

**HOUSE CS FOR CS FOR SENATE BILL NO. 130(L&C)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 5/5/05

Referred: Judiciary, Finance

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

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to workers' compensation and to assigned risk pools; relating to the**  
2 **Alaska Insurance Guaranty Association; establishing the Task Force on Workers'**  
3 **Compensation; amending Rule 45, Alaska Rules of Civil Procedure; and providing for**  
4 **an effective date."**

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

6 \* **Section 1.** AS 21.24.130 is amended by adding a new subsection to read:

7 (f) If an insurer is found to be insolvent by a proceeding under AS 21.78 or by  
8 a court of competent jurisdiction in another state, the director shall take control of the  
9 insurer's deposit made under AS 21.09.090(b). The deposit assets shall be released, at  
10 the discretion of the director, to the Alaska Insurance Guaranty Association  
11 (AS 21.80) to reimburse for a valid loss and loss expense claim payment made by the  
12 association that is within the purpose of the deposit. The director shall pay the  
13 remaining deposit assets to the receiver, conservator, rehabilitator, or liquidator of the  
14 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. 2.** 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. 3.** AS 23.05.067(a) is amended to read:

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

18 (1) for each employer,

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

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

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

30 \* **Sec. 4.** AS 23.30.005(a) is amended to read:

31 (a) The Alaska Workers' Compensation Board consists of two [A] southern

1 **panels** [PANEL] of three members sitting for the first judicial district, **two** [A]  
 2 northern **panels** [PANEL] of three members sitting for the second and fourth judicial  
 3 districts, **five** [FOUR] southcentral panels of three members each sitting for the third  
 4 judicial district, and one panel of three members that may sit in any judicial district.  
 5 Each panel must include the commissioner of labor and workforce development or **a**  
 6 **hearing officer designated to represent** [THE DESIGNATED REPRESENTATIVE  
 7 OF] the commissioner, a representative of industry, and a representative of labor. The  
 8 latter two members of each panel shall be appointed by the governor and are subject to  
 9 confirmation by a majority of the members of the legislature in joint session. **The**  
 10 **board shall by regulation provide procedures to avoid conflicts and the**  
 11 **appearance of impropriety in hearings.**

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

13 (b) The commissioner shall act as **chair** [CHAIRMAN] and executive officer  
 14 of the board and **chair** [CHAIRMAN] of each panel. **The commissioner may**  
 15 **designate a representative to act for the commissioner as chair and executive**  
 16 **officer of the board. The commissioner may designate hearing officers to serve as**  
 17 **chairs of panels for hearing claims** [IF THE COMMISSIONER DESIGNATES A  
 18 REPRESENTATIVE TO ACT FOR THE COMMISSIONER, THE  
 19 REPRESENTATIVE SHALL SERVE IN THAT CAPACITY ON THE BOARD  
 20 AND ON EACH PANEL].

21 \* **Sec. 6.** AS 23.30.005(h) is amended to read:

22 (h) The department shall adopt rules for all panels, and procedures for the  
 23 periodic selection, retention, and removal of both rehabilitation specialists and  
 24 physicians under AS 23.30.041 and 23.30.095, and shall adopt regulations to carry out  
 25 the provisions of this chapter. **The department may by regulation provide for**  
 26 **procedural, discovery, or stipulated matters to be heard and decided by the**  
 27 **commissioner or a hearing officer designated to represent the commissioner**  
 28 **rather than a panel. If a procedural, discovery, or stipulated matter is heard and**  
 29 **decided by the commissioner or a hearing officer designated to represent the**  
 30 **commissioner, the action taken is considered the action of the full board on that**  
 31 **aspect of the claim.** Process and procedure under this chapter shall be as summary

1 and simple as possible. The department, the board or a member of it may for the  
 2 purposes of this chapter subpoena witnesses, administer or cause to be administered  
 3 oaths, and may examine or cause to have examined the parts of the books and records  
 4 of the parties to a proceeding that relate to questions in dispute. The superior court, on  
 5 application of the department, the board or any members of it, shall enforce the  
 6 attendance and testimony of witnesses and the production and examination of books,  
 7 papers, and records.

8 \* **Sec. 7.** AS 23.30.005 is amended by adding a new subsection to read:

9 (m) The board may by regulation delegate authority to the director to assist the  
 10 board in administering and enforcing this chapter.

11 \* **Sec. 8.** AS 23.30.012 is amended to read:

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

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

1 hearing in order to determine whether or not to approve the agreement. A [THE  
 2 BOARD MAY APPROVE] lump-sum settlement may be approved  
 3 [SETTLEMENTS] when it appears to be to the best interest of the employee or  
 4 beneficiary or beneficiaries.

5 \* **Sec. 9.** AS 23.30.015(e) is amended to read:

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

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

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

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

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

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

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

27 \* **Sec. 10.** AS 23.30.015(j) is amended to read:

28 (j) Notice of the commencement of an action against a third party shall be  
 29 given to the division [BOARD] and to all interested parties within 30 days.

30 \* **Sec. 11.** AS 23.30.025(a) is amended to read:

31 (a) An insurer may not enter into or issue a policy of insurance under this

1 chapter until its policy form has been submitted to and approved by the director of the  
2 division of insurance. The director of the division of insurance may not approve the  
3 policy form of an insurance company until the company files with it the certificate of  
4 the director of the division of insurance showing that the company is authorized to  
5 transact the business of workers' compensation insurance in the state. The filing of a  
6 policy form by an insurance company with the **division of workers' compensation**  
7 [BOARD] for approval constitutes, on the part of the company, a conclusive and  
8 unqualified acceptance of the provisions of this chapter, and an agreement by it to be  
9 bound by them.

