employee who elects to accept a job dislocation benefit in
 19 place of reemployment benefits and who has been given a permanent partial
 20 impairment rating by a physician shall be paid

21 (A) \$5,000 if the employee's permanent partial impairment
 22 rating is greater than 0 and less than 15 percent;

23 (B) \$8,000 if the employee's permanent partial impairment
 24 rating is 15 percent or greater but less than 30 percent; or

25 (C) \$13,500 if the employee's permanent partial
 26 impairment rating is 30 percent or greater.

27 (3) The form provided by the division for election shall specify
 28 that the employee understands the scope of the benefits and rights being waived
 29 by the election. The administrator shall serve a copy of the executed election
 30 form on the parties within 10 days after receiving the form from the employee.
 31 The election and waiver of unchosen benefits is effective upon service to the

1 **parties. A waiver and election effective under this subsection discharges the**
2 **employer's liability for the benefits or rights under this section that were not**
3 **elected. A waiver may not be modified under AS 23.30.130.**

4 * **Sec. 17.** AS 23.30.041(j) is amended to read:

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

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

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

29 * **Sec. 19.** AS 23.30.041(q) is amended to read:

30 (q) Notwithstanding AS 23.30.012, after medical stability has been determined
31 and a physician has predicted that the employee may have a permanent impairment

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

13 * **Sec. 20.** AS 23.30.080(d) is amended to read:

14 (d) If an employer fails to insure or provide security as required by
 15 AS 23.30.075, the division may petition the board to [MAY] issue a stop order
 16 prohibiting the use of employee labor by the employer until the employer insures or
 17 provides security as required by AS 23.30.075. The failure of an employer to file
 18 evidence of compliance as required by AS 23.30.085 creates a rebuttable presumption
 19 that the employer has failed to insure or provide security as required by AS 23.30.075.
 20 If an employer fails to comply with a stop order issued under this section, the board
 21 shall assess a civil penalty of \$1,000 per day. The employer may not obtain a public
 22 contract with the state or a political subdivision of the state for three years following
 23 the violation of the stop order.

24 * **Sec. 21.** AS 23.30.080 is amended by adding new subsections to read:

25 (e) If a representative of the department investigates an employer's failure to
 26 file the evidence of compliance required by AS 23.30.085 and, after investigation,
 27 there is substantial evidence that the employer failed to insure or provide security as
 28 required by AS 23.30.075, the representative shall inform the employer. The
 29 representative may request the director to issue a stop order prohibiting the use of
 30 employee labor by the employer until the employer insures or provides security as
 31 required by AS 23.30.075. The director may issue a stop order, without a hearing,

1 based on the representative's investigation. The director shall dissolve a stop order
 2 issued under this subsection upon receipt of substantial evidence that the employer is
 3 insured or has provided security as required by AS 23.30.075(a). If an employer fails
 4 to comply with a stop order issued under this subsection, the division may petition the
 5 board to assess a civil penalty. The board may assess a civil penalty of \$1,000 per
 6 day. An employer who is assessed a penalty under this subsection may not obtain a
 7 public contract with the state or a political subdivision of the state for the three years
 8 following violation of the stop order.

9 (f) If an employer fails to insure or provide security as required by
 10 AS 23.30.075, the division may petition the board to assess a civil penalty of up to
 11 \$1,000 for each employee for each day an employee is employed while the employer
 12 failed to insure or provide the security required by AS 23.30.075. The failure of an
 13 employer to file evidence of compliance as required by AS 23.30.085 creates a
 14 rebuttable presumption that the employer failed to insure or provide security as
 15 required by AS 23.30.075.

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

27 * **Sec. 22.** AS 23.30 is amended by adding a new section to read:

28 **Sec. 23.30.082. Workers' compensation benefits guaranty fund.** (a) The
 29 workers' compensation benefits guaranty fund is established in the general fund to
 30 carry out the purposes of this section. The fund is composed of civil penalty payments
 31 made by employers under AS 23.30.080, income earned on investment of the money

1 in the fund, money deposited in the fund by the department, and appropriations to the
 2 fund. Money appropriated to the fund does not lapse. Amounts in the fund may be
 3 appropriated for claims against the fund, for expenses directly related to fund
 4 operations and claims, and for legal expenses.

5 (b) The Department of Revenue shall provide the division every three months
 6 with a statement of the activities of, balances in, interest earned on, and interest
 7 returned to the fund.

