

CS FOR SENATE BILL NO. 130(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 4/11/05

Referred: Finance

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

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 providing for workers' compensation hearing officers in workers' compensation
10 proceedings; relating to workers' compensation medical benefits and to charges for and
11 payment of fees for the medical benefits; relating to agreements that discharge workers'
12 compensation liability; relating to workers' compensation awards; relating to

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

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

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

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

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

23 (2) to reduce the overall costs of workers' compensation premiums to
 24 employers.

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

1 (e) In addition to and separate from the deposit required under (b) of this
 2 section, an insurer that is authorized to transact workers' compensation and employer's
 3 liability insurance as defined in AS 21.12.070(a)(3) shall deposit in this state, through
 4 the director, for the protection of persons in this state covered by workers'
 5 compensation insurance issued by the insurer, an amount not less than the greater of

6 (1) \$100,000; or

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

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

13 (B) for each of the three years before the date of computation,
 14 65 percent of the earned premium for the year less each loss and loss expense
 15 payment made upon a claim incurred in the corresponding year, except that the
 16 amount for any year may not be less than the present value at four percent
 17 interest of the total determined and estimated future loss and loss expense
 18 payment upon each claim incurred under a policy written in this state that year.

19 (f) In calculating the deposit amount required under (e)(2) of this section, an
 20 insurer may take a credit for reinsurance if the reinsurer has deposited in trust in this
 21 state, through the director, an amount at least equal to the credit to be taken, and not
 22 less than the aggregate of all credits taken by each insurer under this subsection.

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

24 (f) If an insurer is found to be insolvent by a proceeding under AS 21.78 or by
 25 a court of competent jurisdiction in another state, the director shall take control of the
 26 insurer's deposit made under AS 21.09.090(e). The deposit assets shall be released, at
 27 the discretion of the director, to the Alaska Insurance Guaranty Association
 28 (AS 21.80) to reimburse for a valid loss and loss expense claim payment made by the
 29 association that is within the purpose of the deposit. The director shall pay the
 30 remaining deposit assets to the receiver, conservator, rehabilitator, or liquidator of the
 31 insurer, or to another properly designated official who succeeds to the management

1 and control of the insurer's assets, after the director determines that all loss and loss
 2 expense liabilities have been paid that were incurred on the insurer's policies written in
 3 this state for which the deposit was required.

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

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

12 * **Sec. 5.** AS 23.30 is amended by adding a new section to read:

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

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

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

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

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

24 * **Sec. 6.** AS 23.30.005(a) is amended to read:

25 (a) The Alaska Workers' Compensation Board consists of a southern panel of
 26 three members sitting for the first judicial district, a northern panel of three members
 27 sitting for the second and fourth judicial districts, four southcentral panels of three
 28 members each sitting for the third judicial district, and one panel of three members
 29 that may sit in any judicial district. Each panel must include the commissioner of
 30 labor and workforce development or **a hearing officer designated to represent** [THE
 31 DESIGNATED REPRESENTATIVE OF] the commissioner, a representative of

1 industry, and a representative of labor. The latter two members of each panel shall be
 2 appointed by the governor and are subject to confirmation by a majority of the
 3 members of the legislature in joint session. **The board shall by regulation provide**
 4 **procedures to avoid conflicts and the appearance of impropriety in hearings.**

5 * **Sec. 7.** AS 23.30.005(b) is amended to read:

6 (b) The commissioner shall act as **chair** [CHAIRMAN] and executive officer
 7 of the board and **chair** [CHAIRMAN] of each panel. **The commissioner may**
 8 **designate a representative to act for the commissioner as chair and executive**
 9 **officer of the board. The commissioner may designate hearing officers to serve as**
 10 **chairs of panels for hearing claims** [IF THE COMMISSIONER DESIGNATES A
 11 REPRESENTATIVE TO ACT FOR THE COMMISSIONER, THE
 12 REPRESENTATIVE SHALL SERVE IN THAT CAPACITY ON THE BOARD
 13 AND ON EACH PANEL].

14 * **Sec. 8.** AS 23.30.005 is amended by adding new subsections to read:

15 (m) The department may, in its discretion, contract with a nonprofit
 16 organization to provide information services and legal representation to employees in
 17 proceedings under this chapter.

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

20 * **Sec. 9.** AS 23.30.012 is amended to read:

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

1 **(b) If the claimant or beneficiary is not represented by an attorney**
 2 **licensed to practice in this state or the beneficiary is a minor or incompetent, the**
 3 **agreement shall be reviewed by a panel of the board.** If approved by the board, the
 4 agreement is enforceable the same as an order or award of the board and discharges
 5 the liability of the employer for the compensation notwithstanding the provisions of
 6 AS 23.30.130, 23.30.160, and 23.30.245. The agreement shall be approved by the
 7 board only when the terms conform to the provisions of this chapter, and, if it involves
 8 or is likely to involve permanent disability, the board may require an impartial medical
 9 examination and a hearing in order to determine whether or not to approve the
 10 agreement. **A** [THE BOARD MAY APPROVE] lump-sum **settlement may be**
 11 **approved** [SETTLEMENTS] when it appears to be to the best interest of the
 12 employee or beneficiary or beneficiaries.