10 \* **Sec. 12.** AS 23.30.030(5) is amended to read:

11 (5) A termination of the policy by cancellation is not effective as to the  
12 employees of the insured employer covered by it until 20 days after written notice of  
13 the termination has been received by the **division** [BOARD]. If the employer has a  
14 contract with the state or a home rule or other political subdivision of the state, and the  
15 employer's policy is cancelled due to nonpayment of a premium, the termination of the  
16 policy is not effective as to the employees of the insured employer covered by it until  
17 20 days after written notice of the termination has been received by the contracting  
18 agency, and the agency has the option of continuing the payments on behalf of the  
19 employer in order to keep the policy in force. If, however, the employer has secured  
20 insurance with another insurance carrier, cancellation is effective as of the date of the  
21 new coverage.

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

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

27 \* **Sec. 14.** AS 23.30.041(b) is amended to read:

28 (b) The administrator shall  
29 (1) enforce regulations adopted by the board to implement this section;  
30 (2) recommend regulations for adoption by the board that establish  
31 performance and reporting criteria for rehabilitation specialists;

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

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

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

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

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

13 (C) a status report on all individuals requesting, waiving,  
14 beginning, completing, or terminating a reemployment benefits program  
15 including

16 (i) reasons for denial, waiver, suspension, or  
17 termination;

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

19 (iii) other information required by the director  
20 [DATE];

21 (D) the cost of reemployment benefits;

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

24 (i) the plan's occupational goal and whether the  
25 individual obtained work after completion in the planned or  
26 another occupation; and

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

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

31 (7) promote awareness among physicians, adjusters, injured workers,

1 employers, employees, attorneys, training providers, and rehabilitation specialists of  
2 the reemployment program established in this subsection.

3 \* **Sec. 15.** AS 23.30.041(c) is repealed and reenacted to read:

4 (c) An employee and an employer may stipulate to the employee's eligibility  
5 for reemployment benefits at any time. If an employee suffers a compensable injury  
6 and, as a result of the injury, the employee is totally unable, for 45 consecutive days,  
7 to return to the employee's employment at the time of injury, the administrator shall  
8 notify the employee of the employee's rights under this section within 14 days after the  
9 45th day. If the employee is totally unable to return to the employee's employment for  
10 60 consecutive days as a result of the injury, the employee or employer may request an  
11 eligibility evaluation. The administrator may approve the request if the employee's  
12 injury may permanently preclude the employee's return to the employee's occupation  
13 at the time of the injury. If the employee is totally unable to return to the employee's  
14 employment at the time of the injury for 90 consecutive days as a result of the injury,  
15 the administrator shall, without a request, order an eligibility evaluation unless a  
16 stipulation of eligibility was submitted. If the administrator approves a request or  
17 orders an evaluation, the administrator shall, on a rotating and geographic basis, select  
18 a rehabilitation specialist from the list maintained under (b)(6) of this section to  
19 perform the eligibility evaluation. If the person that employs a rehabilitation specialist  
20 selected by the administrator to perform an eligibility evaluation under this subsection  
21 is performing any other work on the same workers' compensation claim involving the  
22 injured employee, the administrator shall select a different rehabilitation specialist.

23 \* **Sec. 16.** AS 23.30.041(j) is amended to read:

24 (j) The employee, rehabilitation specialist, and [THE] employer shall sign the  
25 reemployment benefits plan. If the employer and employee fail to agree on a  
26 reemployment plan, either party may submit a reemployment plan for approval to the  
27 administrator. The [; THE] administrator shall approve or deny a plan within 14 days  
28 after the plan is submitted. Within [; WITHIN] 10 days after [OF] the decision,  
29 either party may seek review of the decision by requesting a hearing under  
30 AS 23.30.110. The [; THE] board shall uphold the decision of the administrator  
31 unless evidence is submitted supporting an allegation of abuse of discretion on the part

1 of the administrator. The [; THE] board shall render a decision within 30 days after  
 2 completion of the hearing.

3 \* **Sec. 17.** AS 23.30.041(k) is amended to read:

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

28 \* **Sec. 18.** AS 23.30.041(n) is amended to read:

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

- 1 (1) unreasonable failure to
- 2 (A) keep appointments;
- 3 (B) maintain passing grades;
- 4 (C) attend designated programs;
- 5 (D) maintain contact with the rehabilitation specialist;
- 6 (E) cooperate with the rehabilitation specialist in developing a
- 7 reemployment plan and participating in activities relating to reemployability on
- 8 a full-time basis;
- 9 (F) comply with the employee's responsibilities outlined in the
- 10 reemployment plan; or
- 11 (G) participate in any planned reemployment activity as
- 12 determined by the administrator; or
- 13 (2) failure to give written notice to the employer of the employee's
- 14 choice of rehabilitation specialists within **30** [15] days after receiving notice of
- 15 eligibility for benefits from the administrator as required by (g) of this section.

16 \* **Sec. 19.** AS 23.30.041(p) is amended to read:

17 (p) When the United States Department of Labor publishes a new edition,

18 revision, or replacement for the "Selected Characteristics of Occupations Defined in

19 the Revised Dictionary of Occupational Titles" referred to in (e) of this section, the

20 **director** [BOARD] shall, not later than 90 days after the last day of the month in

21 which the new edition, revision, or replacement standard is published, hold an open

22 meeting under AS 44.62.310 to select the **proposed** date on which the new edition,

23 revision, or replacement standard will be implemented to make all eligibility

24 determinations required under (e) of this section. The date selected by the

25 **department** [BOARD] for implementing the new edition, revision, or replacement

26 standard may not be later than 90 days after the last day of the month in which the new

27 edition, revision, or replacement standard is published. After the meeting, the

28 **director** [BOARD] shall issue a public notice announcing the date selected **by the**

29 **department**. The requirements of AS 44.62.010 - 44.62.300 do not apply to the

30 selection or announcement of the date under this subsection.