8 (c) Subject to the provisions of this section, an employee employed by an
 9 employer who fails to meet the requirements of AS 23.30.075 and who fails to pay
 10 compensation and benefits due to the employee under this chapter, may file a claim for
 11 payment by the fund. In order to be eligible for payment, the claim form must be filed
 12 within the same time, and in the same manner, as a workers' compensation claim. The
 13 fund may assert the same defenses as an insured employer under this chapter.

14 (d) If the fund pays benefits to an employee under this section, the fund shall
 15 be subrogated to all of the rights of the employee to the amount paid, and the
 16 employee shall assign all right, title, and interest in that portion of the employee's
 17 workers' compensation claim and any recovery under AS 23.30.015 to the fund.
 18 Money collected by the division on the claim or recovery shall be deposited in the
 19 fund.

20 (e) If the money deposited in the fund is insufficient at a given time to satisfy
 21 a duly authorized claim against the fund, the fund shall, when sufficient money has
 22 been deposited in the fund and appropriated, satisfy unpaid claims in the order in
 23 which the claims were originally filed, without interest.

24 (f) The division may contract under AS 36.30 (State Procurement Code) with
 25 a person for the person to adjust claims against the fund. The contract may cover one
 26 or more claims.

27 (g) In this section, "fund" means the workers' compensation benefits guaranty
 28 fund.

29 * **Sec. 23.** AS 23.30.095(j) is amended to read:

30 (j) The commissioner shall [BOARD MAY] appoint a medical services
 31 review committee, or contract with an existing organization in the state or another

1 state, to assist and advise the department and the board in matters involving the
 2 appropriateness, necessity, and cost of medical and related services provided under
 3 this chapter.

4 * **Sec. 24.** AS 23.30.095 is amended by adding new subsections to read:

5 (n) A generic drug product must be used when dispensing a drug product to an
 6 employee under this chapter unless the prescribing physician provides justification in
 7 writing explaining the medical necessity for the name brand drug product. The
 8 department by regulation shall establish a preferred drug list and a procedure for
 9 establishing medical necessity to depart from the list and to use a name brand drug
 10 product. In this subsection, "generic drug product" has the meaning given the term
 11 "equivalent drug product" in AS 08.80.480.

12 (o) For purposes of this chapter, the medical treatment or services which the
 13 nature of the injury or the process of recovery requires, required by (a) of this section,
 14 means treatment or services that are within the recommended guidelines set out in the
 15 American College of Occupational and Environmental Medicine's Occupational
 16 Medicine Practice Guidelines in effect at the time the treatment or service is provided.
 17 The American College of Occupational and Environmental Medicine's Occupational
 18 Medicine Practice Guidelines shall be presumed correct on the issue of the nature,
 19 extent, and scope of medical treatment or services. The presumption may be rebutted
 20 by a preponderance of scientific evidence establishing that a variance from the
 21 guidelines is reasonably required by the nature of the injury or the process of recovery.
 22 For an injury not covered by the American College of Occupational and
 23 Environmental Medicine's Occupational Medicine Practice Guidelines, the treatment
 24 or services shall be in accordance with standards based on other scientific, evidence-
 25 based medical treatment guidelines generally recognized by the national medical
 26 community and adopted by the board by regulation.

27 * **Sec. 25.** AS 23.30 is amended by adding a new section to read:

28 **Sec. 23.30.097. Fees for medical treatment and services; payment of bills.**

29 (a) All fees and other charges for medical treatment or service are subject to regulation
 30 by the board consistent with this section. A fee or other charge for medical treatment
 31 or service may not exceed the lesser of

1 (1) the usual, customary, and reasonable fees for the treatment or
 2 service in the community in which it is rendered, not to exceed the fees in the fee
 3 schedule specified by the board in its published bulletin dated December 15, 1999; or

4 (2) the payment made by the employer as negotiated by the provider
 5 and the employer under (c) of this section.

6 (b) An employer, or group of employers, may establish a list of preferred
 7 physicians and treatment service providers to provide medical, surgical, and other
 8 attendance or treatment services to the employer's employees under this chapter;
 9 however,

10 (1) the employee's right to chose the employee's attending physician
 11 under AS 23.30.095(a) is not impaired;

12 (2) when given to the employee, the employer's preferred physician list
 13 shall clearly state that the list is voluntary, that the employee's choice is not restricted
 14 to the list, that the employee's rights under this chapter are not impaired by choosing
 15 an attending physician from the list, and that if the employee chooses an attending
 16 physician from the list, the employee may, in the manner provided in AS 23.30.095,
 17 make one change of attending physician, from the list or otherwise; and

18 (3) establishment of a list of preferred physicians does not affect the
 19 employer's choice of physician for an employer medical examination under
 20 AS 23.30.095.