13 * **Sec. 10.** AS 23.30.041(a) is amended to read:

14 (a) The **director** [BOARD] shall select and employ a reemployment benefits
 15 administrator. The **director** [BOARD] may authorize the administrator to select and
 16 employ additional staff. The administrator is in the partially exempt service under
 17 AS 39.25.120.

18 * **Sec. 11.** AS 23.30.041(b) is amended to read:

19 (b) The administrator shall
 20 (1) enforce regulations adopted by the board to implement this section;
 21 (2) recommend regulations for adoption by the board that establish
 22 performance and reporting criteria for rehabilitation specialists;
 23 (3) enforce the quality and effectiveness of reemployment benefits
 24 provided for under this section;
 25 (4) review on an annual basis the performance of rehabilitation
 26 specialists to determine continued eligibility for delivery of rehabilitation services;
 27 (5) submit to the department, on or before May 1 of each year, a report
 28 of reemployment benefits provided under this section for the previous calendar year;
 29 the report must include a general section, sections related to each rehabilitation
 30 specialist employed under this section, and a statistical summary of all rehabilitation
 31 cases, including

1 (A) the estimated and actual cost of each active rehabilitation
2 plan;

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

4 (C) a status report on all individuals requesting, waiving,
5 beginning, completing, or terminating a reemployment benefits program
6 including

7 (i) reasons for denial, waiver, suspension, or
8 termination;

9 (ii) dates of completion and [A] return to work; and

10 (iii) other information required by the director

11 [DATE];

12 (D) the cost of reemployment benefits;

13 (E) status reports of all individuals who successfully
14 completed a reemployment plan that includes

15 (i) the plan's occupational goal and whether the
16 individual obtained work after completion in the planned or
17 another occupation; and

18 (ii) the individual's employment status six months,
19 one year, and two years after reemployment plan completion;

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

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

25 * **Sec. 12.** AS 23.30.041(c) is repealed and reenacted to read:

26 (c) An employee and an employer may stipulate to the employee's eligibility
27 for reemployment benefits at any time. If an employee suffers a compensable injury
28 and, as a result of the injury, the employee is totally unable, for 45 consecutive days,
29 to return to the employee's employment at the time of injury, the administrator shall
30 notify the employee of the employee's rights under this section within 14 days after the
31 45th day. If the employee is totally unable to return to the employee's employment for

1 60 consecutive days as a result of the injury, the employee or employer may request an
 2 eligibility evaluation. The administrator may approve the request if the employee's
 3 injury may permanently preclude the employee's return to the employee's occupation
 4 at the time of the injury. If the employee is totally unable to return to the employee's
 5 employment at the time of the injury for 90 consecutive days as a result of the injury,
 6 the administrator shall, without a request, order an eligibility evaluation unless a
 7 stipulation of eligibility was submitted. If the administrator approves a request or
 8 orders an evaluation, the administrator shall, on a rotating and geographic basis, select
 9 a rehabilitation specialist from the list maintained under (b)(6) of this section to
 10 perform the eligibility evaluation. If the person that employs a rehabilitation specialist
 11 selected by the administrator to perform an eligibility evaluation under this subsection
 12 is performing any other work on the same workers' compensation claim involving the
 13 injured employee, the administrator shall select a different rehabilitation specialist.

14 * **Sec. 13.** AS 23.30.041(f) is amended to read:

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

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

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

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

30 (4) [(3)] at the time of medical stability, no permanent impairment is
 31 identified or expected.

1 * **Sec. 14.** AS 23.30.041(g) is amended to read:

2 (g) Within **30** [15] days after the employee receives the administrator's
 3 notification of eligibility for benefits, an employee [WHO DESIRES TO USE THESE
 4 BENEFITS] shall give written notice **under oath, on a form provided by the**
 5 **division,** to the **administrator and the employer of the employee's election to**
 6 **either use the reemployment benefits or to accept a job dislocation benefit under**
 7 **(2) of this subsection. The following apply to an election under this subsection:**

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

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

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

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

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

26 **(3) the form provided by the division for election must specify that**
 27 **the employee understands the scope of the benefits and rights being waived by**
 28 **the election; the administrator shall serve a copy of the executed election form on**
 29 **the parties within 10 days after receiving the form from the employee; the**
 30 **election and waiver of unchosen benefits is effective upon service to the parties; a**
 31 **waiver and election effective under this subsection discharges the employer's**