31 \* **Sec. 20.** AS 23.30.041(q) is amended to read:

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

15 \* **Sec. 21.** AS 23.30.065 is amended to read:

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

22 \* **Sec. 22.** AS 23.30.070(a) is amended to read:

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

- 28 (1) the name, address, and business of the employer;
- 29 (2) the name, address, and occupation of the employee;
- 30 (3) the cause and nature of the alleged injury or death;
- 31 (4) the year, month, day, and hour when and the particular locality

1 where the alleged injury or death occurred; and

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

3 \* **Sec. 23.** AS 23.30.070(b) is amended to read:

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

7 \* **Sec. 24.** AS 23.30.070(d) is amended to read:

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

11 \* **Sec. 25.** AS 23.30.075 is amended to read:

12 **Sec. 23.30.075. Employer's liability to pay.** (a) An employer under this  
13 chapter, unless exempted, shall either insure and keep insured for the employer's  
14 liability under this chapter in an insurance company or association duly authorized to  
15 transact the business of workers' compensation insurance in this state, or shall furnish  
16 the **division** [BOARD] satisfactory proof of the employer's financial ability to pay  
17 directly the compensation provided for. If an employer elects to pay directly, the  
18 board may, in its discretion, require the deposit of an acceptable security, indemnity,  
19 or bond to secure the payment of compensation liabilities as they are incurred.

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

31 \* **Sec. 26.** AS 23.30.075 is amended by adding a new subsection to read:

1 (c) An employer who with gross negligence or reckless or intentional  
 2 misconduct fails to properly classify an employee for the purpose of obtaining  
 3 workers' compensation insurance or to furnish proof to the division of the employer's  
 4 financial ability to pay compensation directly fails to comply with the requirements in  
 5 (a) of this section.

6 \* **Sec. 27.** AS 23.30.080(d) is amended to read:

7 (d) If an employer fails to insure or provide security as required by  
 8 AS 23.30.075, the **director** [BOARD] may issue a stop order prohibiting the use of  
 9 employee labor by the employer until the employer insures or provides security as  
 10 required by AS 23.30.075. The failure of an employer to file evidence of compliance  
 11 as required by AS 23.30.085 creates a rebuttable presumption that the employer has  
 12 failed to insure or provide security as required by AS 23.30.075. If an employer fails  
 13 to comply with a stop order issued under this section, the board shall assess a civil  
 14 penalty of \$1,000 a [PER] day. The employer may not obtain a public contract with  
 15 the state or a political subdivision of the state for three years following the violation of  
 16 the stop order.

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

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

1 (f) If an employer fails to insure or provide security as required by  
 2 AS 23.30.075, the division may petition the board to assess a civil penalty of up to  
 3 \$1,000 for each employee for each day an employee is employed while the employer  
 4 failed to insure or provide the security required by AS 23.30.075. The failure of an  
 5 employer to file evidence of compliance as required by AS 23.30.085 creates a  
 6 rebuttable presumption that the employer failed to insure or provide security as  
 7 required by AS 23.30.075.

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

19 \* **Sec. 29.** AS 23.30 is amended by adding a new section to read:

20 **Sec. 23.30.082. Workers' compensation benefits guaranty fund.** (a) The  
 21 workers' compensation benefits guaranty fund is established in the general fund to  
 22 carry out the purposes of this section. The fund is composed of civil penalty payments  
 23 made by employers under AS 23.30.080, income earned on investment of the money  
 24 in the fund, money deposited in the fund by the department, and other appropriations  
 25 to the fund. Money appropriated to the fund does not lapse. Amounts in the fund may  
 26 be appropriated for claims against the fund, for expenses directly related to fund  
 27 operations and claims, for legal expenses, and for an employee's attorney fees and  
 28 costs.

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

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

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

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

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

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

22 \* **Sec. 30.** AS 23.30.085(a) is amended to read:

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

30 \* **Sec. 31.** AS 23.30.095(h) is amended to read:

31 (h) Upon the filing with the **division** **[BOARD]** by a party in interest of **a**

1 **claim** [AN APPLICATION] or other pleading, all parties to the proceeding must  
 2 immediately, or in any event within five days after service of the pleading, send to the  
 3 **division** [BOARD] the original signed reports of all physicians relating to the  
 4 proceedings **that** [WHICH] they may have in their possession or under their control,  
 5 and copies of the reports shall be served by the party immediately on **any** [THE]  
 6 adverse party. There is a continuing duty on **all** [THE] parties to [SO] file and serve  
 7 all the reports during the pendency of the proceeding.