21 (c) An employer, or group of employers, may negotiate with physicians and
 22 other treatment service providers under this chapter to obtain reduced fees and service
 23 charges, and may take such fees and charges into account when forming a list of
 24 preferred physicians and providers. In no event may an employer, or group of
 25 employers, attempt to influence the treatment, medical decisions, or permanent
 26 impairment ratings by physicians in the course of the negotiations regarding a
 27 preferred physician and provider fee list.

28 (d) An employer shall pay an employee's bills for medical treatment under this
 29 chapter, excluding prescription charges or transportation for medical treatment, within
 30 30 days after the date that the employer receives the provider's bill or a completed
 31 report as required by AS 23.30.095(c), whichever is later.

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

14 (f) An employee may not be required to pay a fee or charge for medical
 15 treatment or service provided under this chapter.

16 * **Sec. 26.** AS 23.30.100(b) is amended to read:

17 (b) The notice must be in writing **and** [,] contain the name and address of the
 18 employee, [AND] a statement of the time, place, nature, and cause of the injury or
 19 death, **authority to release records of medical treatment for the injury or death,**
 20 and be signed by the employee or by a person on behalf of the employee, or in case of
 21 death, by a person claiming to be entitled to compensation for the death or by a person
 22 on behalf of that person.

23 * **Sec. 27.** AS 23.30.107(b) is amended to read:

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

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

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

4 * **Sec. 28.** AS 23.30.107 is amended by adding a new subsection to read:

5 (c) The division may not assemble, or provide information respecting,
 6 individual records for commercial purposes that are outside the scope of this chapter.

7 * **Sec. 29.** AS 23.30.122 is repealed and reenacted to read:

8 **Sec. 23.30.122. Credibility of witnesses.** The board has the sole power to
 9 determine the credibility of testimony presented by a witness. When credibility is
 10 disputed in a proceeding before the board, the board's determination of credibility
 11 must be supported by specific findings.

12 * **Sec. 30.** AS 23.30.125 is repealed and reenacted to read:

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

18 (b) Notwithstanding other provisions of law, a decision or order of the board is
 19 subject to review by the commission as provided in this chapter.

20 (c) If a compensation order is not in accordance with law or fact, the order
 21 may be suspended or set aside, in whole or in part, through proceedings in the
 22 commission brought by a party in interest against all other parties to the proceedings
 23 before the board. The payment of the amounts required by an award may not be
 24 stayed pending a final decision in the proceeding unless, upon application for a stay,
 25 the commission, on hearing, after not less than three days' notice to the parties in
 26 interest, allows the stay of payment, in whole or in part, where the party filing the
 27 application would otherwise suffer irreparable damage. Continuing future periodic
 28 compensation payments may not be stayed without a showing by the appellant of
 29 irreparable damage and the existence of the probability of the merits of the appeal
 30 being decided adversely to the recipient of compensation. The order of the
 31 commission allowing a stay must contain a specific finding, based upon evidence

1 submitted to the commission and identified by reference to the evidence, that
 2 irreparable damage would result to the party applying for a stay and specifying the
 3 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. 31.** AS 23.30 is amended by adding new sections to read:

8 **Sec. 23.30.127. Appeals to commission.** (a) A party in interest may appeal a
 9 compensation order issued by the board to the commission within 30 days after the
 10 compensation order is filed with the office of the board under AS 23.30.110. The
 11 director may intervene in an appeal. If a party in interest is not represented by counsel
 12 and the compensation order concerns an unsettled question of law, the director may
 13 file an appeal to obtain a ruling on the question by the commission.

14 (b) An appeal is initiated by filing with the office of the commission

15 (1) a signed notice of appeal specifying the compensation order
 16 appealed from;

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

18 (3) other material the commission may by regulation require.

19 (c) A cross-appeal may be initiated by filing with the office of the commission
 20 a signed notice of cross-appeal within 30 days after the decision is filed or within 15
 21 days after service of notice of an appeal, whichever is later. The notice of cross-
 22 appeal shall specify the compensation order appealed from and the grounds upon
 23 which the cross-appeal is taken.