1 **liability for the benefits or rights under this section that were not elected; a**
 2 **waiver may not be modified under AS 23.30.130; the administrator may not**
 3 **accept an election to accept a job dislocation benefit by an employee who has not**
 4 **signed a form that conspicuously notes the benefit being waived.**

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

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

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

17 (k) Benefits related to the reemployment plan may not extend past two years
 18 from date of plan approval or acceptance, whichever date occurs first, at which time
 19 the benefits expire. If an employee reaches medical stability before completion of the
 20 plan, temporary total disability benefits shall cease, and permanent impairment
 21 benefits shall then be paid at the employee's temporary total disability rate. If the
 22 employee's permanent impairment benefits are exhausted before the completion or
 23 termination of the reemployment **process** [PLAN], the employer shall provide
 24 compensation equal to 70 percent of the employee's spendable weekly wages, but not
 25 to exceed 105 percent of the average weekly wage, until the completion or termination
 26 of the **process** [PLAN], except that any compensation paid under this subsection is
 27 reduced by wages earned by the employee while participating in the **process** [PLAN]
 28 to the extent that the wages earned, when combined with the compensation paid under
 29 this subsection, exceed the employee's temporary total disability rate. If permanent
 30 partial disability **or permanent partial impairment** benefits have been paid in a lump
 31 sum before the employee requested or was found eligible for reemployment benefits,

1 payment of benefits under this subsection is suspended until permanent partial
 2 disability or permanent partial impairment benefits would have ceased, had those
 3 benefits been paid at the employee's temporary total disability rate, notwithstanding
 4 the provisions of AS 23.30.155(j). A permanent impairment benefit remaining unpaid
 5 upon the completion or termination of the plan shall be paid to the employee in a
 6 single lump sum. An employee may not be considered permanently totally disabled so
 7 long as the employee is involved in the rehabilitation process under this chapter. The
 8 fees of the rehabilitation specialist or rehabilitation professional shall be paid by the
 9 employer and may not be included in determining the cost of the reemployment plan.

10 * **Sec. 17.** AS 23.30.041(n) is amended to read:

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

14 (1) unreasonable failure to

15 (A) keep appointments;

16 (B) maintain passing grades;

17 (C) attend designated programs;

18 (D) maintain contact with the rehabilitation specialist;

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

22 (F) comply with the employee's responsibilities outlined in the
 23 reemployment plan; or

24 (G) participate in any planned reemployment activity as
 25 determined by the administrator; or

26 (2) failure to give written notice to the employer of the employee's
 27 choice of rehabilitation specialists within 30 [15] days after receiving notice of
 28 eligibility for benefits from the administrator as required by (g) of this section.

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

30 (p) When the United States Department of Labor publishes a new edition,
 31 revision, or replacement for the "Selected Characteristics of Occupations Defined in

1 the Revised Dictionary of Occupational Titles" referred to in (e) of this section, the
 2 **director** [BOARD] shall, not later than 90 days after the last day of the month in
 3 which the new edition, revision, or replacement standard is published, hold an open
 4 meeting under AS 44.62.310 to select the **proposed** date on which the new edition,
 5 revision, or replacement standard will be implemented to make all eligibility
 6 determinations required under (e) of this section. The date selected by the
 7 **department** [BOARD] for implementing the new edition, revision, or replacement
 8 standard may not be later than 90 days after the last day of the month in which the new
 9 edition, revision, or replacement standard is published. After the meeting, the
 10 **director** [BOARD] shall issue a public notice announcing the date selected **by the**
 11 **department**. The requirements of AS 44.62.010 - 44.62.300 do not apply to the
 12 selection or announcement of the date under this subsection.

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

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

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

29 (d) If an employer fails to insure or provide security as required by
 30 AS 23.30.075, the board may issue a stop order **at the request of the division**
 31 prohibiting the use of employee labor by the employer until the employer insures or

1 provides security as required by AS 23.30.075. The failure of an employer to file
 2 evidence of compliance as required by AS 23.30.085 creates a rebuttable presumption
 3 that the employer has failed to insure or provide security as required by AS 23.30.075.
 4 If an employer fails to comply with a stop order issued under this section, the board
 5 shall assess a civil penalty of \$1,000 a [PER] day. The employer may not obtain a
 6 public contract with the state or a political subdivision of the state for three years
 7 following the violation of the stop order.

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

9 (e) If a representative of the department investigates an employer's failure to
 10 file the evidence of compliance required by AS 23.30.085 and, after investigation,
 11 there is substantial evidence that the employer failed to insure or provide security as
 12 required by AS 23.30.075, the representative shall inform the employer. The
 13 representative may request the director to issue a stop order prohibiting the use of
 14 employee labor by the employer until the employer insures or provides security as
 15 required by AS 23.30.075. The director may issue a stop order, without a hearing,
 16 based on the representative's investigation. The director shall dissolve a stop order
 17 issued under this subsection upon receipt of substantial evidence that the employer is
 18 insured or has provided security as required by AS 23.30.075(a). If an employer fails
 19 to comply with a stop order issued under this subsection, the division may petition the
 20 board to assess a civil penalty. The board may assess a civil penalty of \$1,000 a day.
 21 An employer who is assessed a penalty under this subsection may not obtain a public
 22 contract with the state or a political subdivision of the state for the three years
 23 following violation of the stop order.