8 \* **Sec. 32.** AS 23.30.095(j) is amended to read:

9 (j) The board **shall** [MAY] appoint a medical services review committee [, OR  
 10 CONTRACT WITH AN EXISTING ORGANIZATION IN THE STATE OR  
 11 ANOTHER STATE,] to assist and advise the board in matters involving the  
 12 appropriateness, necessity, and cost of medical and related services provided under  
 13 this chapter. **The medical services review committee shall elect a chair from**  
 14 **among its members. The medical services review committee shall consist of seven**  
 15 **members to be appointed by the board as follows:**

16 **(1) one rehabilitation specialist as defined in AS 23.30.041;**

17 **(2) one public member who is not within the definition of "health**  
 18 **care provider" in AS 09.55.560;**

19 **(3) one chiropractic physician licensed under AS 08.20;**

20 **(4) four health care providers as defined in AS 09.55.560, except**  
 21 **that a chiropractic physician may not be appointed under this paragraph.**

22 \* **Sec. 33.** AS 23.30.095 is amended by adding a new subsection to read:

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

30 \* **Sec. 34.** AS 23.30 is amended by adding a new section to article 2 to read:

31 **Sec. 23.30.097. Fees for medical treatment and services.** (a) All fees and

1 other charges for medical treatment or service are subject to regulation by the board  
 2 consistent with this section. A fee or other charge for medical treatment or service  
 3 may not exceed the lesser of

4 (1) the usual, customary, and reasonable fees for the treatment or  
 5 service in the community in which it is rendered, not to exceed the fees in the fee  
 6 schedule specified by the board in its published bulletin dated December 1, 2004;

7 (2) the fee or charge for the service when provided to the general  
 8 public; or

9 (3) the fee or charge negotiated by the provider and the employer  
 10 under (c) of this section.

11 (b) An employer, or group of employers, shall establish a list of preferred  
 12 physicians and treatment service providers to provide medical, surgical, and other  
 13 attendance or treatment services to the employer's employees under this chapter;  
 14 however,

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

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

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

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

1 fee plans.

2 (d) An employer shall pay an employee's bills for medical treatment under this  
3 chapter, excluding prescription charges or transportation for medical treatment, within  
4 30 days after the date that the employer receives the provider's bill or a completed  
5 report as required by AS 23.30.095(c), whichever is later.

6 (e) A physician or other provider of treatment services under this chapter,  
7 including hospital services, that submits a bill for medical treatment to the insurer or  
8 self-insured employer shall also submit a copy of the bill to the employee to whom the  
9 treatment was provided. An employee who notifies the insurer or self-insured  
10 employer's adjuster in writing of an overcharge in the bill that was not previously  
11 identified by the insurer or self-insured employer's adjuster shall be entitled to a  
12 reward equal to 25 percent of the billing reduction or reimbursement achieved due to  
13 the employee's report. This reward does not apply to overcharges of an amount under  
14 \$100 if the insurer or self-insured employer's adjuster elects not to pursue correction  
15 of the bill.

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

18 (g) Unless the employer controverts a charge, the employer shall reimburse an  
19 employee's prescription charges under this chapter within 30 days after the employer  
20 receives the health care provider's completed report and an itemization of the  
21 prescription charges for the employee. Unless the employer controverts a charge, an  
22 employer shall reimburse any transportation expenses for medical treatment under this  
23 chapter within 30 days after the employer receives the health care provider's  
24 completed report and an itemization of the dates, destination, and transportation  
25 expenses for each date of travel for medical treatment. If the employer does not plan  
26 to make or does not make payment or reimbursement in full as required by this  
27 subsection, the employer shall notify the employee and the employee's health care  
28 provider in writing that payment will not be made timely and the reason for the  
29 nonpayment. The notification must be provided not later than the date that the  
30 payment is due under this subsection.

31 \* **Sec. 35.** AS 23.30.100(b) is amended to read:

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

7 \* **Sec. 36.** AS 23.30.107 is amended to read:

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

18 (b) Medical or rehabilitation records in an employee's file maintained by the  
 19 **division and individually identifiable information concerning employees and**  
 20 **employers in files maintained by the division** [BOARD] are not public records  
 21 subject to public inspection and copying under AS 40.25. This subsection does not  
 22 prohibit

23 (1) the reemployment benefits administrator, **the division**, the board,  
 24 or the department from releasing medical or rehabilitation records in an employee's  
 25 file, **or releasing individually identifiable information concerning employees and**  
 26 **employers in files maintained by the division**, without the employee's **or the**  
 27 **employer's** consent, to a physician providing medical services under AS 23.30.095(k)  
 28 or 23.30.110(g), **an employer of the employee, an employee of the employer**, a  
 29 party to a claim **regarding** [FILED BY] the employee, or a governmental agency;  
 30 [OR]

31 (2) the quoting or discussing of [MEDICAL OR REHABILITATION]

1 records contained in an employee's file during a hearing on a claim for compensation,  
 2 **in a determination by the reemployment benefits administrator,** or in a decision  
 3 and order of the board; **or**

4 **(3) the division from confirming the insurance coverage or self-**  
 5 **insurance certificate for liabilities of an employer under this chapter.**

6 \* **Sec. 37.** AS 23.30.107 is amended by adding a new subsection to read:

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

9 \* **Sec. 38.** AS 23.30.140 is amended to read:

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

17 \* **Sec. 39.** 23.30.145(b) is amended to read:

18 (b) If an employer fails to file timely notice of controversy or fails to pay  
 19 compensation or medical and related benefits within 15 days after it becomes due or  
 20 otherwise resists the payment of compensation or medical and related benefits and if  
 21 the claimant has employed an attorney in the successful prosecution of the claim, the  
 22 board shall make an award to reimburse the claimant for the costs in the proceedings,  
 23 including [A] reasonable attorney **fees** [FEE]. The award is in addition to the  
 24 compensation or medical and related benefits ordered.

25 \* **Sec. 40.** AS 23.30.155(a) is amended to read:

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

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

31 (2) the name of the employee;

- 1 (3) the name of the employer;  
 2 (4) the date of the alleged injury or death; and  
 3 (5) the type of compensation and all grounds upon which the right to  
 4 compensation is controverted.