24 (d) The office of the commission may charge a fee, not to exceed \$100, for
 25 filing appeals and cross-appeals, except that the office of the commission may not
 26 charge a fee if the appellant is the state or a political subdivision of the state. The
 27 commission may require an appellant to pay the costs of the transcript of hearing and
 28 the preparation of the record on appeal. The commission may require cross-appellants
 29 or intervenors to share in the costs.

30 (e) If a request for reconsideration of a board decision was timely filed with
 31 the office of the board, the notice of appeal must be filed within 30 days after the

1 reconsideration decision is mailed to the parties, or the date the request for
 2 reconsideration is considered denied in the absence of any action on the request,
 3 whichever is earlier.

4 (f) The commission may require written briefs and make other rules and
 5 orders to facilitate the business of the commission and advance the prompt, fair, and
 6 just disposition of appeals.

7 **Sec. 23.30.128. Commission proceedings.** (a) An appeal from a decision of
 8 the board under this chapter, and other proceedings under this section, shall be heard
 9 and decided by a three-member panel of the commission. An appeal panel of the
 10 commission must include the chair of the commission. The chair of the commission
 11 shall assign two members to each appeal, including one commission member
 12 classified as representing employees and one commission member classified as
 13 representing employers. Acts, decisions, and orders of the commission panel in the
 14 appeal or related proceeding shall be considered the acts, decisions, and orders of the
 15 full commission. The matter on appeal shall be decided on the record made before the
 16 board, a transcript or recording of the proceedings before the board, and oral argument
 17 and written briefs allowed by the commission. Except as provided in (c) of this
 18 section, new or additional evidence may not be received with respect to the appeal.

19 (b) The commission may review *de novo* all discretionary actions, findings of
 20 fact, and conclusions of law by the board in hearing, determining, or otherwise acting
 21 on any compensation claim or petition. The board's findings regarding the credibility
 22 of testimony of a witness are binding on the commission. The findings of the board, if
 23 not set aside by the commission, are conclusive.

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

29 (d) The commission may affirm, reverse, or modify a decision or order upon
 30 review and issue other orders as appropriate. The commission may remand matters it
 31 determines were improperly, incompletely, or otherwise insufficiently developed. The

1 commission may remand for further proceedings and appropriate action with or
2 without relinquishing the commission's jurisdiction of the appeal. The administrative
3 adjudication procedures of AS 44.62 (Administrative Procedure Act) do not apply to
4 the proceedings of the commission.

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

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

- 1 (g) A decision of the commission becomes final on the
 2 (1) 31st day after the date of service of a decision if reconsideration is
 3 not requested;
 4 (2) 61st day after the date of service of a decision if reconsideration is
 5 requested but an order for reconsideration is not issued; or
 6 (3) date of service of the commission decision upon reconsideration
 7 under (f) of this section if reconsideration is requested and an order for reconsideration
 8 is issued.

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

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

19 * **Sec. 32.** AS 23.30.175(b) is amended to read:

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

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

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

29 (3) if the gross weekly earnings of the recipient and the resulting
 30 compensation rate are determined under AS 23.30.220(a)(6), (7), or (10), the
 31 calculation required by this subsection applies only to the portion of the recipient's

1 weekly compensation rate attributable to wages earned in the state;

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

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

8 * **Sec. 33.** AS 23.30.175(c) is amended to read:

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

13 * **Sec. 34.** AS 23.30.205(e) is amended to read:

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

19 * **Sec. 35.** AS 23.30.205 is amended by adding a new subsection to read:

20 (g) Claims for reimbursement may not be submitted to the fund after
21 September 1, 2005. The fund shall continue to make reimbursement payments on
22 claims accepted before July 1, 2006, or ordered by the board, until the fund's liabilities
23 for the claim are extinguished.

24 * **Sec. 36.** AS 23.30 is amended by adding a new section to read:

25 **Sec. 23.30.224. Coordination of benefits.** (a) Notwithstanding other
26 provisions of this chapter, an employer's liability for payment of weekly compensation
27 under AS 23.30.180 or 23.30.185 to an employee eligible for a disability benefit under
28 AS 14.25.130 or AS 39.35.400 or 39.35.410 may not exceed the lesser of

29 (1) the difference between the disability benefit payable to the
30 employee under AS 14.25.130 or AS 39.35.400 or 39.35.410, converted to a weekly
31 basis, and 100 percent of the employee's spendable weekly wage as calculated under

1 AS 23.30.220; or

2 (2) the maximum compensation rate calculated under AS 23.30.175.