24 (f) If an employer fails to insure or provide security as required by
 25 AS 23.30.075, the division may petition the board to assess a civil penalty of up to
 26 \$1,000 for each employee for each day an employee is employed while the employer
 27 failed to insure or provide the security required by AS 23.30.075. The failure of an
 28 employer to file evidence of compliance as required by AS 23.30.085 creates a
 29 rebuttable presumption that the employer failed to insure or provide security as
 30 required by AS 23.30.075.

31 (g) If an employer fails to pay a civil penalty order issued under (d), (e), or (f)

1 of this section within seven days after the date of service of the order upon the
 2 employer, the director may declare the employer in default. The director shall file a
 3 certified copy of the penalty order and declaration of default with the clerk of the
 4 superior court. The court shall, upon the filing of the copy of the order and
 5 declaration, enter judgment for the amount declared in default if it is in accordance
 6 with law. Anytime after a declaration of default, the attorney general shall, when
 7 requested to do so by the director, take appropriate action to ensure collection of the
 8 defaulted payment. Review of the judgment may be had as provided under the Alaska
 9 Rules of Civil Procedure. Final proceedings to execute the judgment may be had by
 10 writ of execution.

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

12 **Sec. 23.30.082. Workers' compensation benefits guaranty fund.** (a) The
 13 workers' compensation benefits guaranty fund is established in the general fund to
 14 carry out the purposes of this section. The fund is composed of civil penalty payments
 15 made by employers under AS 23.30.080, income earned on investment of the money
 16 in the fund, money deposited in the fund by the department, and appropriations to the
 17 fund. Money appropriated to the fund does not lapse. Amounts in the fund may be
 18 appropriated for claims against the fund, for expenses directly related to fund
 19 operations and claims, and for legal expenses.

20 (b) Every three months, the Department of Revenue shall provide the division
 21 with a statement of the activities of, balances in, interest earned on, and interest
 22 returned to the fund.

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

29 (d) If the fund pays benefits to an employee under this section, the fund shall
 30 be subrogated to all of the rights of the employee to the amount paid, and the
 31 employee shall assign all right, title, and interest in that portion of the employee's

1 workers' compensation claim and any recovery under AS 23.30.015 to the fund.
2 Money collected by the division on the claim or recovery shall be deposited in the
3 fund.

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

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

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

13 * **Sec. 23.** AS 23.30.095(c) is amended to read:

14 (c) A claim for medical or surgical treatment, or treatment requiring
15 continuing and multiple treatments of a similar nature is not valid and enforceable
16 against the employer unless, within 14 days following treatment, the physician or
17 health care provider giving the treatment or the employee receiving it furnishes to the
18 employer and the board notice of the injury and treatment, preferably on a form
19 prescribed by the board. The board shall, however, excuse the failure to furnish notice
20 within 14 days when it finds it to be in the interest of justice to do so, and it may, upon
21 application by a party in interest, make an award for the reasonable value of the
22 medical or surgical treatment so obtained by the employee. When a claim is made for
23 a course of treatment requiring continuing and multiple treatments of a similar nature,
24 in addition to the notice, the physician or health care provider shall furnish a written
25 treatment plan if the course of treatment will require more frequent outpatient visits
26 than the standard treatment frequency for the nature and degree of the injury and the
27 type of treatments. The treatment plan shall be furnished to the employee and the
28 employer within 14 days after treatment begins. The treatment plan must include
29 objectives, modalities, frequency of treatments, and reasons for the frequency of
30 treatments. If the treatment plan is not furnished as required under this subsection,
31 neither the employer nor the employee may be required to pay for treatments that

1 exceed the frequency standard. The board shall adopt regulations establishing
 2 standards for frequency of treatment. **Notwithstanding (a) of this section, a claim**
 3 **for palliative care or treatment provided after the employee's conditions**
 4 **medically stable is not valid and enforceable against the employer unless the**
 5 **employee's attending physician certifies that the palliative care or treatment is**
 6 **required to enable the employee to continue in the employee's employment at the**
 7 **time of treatment or to enable the employee to continue to participate in an**
 8 **agreed upon or approved reemployment plan. Palliative care or treatment is also**
 9 **subject to the requirements of this subsection if the palliative care or treatment**
 10 **involves continuing and multiple treatments of a similar nature. Limitations**
 11 **described in this subsection do not apply if the physician certifies that the**
 12 **treatment is needed to treat chronic debilitating pain.**

13 * **Sec. 24.** AS 23.30.095(j) is amended to read:

14 (j) The **commissioner shall** [BOARD MAY] appoint a medical services
 15 review committee, or contract with an existing organization in the state or another
 16 state, to assist and advise **the department and** the board in matters involving the
 17 appropriateness, necessity, and cost of medical and related services provided under
 18 this chapter.