5 \* **Sec. 41.** AS 23.30.155(c) is amended to read:

6 (c) The insurer or adjuster shall notify the **division** [BOARD] and the  
 7 employee on a form prescribed by the **director** [BOARD] that the payment of  
 8 compensation has begun or has been increased, decreased, suspended, terminated,  
 9 resumed, or changed in type. An initial report shall be filed with the **division**  
 10 [BOARD] and sent to the employee within 28 days after the date of issuing the first  
 11 payment of compensation. If at any time 21 days or more pass and no compensation  
 12 payment is issued, a report notifying the **division** [BOARD] and the employee of the  
 13 termination or suspension of compensation shall be filed with the **division** [BOARD]  
 14 and sent to the employee within 28 days after the date the last compensation payment  
 15 was issued. A report shall also be filed with the **division** [BOARD] and sent to the  
 16 employee within 28 days after the date of issuing a payment increasing, decreasing,  
 17 resuming, or changing the type of compensation paid. If the **division** [BOARD] and  
 18 the employee are not notified within the 28 days prescribed by this subsection for  
 19 reporting, the insurer or adjuster shall pay a civil penalty of \$100 for the first day plus  
 20 \$10 for each day **after the first day** [THEREAFTER] that the notice was not given.  
 21 Total penalties under this subsection may not exceed \$1,000 for a failure to file a  
 22 required report. Penalties assessed under this subsection are eligible for reduction  
 23 under (m) of this section. A penalty assessed under this subsection after penalties have  
 24 been reduced under (m) of this section shall be increased by 25 percent and shall bear  
 25 interest at the rate established under AS 45.45.010.

26 \* **Sec. 42.** AS 23.30.155(d) is amended to read:

27 (d) If the employer controverts the right to compensation the employer shall  
 28 file with the **division** [BOARD] and send to the employee a notice of controversion on  
 29 or before the 21st day after the employer has knowledge of the alleged injury or death.  
 30 If the employer controverts the right to compensation after payments have begun, the  
 31 employer shall file with the **division** [BOARD] and send to the employee a notice of

1           controversion within seven days after an installment of compensation payable without  
 2           an award is due. When payment of temporary disability benefits is controverted solely  
 3           on the grounds that another employer or another insurer of the same employer may be  
 4           responsible for all or a portion of the benefits, the most recent employer or insurer  
 5           who is party to the claim and who may be liable shall make the payments during the  
 6           pendency of the dispute. When a final determination of liability is made, any  
 7           reimbursement required, including interest at the statutory rate, and all costs and  
 8           attorney [ATTORNEYS'] fees incurred by the prevailing employer, shall be made  
 9           within 14 days after [OF] the determination.

10   \* **Sec. 43.** AS 23.30.155(e) is amended to read:

11           (e) If any installment of compensation payable without an award is not paid  
 12           within seven days after it becomes due, as provided in (b) of this section, there shall be  
 13           added to the unpaid installment an amount equal to 25 percent of the installment [IT].  
 14           This additional amount shall be paid at the same time as, and in addition to, the  
 15           installment, unless notice is filed under (d) of this section or unless the nonpayment is  
 16           excused by the board after a showing by the employer that owing to conditions over  
 17           which the employer had no control the installment could not be paid within the period  
 18           prescribed for the payment. The additional amount shall be paid directly to the  
 19           recipient to whom the unpaid installment was to be paid.

20   \* **Sec. 44.** AS 23.30.155(f) is amended to read:

21           (f) If compensation payable under the terms of an award is not paid within 14  
 22           days after it becomes due, there shall be added to that unpaid compensation an amount  
 23           equal to 25 percent of the unpaid installment. The additional amount [IT,  
 24           WHICH] shall be paid at the same time as, but in addition to, the compensation, unless  
 25           review of the compensation order making the award is had as provided in the Alaska  
 26           Rules of Appellate Procedure [AS 23.30.125] and an interlocutory injunction staying  
 27           payments is allowed by the court. The additional amount shall be paid directly to  
 28           the recipient to whom the unpaid compensation was to be paid.

29   \* **Sec. 45.** AS 23.30.155(i) is amended to read:

30           (i) When the director [BOARD] considers it advisable, the director [IT] may  
 31           require an employer to make a deposit with the Department of Revenue to secure the

1 prompt and convenient payment of the compensation, and payments from the deposit  
2 upon an award shall be made upon order of the **director** [BOARD].

3 \* **Sec. 46.** AS 23.30.155(k) is amended to read:

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

8 \* **Sec. 47.** AS 23.30.155(m) is amended to read:

9 (m) On or before March 1 of each year, the insurer or adjuster shall file a  
10 verified annual report on a form prescribed by the **director** [BOARD] stating the total  
11 amount of all compensation by type, the number of claims received and the percentage  
12 controverted, medical [,] and related benefits, vocational rehabilitation expenses, legal  
13 fees, including a separate total of fees paid to attorneys and fees paid for the other  
14 costs of litigation, and penalties paid on all claims during the preceding calendar year.  
15 If the annual report is timely and complete when received by the **division** [BOARD]  
16 and provides accurate information about each category of payments, the **director**  
17 [COMMISSIONER] shall review the timeliness of the insurer's or adjuster's reports  
18 filed during the preceding year under (c) of this section. If, during the preceding year,  
19 the insurer or adjuster filed at least 99 percent of the reports on time, the penalties  
20 assessed under (c) of this section shall be waived. If, during the preceding year, the  
21 insurer or adjuster filed at least 97 percent of the reports on time, 75 percent of the  
22 penalties assessed under (c) of this section shall be waived. If, during the preceding  
23 year, the insurer or adjuster filed 95 percent of the reports on time, 50 percent of the  
24 penalties assessed under (c) of this section shall be waived. If, during the preceding  
25 year, the insurer's or adjuster's reports have not been filed on time at least 95 percent  
26 of the time, none of the penalties assessed under (c) of this section shall be waived.  
27 The penalties that are not waived are due and payable when the insurer or adjuster  
28 receives notification from the **director** [COMMISSIONER] regarding the timeliness  
29 of the reports. If the annual report is not filed by March 1 of each year, the insurer or  
30 adjuster shall pay a civil penalty of \$100 for the first day the annual report is late [,]  
31 and \$10 for each additional day the report is late. If the annual report is incomplete

1 when filed, the insurer or adjuster shall pay a civil penalty of \$1,000.