3 (b) An employer's liability for payment of compensation under
4 AS 23.30.041(k) to an employee eligible for a disability benefit payable under
5 AS 14.25.130 or AS 39.35.400 or 39.35.410 may not exceed the lesser of

6 (1) the difference between the disability benefit payable to the
7 employee under AS 14.25.130 or AS 39.35.400 or 39.35.410, converted to a weekly
8 basis, and 80 percent of the employee's spendable weekly wage as calculated under
9 AS 23.30.220; or

10 (2) 105 percent of the average weekly wage calculated under
11 AS 23.30.175(d).

12 (c) Notwithstanding other provisions of this chapter, the liability of an
13 employer for payment of compensation for an injury or illness under AS 23.30.180 or
14 23.30.185 to an employee who is covered by a union or group retirement system to
15 which the employer makes contributions under a collective bargaining agreement, or
16 by membership in a welfare or pension plan or trust, may not not exceed the lesser of

17 (1) the difference between 100 percent of the employee's spendable
18 weekly wage and an amount equal to the disability benefit, disability pension, or
19 medical retirement benefit that the employee is eligible to receive as a result of the
20 injury or illness, as calculated on a weekly basis, under the retirement system or
21 welfare or pension plan or trust; or

22 (2) the maximum compensation rate calculated under AS 23.30.175.

23 (d) If the union or group retirement system, pension plan, or trust referred to in
24 (c) of this section provides by its terms that its benefits are precluded or reduced if
25 benefits are awarded under this chapter, the limitation provided in (c)(1) of this section
26 is not applicable to the extent of the amount precluded or reduced.

27 (e) Notwithstanding other provisions of this chapter, the liability of an
28 employer for payment of compensation for an injury or illness under AS 23.30.041(k)
29 to an employee who is covered by a union or group retirement system to which the
30 employer makes contributions under a collective bargaining agreement, or by
31 membership in a welfare or pension plan or trust, may not not exceed the lesser of

1 (1) the difference between 80 percent of the employee's spendable
 2 weekly wage and an amount equal to the disability benefit, disability pension, or
 3 medical retirement benefit that the employee is eligible to receive as a result of the
 4 injury or illness, calculated on a weekly basis, under the retirement system or welfare
 5 or pension plan or trust; or

6 (2) 105 percent of the average weekly wage calculated under
 7 AS 23.30.175(d).

8 (f) If the union or group retirement system, pension plan, or trust referred to in
 9 (e) of this section provides by its terms that its benefits are precluded or reduced if
 10 benefits are awarded under this chapter, the limitation provided in (e)(1) of this section
 11 is not applicable to the extent of the amount precluded or reduced.

12 (g) If the employee receives a lump sum distribution of disability benefits,
 13 disability pension, or medical retirement benefits, the combined workers'
 14 compensation and weekly disability or medical retirement benefit specified in this
 15 section shall be calculated by assuming that the employee received weekly disability
 16 or medical retirement payments under the applicable plan from the date of eligibility
 17 for the disability benefit or medical retirement until the total of such weekly payments
 18 equals the amount of the lump sum, exclusive of that portion of the lump sum
 19 specifically set aside under the applicable plan for retraining expenses, medical and
 20 transportation expenses, and attorney fees or other legal costs.

21 * **Sec. 37.** AS 23.30.240 is amended to read:

22 **Sec. 23.30.240. Officers of corporations, municipal corporations, and**
 23 **nonprofit corporations, and members of limited liability companies, as**
 24 **employees.** An executive officer elected or appointed and empowered in accordance
 25 with the charter and bylaws of a corporation, other than an official of a municipal
 26 corporation or a charitable, religious, educational, or other nonprofit corporation, is an
 27 employee of the corporation under this chapter. However, an executive officer of a
 28 corporation may waive coverage under this chapter, subject to the approval of the
 29 **director** [COMMISSIONER OF LABOR AND WORKFORCE DEVELOPMENT],
 30 notwithstanding AS 23.30.245(b). Notwithstanding any other provision of this
 31 chapter, an executive officer of a municipal corporation or of a charitable, religious,

1 educational, or other nonprofit corporation may be brought within the coverage of its
 2 insurance contract by the corporation by specifically including the officer in the
 3 contract of insurance. The election to bring an executive officer within the coverage
 4 continues in force for the period the contract of insurance is in effect. During that
 5 period, an executive officer brought within the coverage of the insurance contract is an
 6 employee of the corporation under this chapter.