19 * **Sec. 25.** AS 23.30.095 is amended by adding new subsections to read:

20 (n) A generic drug product must be used when dispensing a drug product to an
 21 employee under this chapter unless the attending physician provides justification in
 22 writing explaining the medical necessity for the name-brand drug product. The
 23 department, by regulation, shall establish a preferred drug list and a procedure for
 24 establishing medical necessity to depart from the list and to use a name-brand drug
 25 product. In this subsection, "generic drug product" has the meaning given the term
 26 "equivalent drug product" in AS 08.80.480.

27 (o) For purposes of this chapter, the medical treatment or service that the
 28 nature of the injury or the process of recovery requires under (a) of this section means
 29 treatment or service that is within the recommended guidelines set out in the American
 30 College of Occupational and Environmental Medicine's Occupational Medicine
 31 Practice Guidelines in effect at the time the treatment or service is provided. The

1 American College of Occupational and Environmental Medicine's Occupational
 2 Medicine Practice Guidelines shall be presumed correct on the issue of the nature,
 3 extent, and scope of medical treatment or services. For an injury not covered by the
 4 American College of Occupational and Environmental Medicine's Occupational
 5 Medicine Practice Guidelines, the treatment or service shall be in accordance with
 6 standards based on other scientific, evidence-based medical treatment guidelines
 7 generally recognized by the national medical community and adopted by the board by
 8 regulation, and those standards shall also be presumed correct on the issue of the
 9 nature, extent, and scope of medical treatment or services. Treatment may not be
 10 denied based on American College of Occupational and Environmental Medicine's
 11 Occupational Medicine Practice Guidelines if the treatment for the injury is not
 12 specifically addressed by the American College of Occupational and Environmental
 13 Medicine's Occupational Medicine Practice Guidelines.

14 (p) The presumptions established under (o) of this section may be rebutted by
 15 an employee's physician's written certification explaining

16 (1) the nature, extent, and scope of provided medical treatment or
 17 service that is at variance with the applicable guidelines or standards; and

18 (2) the basis for the physician's conclusion that the provided medical
 19 treatment or service at variance was reasonably required by the nature of the injury or
 20 process of recovery.

21 * **Sec. 26.** AS 23.30 is amended by adding a new section to article 2 to read:

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

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

26 (1) the usual, customary, and reasonable fees for the treatment or
 27 service in the community in which it is rendered, not to exceed the fees in the fee
 28 schedule specified by the board in its published bulletin in effect on December 15,
 29 2003; or

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

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

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

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

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

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

23 (d) An employer shall pay an employee's bills for medical treatment under this
24 chapter, excluding prescription charges or transportation for medical treatment, within
25 30 days after the date that the employer receives the provider's bill or a completed
26 report as required by AS 23.30.095(c), whichever is later.

27 (e) Unless the employer controverts a charge, an employer shall reimburse an
28 employee's prescription charges under this chapter within 30 days after the employer
29 received the health care provider's completed report and an itemization of the
30 prescription charges for the employee. Unless the employer controverts a charge, an
31 employer shall reimburse transportation expenses for medical treatment under this

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

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

11 * **Sec. 27.** AS 23.30.100(b) is amended to read:

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

18 * **Sec. 28.** AS 23.30.107(b) is amended to read:

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

22 (1) the reemployment benefits administrator, **the division,** the board,
 23 or the department from releasing medical or rehabilitation records in an employee's
 24 file, without the employee's consent, to a physician providing medical services under
 25 AS 23.30.095(k) or 23.30.110(g), a party to a claim filed by the employee, or a
 26 governmental agency; or

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

30 * **Sec. 29.** AS 23.30.107 is amended by adding a new subsection to read:

31 (c) The division may not assemble, or provide information respecting,

1 individual records for commercial purposes that are outside the scope of this chapter.

2 * **Sec. 30.** AS 23.30.122 is repealed and reenacted to read:

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

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

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

10 (1) the weekly rate of compensation shall be calculated by multiplying
11 the recipient's weekly compensation rate calculated under AS 23.30.180, 23.30.185,
12 23.30.190, 23.30.200, or 23.30.215 [,] by the ratio of the cost of living of the area in
13 which the recipient resides to the cost of living in this state;

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

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

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

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

27 * **Sec. 32.** AS 23.30.175(c) is amended to read:

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

1 * **Sec. 33.** AS 23.30.205(e) is amended to read:

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

7 * **Sec. 34.** AS 23.30.205 is amended by adding a new subsection to read:

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

12 * **Sec. 35.** AS 23.30 is amended by adding a new section to read:

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

17 (1) the difference between the disability benefit payable to the
18 employee under AS 14.25.130, AS 39.35.400, or 39.35.410, converted to a weekly
19 basis, and 100 percent of the employee's spendable weekly wage as calculated under
20 AS 23.30.220; or

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

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

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

29 (2) 105 percent of the average weekly wage calculated under
30 AS 23.30.175(d).