2 \* **Sec. 48.** AS 23.30.155(o) is amended to read:

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

8 \* **Sec. 49.** AS 23.30.175(b) is amended to read:

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

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

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

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

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

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

28 \* **Sec. 50.** AS 23.30.175(c) is amended to read:

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

1 costs every three years.

2 \* **Sec. 51.** AS 23.30.175 is amended by adding a new subsection to read:

3 (e) If the commissioner fails to determine the average weekly wage in the state  
4 as required in (d) of this section until after January 1, but before April 1, of the year  
5 following the date the determination was to be made, an employer is not required to  
6 make a retroactive adjustment of compensation.

7 \* **Sec. 52.** AS 23.30.205(e) is amended to read:

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

13 \* **Sec. 53.** AS 23.30.205 is amended by adding a new subsection to read:

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

18 \* **Sec. 54.** AS 23.30.220(a) is amended to read:

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

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

25 (2) if at the time of injury the employee's earnings are calculated by the  
26 month, the employee's gross weekly earnings are the monthly earnings multiplied by  
27 12 and divided by 52;

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

30 (4) if at the time of injury the [(A)] employee's earnings are calculated  
31 by the day, by the hour, or by the output of the employee, then the employee's gross

1 weekly earnings are 1/50 of the total wages that the employee earned from all  
 2 occupations during either of the two calendar years immediately preceding the  
 3 injury, whichever is [THE EMPLOYEE'S EARNINGS] most favorable to the  
 4 employee [COMPUTED BY DIVIDING BY 13 THE EMPLOYEE'S EARNINGS,  
 5 INCLUDING OVERTIME OR PREMIUM PAY, EARNED DURING ANY PERIOD  
 6 OF 13 CONSECUTIVE CALENDAR WEEKS WITHIN THE 52 WEEKS  
 7 IMMEDIATELY PRECEDING THE INJURY];

8 (B) EMPLOYEE HAS BEEN EMPLOYED FOR LESS THAN  
 9 13 CALENDAR WEEKS IMMEDIATELY PRECEDING THE INJURY,  
 10 THEN, NOTWITHSTANDING (1) - (3) OF THIS SUBSECTION AND (A)  
 11 OF THIS PARAGRAPH, THE EMPLOYEE'S GROSS WEEKLY  
 12 EARNINGS ARE COMPUTED BY DETERMINING THE AMOUNT THAT  
 13 THE EMPLOYEE WOULD HAVE EARNED, INCLUDING OVERTIME  
 14 OR PREMIUM PAY, HAD THE EMPLOYEE BEEN EMPLOYED BY THE  
 15 EMPLOYER FOR 13 CALENDAR WEEKS IMMEDIATELY PRECEDING  
 16 THE INJURY AND DIVIDING THIS SUM BY 13];

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

21 (6) if at the time of injury the employee's earnings are calculated by  
 22 the week under (a)(1) of this section or by the month under (a)(2) of this section  
 23 and the employment is exclusively seasonal or temporary, then [,  
 24 NOTWITHSTANDING (1) - (5) OF THIS SUBSECTION,] the gross weekly  
 25 earnings are 1/50 of the total wages that the employee has earned from all occupations  
 26 during the 12 calendar months immediately preceding the injury;

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

30 (8) if an employee when injured is a minor, an apprentice, or a trainee  
 31 in a formalized [FORMAL] training program, as determined by the board, whose

1 wages under normal conditions would increase during the period of disability, the  
 2 projected increase may be considered by the board in computing the gross weekly  
 3 earnings of the employee; **if the minor, apprentice, or trainee would have likely**  
 4 **continued that training program, then the compensation shall be the average**  
 5 **weekly wage at the time of injury rather than that based on the individual's prior**  
 6 **earnings;**

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

17 (10) if an employee is entitled to compensation under AS 23.30.180  
 18 and the board determines that calculation of the employee's gross weekly earnings  
 19 under (1) - (7) of this subsection does not fairly reflect the employee's earnings during  
 20 the period of disability, the board shall determine gross weekly earnings by  
 21 considering the nature of the employee's work, work history, and resulting disability,  
 22 but compensation calculated under this paragraph may not exceed the employee's  
 23 gross weekly earnings at the time of injury.

24 \* **Sec. 55.** AS 23.30.240 is amended to read:

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

27 An executive officer elected or appointed and empowered in accordance with the  
 28 charter and bylaws of a corporation, other than an official of a municipal corporation  
 29 or a charitable, religious, educational, or other nonprofit corporation, is an employee  
 30 of the corporation under this chapter. However, an executive officer of a corporation  
 31 may waive coverage under this chapter, subject to the approval of the **director**

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

10 \* **Sec. 56.** AS 23.30.240 is amended by adding a new subsection to read:

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

20 \* **Sec. 57.** AS 23.30.247(c) is amended to read:

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

28 \* **Sec. 58.** AS 23.30.250 is amended to read:

29 **Sec. 23.30.250. Penalties for fraudulent or misleading acts.** (a) A person,  
 30 including an employee, an employer, a representative of a person, a physician, a  
 31 medical provider, or any entity who (1) knowingly makes a false or misleading

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

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

22 \* **Sec. 59.** AS 23.30.250 is amended by adding a new subsection to read:

23 (c) To the extent allowed by law, in a civil action under (a) of this section, an  
 24 award of damages by a court or jury may include compensatory and punitive damages,  
 25 subject to AS 09.17; attorney fees may be awarded to a prevailing party.