7 * **Sec. 38.** AS 23.30.240 is amended by adding a new subsection to read:

8 (b) Except as provided in this subsection, a member of a limited liability
 9 company organized under AS 10.50 is not an employee of the company under this
 10 chapter. Notwithstanding any other provision of this chapter, a limited liability
 11 company may bring a member of the company within the coverage of the company's
 12 insurance contract by specifically including the member in the contract of insurance.
 13 The election to bring the member within the company's coverage continues in force
 14 for the period the contract of insurance is in effect. During that period, a member
 15 brought within the coverage of the insurance contract is an employee of the company
 16 under this chapter.

17 * **Sec. 39.** AS 23.30.247(c) is amended to read:

18 (c) This section may not be construed to prohibit an employer from requiring a
 19 prospective employee to fill out a preemployment questionnaire or application
 20 regarding the person's prior health or disability history as long as it is meant to
 21 [EITHER DOCUMENT WRITTEN NOTICE FOR SECOND INJURY FUND
 22 REIMBURSEMENT UNDER AS 23.30.205(c) OR] determine whether the employee
 23 has the physical or mental capacity to meet the documented physical or mental
 24 demands of the work.

25 * **Sec. 40.** AS 23.30 is amended by adding a new section to read:

26 **Sec. 23.30.249. Fraudulent acts and false or misleading statements.** (a) An
 27 employer, insurer, or other person may petition for an order to reimburse a payment
 28 and the cost of compensation, medical treatment, or other benefit provided under this
 29 chapter obtained by a fraudulent act or false or misleading statement or representation.
 30 If the board, after a hearing as provided by AS 23.30.110, finds by a preponderance of
 31 the evidence that a person has obtained a payment, compensation, medical treatment,

1 or another benefit provided under this chapter by a fraudulent act or by knowingly
2 making a false or misleading statement or representation for the purpose of obtaining
3 that benefit or payment, the board shall order that person to make full reimbursement
4 of the payment or cost of all benefits obtained. Upon entry of an order authorized
5 under this subsection, the board shall also order that person to pay all reasonable costs
6 and attorney fees incurred in obtaining an order under this section and in defending
7 any fraudulent claim made for benefits under this chapter. If a person fails to comply
8 with an order requiring reimbursement of payment or cost of benefits, and payment of
9 costs and attorney fees, the employer, insurer, or other party may declare the person in
10 default and proceed to collect any sum due in the same manner as provided under
11 AS 23.30.170(b) and (c).

12 (b) Except as provided in (c) of this section, a person is not liable for civil
13 damages for filing a report with or furnishing other information, whether written or
14 oral, concerning a suspected, anticipated, or completed fraudulent act or false or
15 misleading statements or representation to

16 (1) law enforcement officials or their agents and employees;

17 (2) the division of workers' compensation, the division of insurance in
18 the Department of Commerce, Community, and Economic Development, or an agency
19 in another state that regulates insurance or workers' compensation;

20 (3) an insurer or adjuster or its agents, employees, or designees, or the
21 risk manager of a self-insured employer under this chapter.

22 (c) The provisions of (b) of this section do not preclude liability for civil
23 damages as described in (b) of this section if the liability arose as a result of reckless,
24 wilful, or intentional misconduct.

25 (d) An insurer, an adjuster, or a risk manager of a self-insured employer that
26 has reason to believe that a fraudulent workers' compensation demand or claim has
27 been made against it shall send the director a report disclosing information that the
28 director may require. An insurer or an adjuster or its employee or agent, or a risk
29 manager of a self-employed employer, or another person acting in good faith is not
30 civilly liable for damages resulting from the filing of the report or the furnishing of
31 information required by this section or by the director.