31 (c) Notwithstanding other provisions of this chapter, the liability of an

1 employer for payment of compensation for an injury or illness under AS 23.30.180 or
2 23.30.185 to an employee who is covered by a union or group retirement system to
3 which the employer makes contributions under a collective bargaining agreement or
4 by membership in a welfare or pension plan or trust may not exceed the lesser of

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

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

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

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

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

25 (2) 105 percent of the average weekly wage calculated under
26 AS 23.30.175(d).

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

31 (g) If the employee receives a lump sum distribution of disability benefits,

1 disability pension, or medical retirement benefits, the combined workers'
 2 compensation and weekly disability or medical retirement benefit specified in this
 3 section shall be calculated by assuming that the employee received weekly disability
 4 or medical retirement payments under the applicable plan from the date of eligibility
 5 for the disability benefit or medical retirement until the total of the weekly payments
 6 equals the amount of the lump sum, exclusive of that portion of the lump sum
 7 specifically set aside under the applicable plan for retraining expenses, medical and
 8 transportation expenses, and attorney fees or other legal costs.

9 * **Sec. 36.** AS 23.30.240 is amended to read:

10 **Sec. 23.30.240. Officers of corporations, municipal corporations and**
 11 **nonprofit corporations and members of limited liability companies as employees.**

12 An executive officer elected or appointed and empowered in accordance with the
 13 charter and bylaws of a corporation, other than an official of a municipal corporation
 14 or a charitable, religious, educational, or other nonprofit corporation, is an employee
 15 of the corporation under this chapter. However, an executive officer of a corporation
 16 may waive coverage under this chapter, subject to the approval of the **director**
 17 [COMMISSIONER OF LABOR AND WORKFORCE DEVELOPMENT],
 18 notwithstanding AS 23.30.245(b). Notwithstanding any other provision of this
 19 chapter, an executive officer of a municipal corporation or of a charitable, religious,
 20 educational, or other nonprofit corporation may be brought within the coverage of its
 21 insurance contract by the corporation by specifically including the officer in the
 22 contract of insurance. The election to bring an executive officer within the coverage
 23 continues in force for the period the contract of insurance is in effect. During that
 24 period, an executive officer brought within the coverage of the insurance contract is an
 25 employee of the corporation under this chapter.

26 * **Sec. 37.** AS 23.30.240 is amended by adding a new subsection to read:

27 (b) Except as provided in this subsection, a member of a limited liability
 28 company organized under AS 10.50 is not an employee of the company under this
 29 chapter. Notwithstanding any other provision of this chapter, a limited liability
 30 company may bring a member of the company within the coverage of the company's
 31 insurance contract by specifically including the member in the contract of insurance.

1 The election to bring the member within the company's coverage continues in force
 2 for the period the contract of insurance is in effect. During that period, a member
 3 brought within the coverage of the insurance contract is an employee of the company
 4 under this chapter.

5 * **Sec. 38.** AS 23.30 is amended by adding a new section to read:

6 **Sec. 23.30.249. Fraudulent acts and false or misleading statements.** (a)

7 An employer, insurer, or other person may petition for an order to reimburse a
 8 payment and the cost of compensation, medical treatment, or other benefit provided
 9 under this chapter obtained by a fraudulent act or false or misleading statement or
 10 representation. If the board, after a hearing as provided by AS 23.30.110, finds by a
 11 preponderance of the evidence that a person has obtained a payment, compensation,
 12 medical treatment, or another benefit provided under this chapter, or that a provider
 13 has received a payment, by a fraudulent act or by knowingly making a false or
 14 misleading statement or representation for the purpose of obtaining that benefit or
 15 payment, the board shall order that person to make full reimbursement of the payment
 16 or cost of all benefits obtained. Upon entry of an order authorized under this
 17 subsection, the board shall also order that person to pay all reasonable costs and
 18 attorney fees incurred in obtaining an order under this section and in defending a
 19 fraudulent claim made for benefits under this chapter. If a person fails to comply with
 20 an order requiring reimbursement of payment or cost of benefits and payment of costs
 21 and attorney fees, the employer, insurer, or other party may declare the person in
 22 default and proceed to collect any sum due in the same manner as provided under
 23 AS 23.30.170(b) and (c).