26 \* **Sec. 60.** AS 23.30.260 is amended to read:

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

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

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

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

6 \* **Sec. 61.** AS 23.30.260 is amended by adding a new subsection to read:

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

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

12 **Sec. 23.30.280. Investigation of fraud; staffing.** (a) The director shall  
 13 establish a section within the division for the investigation of fraudulent or misleading  
 14 acts under AS 23.30.250 and other fraudulent acts relating to workers' compensation.

15 (b) 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 AS 23.30.250(a), 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 (c) The director shall establish a toll-free fraud hotline to receive calls relating  
 27 to fraudulent or misleading acts under this chapter. The director shall publicize the  
 28 availability of the toll-free fraud hotline and encourage the public to provide  
 29 information to the division relating to fraudulent or misleading acts relating to  
 30 workers' compensation.

31 (d) The section established by the director under (a) of this section shall

1 include not less than two full-time investigators with the primary responsibility of  
 2 investigating fraudulent or misleading acts relating to workers' compensation. The  
 3 director shall also ensure that there are sufficient personnel to staff the toll-free fraud  
 4 hotline established under (c) of this section.

5 (e) Except as provided in (f) of this section, a person is not liable for civil  
 6 damages for filing a report concerning a suspected, anticipated, or completed  
 7 fraudulent act or a false or misleading statement or representation with, or for  
 8 furnishing other information, whether written or oral, concerning a suspected,  
 9 anticipated, or completed fraudulent act or false or misleading statements or  
 10 representation to

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

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

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

17 (f) The provisions of (e) of this section do not preclude liability for civil  
 18 damages as described in (e) of this section if the liability arose as a result of gross  
 19 negligence or reckless or intentional misconduct.

20 (g) The papers, reports, documents, and evidence received under this section  
 21 or in an investigation arising from information received under this section are not  
 22 subject to public inspection for so long as the director considers confidentiality to be  
 23 in the public interest or reasonably necessary to complete an investigation or protect  
 24 the person investigated from unwarranted injury. Papers, reports, documents, and  
 25 other evidence related to an investigation under this section are confidential.

26 (h) If the material that the director seeks to obtain is located outside the state,  
 27 the material may be made available to the director to examine at the place where the  
 28 material is located. The director may designate representatives, including officials of  
 29 the state in which the material is located, to inspect the material on behalf of the  
 30 director. The director may respond to a request from an official of another state for  
 31 similar material.

1 (i) Papers, reports, documents and other evidence related to an investigation  
 2 under this section are not subject to subpoena unless, after notice to the director and a  
 3 hearing, a court determines that the director would not be unduly hindered by public  
 4 inspection.

5 \* **Sec. 63.** AS 23.30.395 is amended by adding new paragraphs to read:

6 (35) "commissioner" means the commissioner of labor and workforce  
 7 development;

8 (36) "department" means the Department of Labor and Workforce  
 9 Development;

10 (37) "director" means the director of the division of workers'  
 11 compensation in the department;

12 (38) "division" means the division of workers' compensation in the  
 13 department;

14 (39) "medical rehabilitation caseworker" means a person who is a  
 15 registered nurse, certified rehabilitation counselor, or other person who has equivalent  
 16 or better qualification, as determined under regulations adopted by the board.

17 \* **Sec. 64.** AS 37.05.146(c) is amended by adding a new paragraph to read:

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

19 \* **Sec. 65.** AS 39.25.120(c)(14) is amended to read:

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

22 \* **Sec. 66.** AS 44.23.020 is amended by adding a new subsection to read:

23 (f) The attorney general shall designate not less than one-half attorney position  
 24 in the Department of Law for the purpose of prosecuting actions for fraudulent acts  
 25 related to workers' compensation under AS 23.30.

26 \* **Sec. 67.** AS 23.30.095(f), (l), and (m) are repealed.

27 \* **Sec. 68.** AS 23.30.015(c), 23.30.040, 23.30.205, 23.30.395(27); and AS 37.05.146(c)(12)  
 28 are repealed.

29 \* **Sec. 69.** AS 23.30.097(a)(1) is repealed August 1, 2007.

30 \* **Sec. 70.** The uncodified law of the State of Alaska is amended by adding a new section to  
 31 read:

1           INDIRECT COURT RULE AMENDMENT. AS 23.30.280(i), as enacted by sec. 62  
2 of this Act, has the effect of changing Rule 45, Alaska Rules of Civil Procedure, by changing  
3 the procedure relating to subpoenas.

4       \* **Sec. 71.** The uncodified law of the State of Alaska is amended by adding a new section to  
5 read:

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

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

11                   (2) a review of current Alaska workers' compensation medical costs and an  
12 assessment of needed changes, including the effect on businesses that employ fewer than 100  
13 employees and the costs and benefits of palliative care;

14                   (3) a review of the guidelines, including the American College of  
15 Occupational and Environmental Medicine's Occupational Medicine Practice Guidelines, and  
16 the effect of those guidelines in other states;

17                   (4) a review of the cost of claims and other cost drivers that affect workers'  
18 compensation insurance;

19                   (5) a review of current vocational rehabilitation and return to work programs  
20 in this state and other states; and

21                   (6) a consideration of other issues determined to be relevant by members of  
22 the task force.