1 (e) The director may investigate facts reported under this section and may
2 refer facts indicating a possible violation of law to the appropriate prosecutor or
3 agency. If the director determines that there is credible evidence that a person
4 obtained a payment, compensation, medical treatment, or other benefit provided under
5 this chapter by a fraudulent act or false or misleading statement or representation as
6 provided in (a) of this section, the director shall notify the affected employer, insurer,
7 and adjuster upon conclusion of the investigation. If the fraudulent act or false or
8 misleading statement or representation was perpetrated against the division, the
9 director may file a petition as provided in AS 23.30.110 for an order of forfeiture
10 against the person, precluding, in whole or in part, the person from future payment,
11 compensation, medical treatment, or other benefit provided under this chapter.

12 (f) The papers, reports, documents, and evidence received under this section or
13 in an investigation arising from information received under this section are not subject
14 to public inspection for so long as the director considers confidentiality to be in the
15 public interest or reasonably necessary to complete an investigation or protect the
16 person investigated from unwarranted injury. Papers, reports, documents, and
17 evidence relative to an investigation under this section are confidential and not subject
18 to subpoena unless, after notice to the director and a hearing, a court determines that
19 the director would not be unduly hindered by public inspection.

20 (g) If the material that the director seeks to obtain is located outside the state,
21 the material may be made available to the director to examine at the place where the
22 material is located. The director may designate representatives, including officials of
23 the state in which the material is located, to inspect the material on behalf of the
24 director. The director may respond to a request from an official of another state for
25 similar material.

26 (h) In this section, "fraudulent act" includes

27 (1) to knowingly pretend injury or disability, with intent to defraud or
28 obtain a benefit under this chapter;

29 (2) to knowingly conceal, suppress, destroy, remove, or alter records,
30 with intent to defraud or obtain a benefit under this chapter;

31 (3) to knowingly assist or prepare another person to submit a false or

1 misleading statement in support of a claim for benefits under this chapter with reckless
2 disregard that the person is not entitled to benefits under this chapter;

3 (4) to use force against a person, damage the property of a person, or
4 threaten a person with intent to improperly influence the opinion of a witness, a
5 physician, or other health care provider;

6 (5) except as otherwise authorized under this chapter, to knowingly
7 confer, offer to confer, solicit, agree to accept, or accept property, services, or a
8 benefit

9 (A) to refer an employee to a physician or other health care
10 provider; or

11 (B) for providing medical treatment, services, medicines, or
12 supplies to an employee if the property, services, or benefit is in addition to
13 payment by the employer, insurer, or adjuster allowed under this chapter.

14 * **Sec. 41.** AS 23.30.250 is repealed and reenacted to read:

15 **Sec. 23.30.250. Penalty for fraudulent acts or false or misleading**
16 **statements or representations.** (a) A person is guilty of theft by deception as defined
17 in AS 11.46.180, and may be punished as provided by AS 11.46.120 - 11.46.150, and
18 is civilly liable to a person adversely affected by the conduct, if the person

19 (1) knowingly makes a false or misleading statement, representation,
20 or submission related to an injury, compensation, or benefit under this chapter;

21 (2) knowingly assists, abets, solicits, or conspires in making a false or
22 misleading submission affecting the payment, coverage, or other benefit under this
23 chapter;

24 (3) knowingly misclassifies employees or engages in deceptive leasing
25 practices for the purpose of evading full payment of workers' compensation insurance
26 premiums; or

27 (4) employs or contracts with a natural person or business organization
28 to coerce or encourage an individual to file a fraudulent compensation claim.

29 (b) In this section,

30 (1) "benefit" means a payment, compensation, medical treatment,
31 service, product, entitlement, or right available under this chapter;

1 (2) "knowingly" has the meaning given in AS 11.81.900.

2 * **Sec. 42.** AS 23.30.260 is amended by adding a new subsection to read:

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

7 * **Sec. 43.** AS 23.30.395 is amended by adding new paragraphs to read:

8 (35) "commission" means the Workers' Compensation Appeals
9 Commission;

10 (36) "commissioner" means the commissioner of labor and workforce
11 development;

12 (37) "department" means the Department of Labor and Workforce
13 Development;

14 (38) "director" means the director of the division of workers'
15 compensation in the department;

16 (39) "division" means the division of workers' compensation in the
17 department.

18 * **Sec. 44.** AS 37.05.146(c) is amended by adding a new paragraph to read:

19 (78) workers' compensation benefits guaranty fund (AS 23.30.082).

20 * **Sec. 45.** AS 39.25.110 is amended by adding a new paragraph to read:

21 (40) the chair of the Workers' Compensation Appeals Commission
22 (AS 23.30.007).