24 (b) Except as provided in (c) of this section, a person is not liable for civil
 25 damages for filing a report concerning a suspected, anticipated, or completed
 26 fraudulent act or a false or misleading statement or representation with, or for
 27 furnishing other information, whether written or oral, concerning a suspected,
 28 anticipated, or completed fraudulent act or false or misleading statements or
 29 representation to

- 30 (1) law enforcement officials or their agents and employees;
 31 (2) the division of workers' compensation, the division of insurance in

1 the Department of Commerce, Community, and Economic Development, or an agency
2 in another state that regulates insurance or workers' compensation;

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

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

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

15 (e) The director may investigate facts reported under this section and may
16 refer facts indicating a possible violation of law to the appropriate prosecutor or
17 agency. If the director determines that there is credible evidence that a person
18 obtained a payment, compensation, medical treatment, or other benefit provided under
19 this chapter by a fraudulent act or false or misleading statement or representation as
20 provided in (a) of this section, the director shall notify the affected employer, insurer,
21 and adjuster upon conclusion of the investigation. If the fraudulent act or false or
22 misleading statement or representation was perpetrated against the division, the
23 director may file a petition as provided in AS 23.30.110 for an order of forfeiture
24 against the person, precluding, in whole or in part, the person from future payment,
25 compensation, medical treatment, or other benefit provided under this chapter.

26 (f) The papers, reports, documents, and evidence received under this section or
27 in an investigation arising from information received under this section are not subject
28 to public inspection for so long as the director considers confidentiality to be in the
29 public interest or reasonably necessary to complete an investigation or protect the
30 person investigated from unwarranted injury. Papers, reports, documents, and
31 evidence relative to an investigation under this section are confidential and not subject

1 to subpoena unless, after notice to the director and a hearing, a court determines that
2 the director would not be unduly hindered by public inspection.

3 (g) If the material that the director seeks to obtain is located outside the state,
4 the material may be made available to the director to examine at the place where the
5 material is located. The director may designate representatives, including officials of
6 the state in which the material is located, to inspect the material on behalf of the
7 director. The director may respond to a request from an official of another state for
8 similar material.

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

10 (1) to knowingly pretend injury or disability with intent to defraud or
11 obtain a benefit under this chapter;

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

14 (3) to knowingly assist or prepare another person to submit a false or
15 misleading statement in support of a claim for benefits under this chapter with reckless
16 disregard that the person is not entitled to benefits under this chapter;

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

20 (5) except as otherwise authorized under this chapter, to knowingly
21 confer, offer to confer, solicit, agree to accept, or accept property, services, or a
22 benefit

23 (A) to refer an employee to a physician or other health care
24 provider; or

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

28 * **Sec. 39.** AS 23.30.250(a) is amended to read:

29 (a) A person, **including an employee, employer, physician, medical**
30 **provider, or the representative of a person** who (1) knowingly makes a false or
31 misleading statement, representation, or submission related to a benefit under this

1 chapter; (2) knowingly assists, abets, solicits, or conspires in making a false or
 2 misleading submission affecting the payment, coverage, or other benefit under this
 3 chapter; (3) knowingly misclassifies employees or engages in deceptive leasing
 4 practices for the purpose of evading full payment of workers' compensation insurance
 5 premiums; or (4) employs or contracts with a person or firm to coerce or encourage an
 6 individual to file a fraudulent compensation claim is civilly liable to a person
 7 adversely affected by the conduct, is guilty of theft by deception as defined in
 8 AS 11.46.180, and may be punished as provided by AS 11.46.120 - 11.46.150.

9 * **Sec. 40.** AS 23.30.250(b) is repealed and reenacted to read:

10 (b) To the extent allowed by law, in a civil action under (a) of this section, an
 11 award of damages by a court or jury may include compensatory damages, subject to
 12 AS 09.17. Attorney fees may be awarded to a prevailing party as allowed by law.

13 * **Sec. 41.** AS 23.30.260 is amended by adding a new subsection to read:

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

18 * **Sec. 42.** AS 23.30.395(17) is amended to read:

19 (17) "injury" means accidental injury or death arising out of and in the
 20 course of employment, and an occupational disease or infection **that** [WHICH] arises
 21 naturally out of the employment or **that** [WHICH] naturally or unavoidably results
 22 from an accidental injury; "injury" includes breakage or damage to eyeglasses, hearing
 23 aids, dentures, or any prosthetic devices **that** [WHICH] function as part of the body
 24 and further includes an injury caused by the wilful act of a third person directed
 25 against an employee because of the employment; "injury" **does not include**
 26 **aggravation, acceleration, or combination with a preexisting condition, unless the**
 27 **employment is the major contributing cause of the disability or need for medical**
 28 **treatment, and** does not include mental injury caused by mental stress, unless it is
 29 established that (A) the work stress was extraordinary and unusual in comparison to
 30 pressures and tensions experienced by individuals in a comparable work environment,
 31 and (B) the work stress was the predominant cause of the mental injury; the amount of

1 work stress shall be measured by actual events; a mental injury is not considered to
 2 arise out of and in the course of employment if it results from a disciplinary action,
 3 work evaluation, job transfer, layoff, demotion, termination, or similar action, taken in
 4 good faith by the employer;