23           (b) The task force established under (a) of the section shall consist of 13 voting  
24 members. One member shall be a state senator appointed by the president of the senate, one  
25 member shall be a state representative appointed by the speaker of the house of  
26 representatives, and one member shall be a member of the minority in either house jointly  
27 selected by the president of the senate and the speaker of the house of representatives. Ten  
28 members shall be appointed jointly by the president of the senate and speaker of the house of  
29 representatives as follows:

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

31                   (2) a representative of the Alaska Chiropractic Society;

1 (3) a rehabilitation specialist, as defined in AS 23.30.041;

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

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

4 (6) a representative of the insurance industry that provides workers'  
5 compensation insurance;

6 (7) two representatives from organized labor nominated by the Alaska Labor-  
7 Management ad hoc Committee on Worker's Compensation; and

8 (8) two representatives from management nominated by the Alaska Labor-  
9 Management Committee on Worker's Compensation.

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

11 (1) may begin work immediately upon the appointment of its full voting  
12 membership and shall meet as often as required to meet the objectives established in this  
13 section;

14 (2) shall elect a chair of the task force from among its members;

15 (3) shall hold public hearings and may perform research related to its work;

16 (4) may meet in the interim and vote telephonically;

17 (5) shall contract with a consultant specializing in workers' compensation  
18 issues to assist the task force by researching information and conducting a comparative  
19 analysis of workers' compensation systems in other states on the topics listed in (a) of this  
20 section; the contract must require that the consultant present the result of the research and  
21 analysis to the task force on or before September 1, 2005;

22 (6) shall report its written findings and give a copy of proposed legislation and  
23 other recommendations to the president of the senate and the speaker of the house of  
24 representatives before the first day of the Second Regular Session of the Twenty-Fourth  
25 Alaska State Legislature; and

26 (7) is terminated on February 1, 2006.

27 (d) Members of the task force who are not state employees are not entitled to per diem  
28 under AS 39.20.180.

29 (e) The president of the senate and the speaker of the house of representatives shall  
30 jointly appoint a staff member to provide administrative support to the task force.

31 \* **Sec. 72.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 APPLICABILITY. The amendment to AS 23.30.175(b) made by sec. 49 of this Act  
3 applies to an injury occurring on or after the effective date of sec. 49 of this Act.

4 \* **Sec. 73.** The uncodified law of the State of Alaska is amended by adding a new section to  
5 read:

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

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

16 \* **Sec. 74.** The uncodified law of the State of Alaska is amended by adding a new section to  
17 read:

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

23 \* **Sec. 75.** The uncodified law of the State of Alaska is amended by adding a new section to  
24 read:

25 IMPLEMENTATION OF REPEAL OF SECOND INJURY FUND. (a) The balance  
26 of the second injury fund created by former AS 23.30.040 is transferred to the workers' safety  
27 and compensation administration account (AS 23.05.067) on the effective date of this section.  
28 The amount transferred under this subsection shall be accounted for separately within the  
29 workers' safety and compensation administration account. The Task Force on Workers'  
30 Compensation established in sec. 71 of this Act shall make recommendations in its report  
31 regarding the use of these funds.

1 (b) Notwithstanding the repeal of AS 23.30.040, all expenses incurred by the  
 2 employer as described under AS 23.30.015(e)(1), as amended by sec. 9 of this Act, shall  
 3 continue to be open to recovery from third parties under AS 23.30.015 until such liabilities are  
 4 recovered, settled, or legally expire.

5 \* **Sec. 76.** The uncodified law of the State of Alaska is amended by adding a new section to  
 6 read:

7 TRANSITION: MEDICAL SERVICES REVIEW COMMITTEE STUDY,  
 8 REPORTS, AND RECOMMENDATIONS. (a) The medical services review committee  
 9 appointed under AS 23.30.095(j) shall proceed to study medical and related benefits provided  
 10 under AS 23.30 to determine the appropriateness, necessity, and cost of the benefits and shall,  
 11 by September 30, 2005, provide to the commissioner of labor and workforce development a  
 12 report of the results of the study.

13 (b) The medical services review committee appointed under AS 23.30.095(j) shall  
 14 assist the Task Force on Workers' Compensation established in sec. 71 of this Act and make  
 15 recommendations for medical procedure guidelines to the task force, not later than  
 16 December 1, 2005, which may be included in the written findings and proposed legislation  
 17 under sec. 71(c)(6) of this Act.

18 \* **Sec. 77.** The uncodified law of the State of Alaska is amended by adding a new section to  
 19 read:

20 CONDITIONAL EFFECT. AS 23.30.280(i), enacted by sec. 62 of this Act, takes  
 21 effect only if sec 70 of this Act receives the two-thirds majority vote of each house required  
 22 by art. IV, sec. 15, Constitution of the State of Alaska.

23 \* **Sec. 78.** Sections 32, 71, and 74 of this Act take effect immediately under  
 24 AS 01.10.070(c).

25 \* **Sec. 79.** Sections 1, 2, 49, and 76 of this Act take effect September 1, 2005.

26 \* **Sec. 80.** Sections 3, 9, 57, 68, and 75 of this Act take effect on the date that the  
 27 commissioner of labor and workforce development certifies to the revisor of statutes and the  
 28 lieutenant governor that all liability for previously accepted claims to the second injury fund  
 29 created by former AS 23.30.040, and claims ordered to be paid from that fund, have been  
 30 satisfied.

31 \* **Sec. 81.** Except as provided in secs. 78 - 80 of this Act, this Act takes effect August 1,

1 2005.