23 * **Sec. 46.** AS 39.25.120(c)(14) is amended to read:

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

26 * **Sec. 47.** AS 39.50.200(b)(31) is amended to read:

27 (31) Workers' Compensation Board (AS 23.30.005) **and Workers'**
28 **Compensation Appeals Commission (AS 23.30.007)**;

29 * **Sec. 48.** AS 23.30.095(f), 23.30.095(l), and 23.30.095(m) are repealed.

30 * **Sec. 49.** AS 23.30.015(c), 23.30.040, 23.30.205, 23.30.395(27); and AS 37.05.146(c)(12)
31 are repealed.

1 * **Sec. 50.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 APPLICABILITY. The amendment to AS 23.30.175(b) made by sec. 32 of this Act
4 applies to an injury occurring on or after the effective date of sec. 32 of this Act.

5 * **Sec. 51.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 TRANSITION: INITIAL TERMS OF MEMBERS OF WORKERS'
8 COMPENSATION APPEALS COMMISSION. Notwithstanding AS 23.30.007(e), enacted
9 by sec. 10 of this Act, the terms of the initially appointed representative members of the
10 Workers' Compensation Appeals Commission, established by AS 23.30.007 enacted by sec.
11 10 of this Act, shall be set by the governor to achieve staggered terms in the manner provided
12 in AS 39.05.055.

13 * **Sec. 52.** The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

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

22 (b) In this section,

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

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

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

29 * **Sec. 53.** The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 TRANSITIONAL PROVISIONS. (a) Litigation, investigations, and other

1 proceedings pending under a law amended or repealed by this Act, or in connection with
 2 functions transferred by this Act, continue in effect and may be continued and completed,
 3 notwithstanding a transfer or amendment or repeal provided for in this Act.

4 (b) Certificates, decisions, and orders issued under authority of a law amended or
 5 repealed by this Act remain in effect for the term issued, or until revoked, vacated, or
 6 otherwise modified under the provisions of this Act. Contracts, rights, liabilities, and
 7 obligations created by or under a law amended or repealed by this Act, and in effect on the
 8 day before the effective date of this section, remain in effect notwithstanding this Act's taking
 9 effect.

10 * **Sec. 54.** The uncodified law of the State of Alaska is amended by adding a new section to
 11 read:

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

17 (b) In order to provide for the procedures and other administrative matters necessary
 18 to ensure the on-going implementation of the state's workers' compensation laws to meet the
 19 urgent needs of injured workers, and thus ensure the preservation of the public peace, health,
 20 safety, or general welfare, the Workers' Compensation Appeals Commission established by
 21 AS 23.30.007, enacted by sec. 10 of this Act, may adopt under AS 23.30.008, enacted by sec.
 22 10 of this Act, as emergency regulations, the regulations necessary to implement the changes
 23 made by this Act.

24 * **Sec. 55.** The uncodified law of the State of Alaska is amended by adding a new section to
 25 read:

26 IMPLEMENTATION OF REPEAL OF SECOND INJURY FUND. The balance of
 27 the second injury fund created by former AS 23.30.040 is transferred to the general fund on
 28 the effective date of this section.

29 * **Sec. 56.** The uncodified law of the State of Alaska is amended by adding a new section to
 30 read:

31 TRANSITION: MEDICAL SERVICES REVIEW COMMITTEE STUDY AND

1 REPORT. The medical services review committee appointed by the commissioner of labor
2 and workforce development under AS 23.30.095(j), as amended by sec. 23 of this Act, shall
3 proceed to study medical and related benefits provided under AS 23.30 to determine the
4 appropriateness, necessity, and cost of the benefits, and shall provide to the commissioner of
5 labor and workforce development, by March 1, 2007, a report of the results of the study.

6 * **Sec. 57.** Section 54(a) of this Act takes effect immediately under AS 01.10.070(c).

7 * **Sec. 58.** Sections 1 - 4, 32, and 56 of this Act take effect September 1, 2005.

8 * **Sec. 59.** Sections 5, 12, 39, 49, and 55 of this Act take effect on the date that the
9 commissioner of labor and workforce development certifies to the revisor of statutes and the
10 lieutenant governor that all liability for previously accepted claims to the second injury fund
11 created by former AS 23.30.040, and claims ordered to be paid from that fund, have been
12 satisfied.

13 * **Sec. 60.** Except as provided in secs. 57 - 59 of this Act, this Act takes effect August 1,
14 2005.