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

6 (35) "attending physician" means one of the following designated by
 7 the employee under AS 23.30.095(a) or (b):

8 (A) a licensed medical doctor;

9 (B) a licensed doctor of osteopathy;

10 (C) a licensed dentist or dental surgeon;

11 (D) a licensed physician assistant acting under supervision of a
 12 licensed medical doctor or doctor of osteopathy;

13 (E) a licensed nurse practitioner acting under supervision of a
 14 licensed medical doctor or doctor of osteopathy; or

15 (F) a licensed chiropractor;

16 (36) "commissioner" means the commissioner of labor and workforce
 17 development;

18 (37) "department" means the Department of Labor and Workforce
 19 Development;

20 (38) "director" means the director of the division of workers'
 21 compensation in the department;

22 (39) "division" means the division of workers' compensation in the
 23 department.

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

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

26 * **Sec. 45.** AS 39.25.120(c)(14) is amended to read:

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

29 * **Sec. 46.** AS 23.30.095(f), 23.30.095(l), and 23.30.095(m) are repealed.

30 * **Sec. 47.** The uncodified law of the State of Alaska is amended by adding a new section to
 31 read:

1 TASK FORCE ON WORKERS' COMPENSATION. (a) There is established in the
2 legislative branch the Task Force on Workers' Compensation to address the improvement of
3 the Alaska workers' compensation system, including

4 (1) a review of workers' compensation and insurance reform measures
5 throughout the United States and an assessment of the effects of those reforms;

6 (2) an analysis and assessment of proposals for workers' compensation and
7 workers' compensation liability insurance reform in Alaska;

8 (3) a review of current Alaskan workers' compensation benefits and costs and
9 an assessment of needed changes;

10 (4) a review of compliance with current Alaska workers' compensation laws;

11 (5) a consideration of other issues determined to be relevant by members of
12 the task force.

13 (b) The task force established under (a) of the section shall consist of 11 voting
14 members. One member shall be a state senator appointed by the president of the senate, one
15 member shall be a state representative appointed by the speaker of the house of
16 representatives, and one member shall be a member of the minority in either house jointly
17 selected by the president of the senate and the speaker of the house of representatives. Eight
18 members shall be appointed jointly by the president of the senate and speaker of the house of
19 representatives as follows:

20 (1) a representative of the Alaska State Medical Association;

21 (2) an attorney who represents employees in workers' compensation cases;

22 (3) an attorney who represents employers in workers' compensation cases;

23 (4) a representative of the insurance industry that provides workers'
24 compensation insurance;

25 (5) a representative from organized labor;

26 (6) a person representing employees not represented by organized labor;

27 (7) a person representing small businesses; and

28 (8) a person representing larger businesses.

29 (c) The task force established under (a) of this section

30 (1) may begin work immediately upon the appointment of its full voting
31 membership and shall meet at least three times telephonically or in person;

1 (2) shall hold public hearings and may perform research related to its work;

2 (3) may meet in the interim and vote telephonically;

3 (4) shall report its written findings and give a copy of proposed legislation and
4 other recommendations to the president of the senate and the speaker of the house of
5 representatives before December 1, 2005; and

6 (5) is terminated on February 1, 2006.

7 * **Sec. 48.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 APPLICABILITY. The amendment to AS 23.30.175(b) made by sec. 31 of this Act
10 applies to an injury occurring on or after the effective date of sec. 31 of this Act.

11 * **Sec. 49.** The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

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

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

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

25 TRANSITION: REGULATIONS. The Department of Labor and Workforce
26 Development and the director of insurance in the Department of Commerce, Community, and
27 Economic Development may proceed to adopt regulations necessary to implement the
28 respective provisions for which each is responsible under this Act. The regulations take effect
29 under AS 44.62 (Administrative Procedure Act), but not before the effective date of the
30 statutory changes.

31 * **Sec. 51.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 TRANSITION: MEDICAL SERVICES REVIEW COMMITTEE STUDY AND
3 REPORT. The medical services review committee appointed by the commissioner of labor
4 and workforce development under AS 23.30.095(j), as amended by sec. 24 of this Act, shall
5 proceed to study medical and related benefits provided under AS 23.30 to determine the
6 appropriateness, necessity, delivery, and cost of the benefits and shall, before the end of the
7 first week of the First Regular Session of the Twenty-Fifth Alaska State Legislature, provide
8 to the legislature and the commissioner of labor and workforce development a report of the
9 results of the study.

10 * **Sec. 52.** Section 50 of this Act takes effect immediately under AS 01.10.070(c).

11 * **Sec. 53.** Sections 1 - 4, 31, and 51 of this Act take effect September 1, 2005.

12 * **Sec. 54.** Except as provided in secs. 52 and 53 of this Act, this Act takes effect August 1,
13 2005.