

HOUSE CS FOR CS FOR SENATE BILL NO. 130(JUD) am H

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Amended: 5/8/05

Offered: 5/6/05

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 23.30.005(a) is amended to read:

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

25 * **Sec. 4.** AS 23.30.005(b) is amended to read:

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

1 REPRESENTATIVE SHALL SERVE IN THAT CAPACITY ON THE BOARD
2 AND ON EACH PANEL].

3 * **Sec. 5.** AS 23.30.005(h) is amended to read:

4 (h) The department shall adopt rules for all panels, and procedures for the
5 periodic selection, retention, and removal of both rehabilitation specialists and
6 physicians under AS 23.30.041 and 23.30.095, and shall adopt regulations to carry out
7 the provisions of this chapter. **The department may by regulation provide for**
8 **procedural, discovery, or stipulated matters to be heard and decided by the**
9 **commissioner or a hearing officer designated to represent the commissioner**
10 **rather than a panel. If a procedural, discovery, or stipulated matter is heard and**
11 **decided by the commissioner or a hearing officer designated to represent the**
12 **commissioner, the action taken is considered the action of the full board on that**
13 **aspect of the claim.** Process and procedure under this chapter shall be as summary
14 and simple as possible. The department, the board or a member of it may for the
15 purposes of this chapter subpoena witnesses, administer or cause to be administered
16 oaths, and may examine or cause to have examined the parts of the books and records
17 of the parties to a proceeding that relate to questions in dispute. The superior court, on
18 application of the department, the board or any members of it, shall enforce the
19 attendance and testimony of witnesses and the production and examination of books,
20 papers, and records.

21 * **Sec. 6.** AS 23.30.005 is amended by adding a new subsection to read:

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

24 * **Sec. 7.** AS 23.30.012 is amended to read:

25 **Sec. 23.30.012. Agreements in regard to claims. (a)** At any time after
26 death, or after 30 days subsequent to the date of the injury, the employer and the
27 employee or the beneficiary or beneficiaries, as the case may be, have the right to
28 reach an agreement in regard to a claim for injury or death under this chapter [IN
29 ACCORDANCE WITH THE APPLICABLE SCHEDULE IN THIS CHAPTER], but
30 a memorandum of the agreement in a form prescribed by the **director** [BOARD] shall
31 be filed with the **division** [BOARD]. Otherwise, the agreement is void for any

1 purpose. Except as provided in (b) of this section, an agreement filed with the
 2 division discharges the liability of the employer for the compensation,
 3 notwithstanding the provisions of AS 23.30.130, 23.30.160, and 23.30.245, and is
 4 enforceable as a compensation order.

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

18 * **Sec. 8.** AS 23.30.015(e) is amended to read:

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

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

22 (A) the expenses incurred by the employer with respect to the
 23 action or compromise, including a reasonable attorney fee determined by the
 24 board;

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

27 (C) all amounts paid as compensation and second-injury fund
 28 payments, and [,] if the employer is self-insured or uninsured, all service fees
 29 paid under AS 23.05.067;

30 (D) the present value of all amounts payable later as
 31 compensation, computed from a schedule prepared by the board, [;] and the

1 present value of the cost of all benefits to be furnished later under
 2 AS 23.30.095 as estimated by the board; the amounts so computed and
 3 estimated **shall** [TO] be retained by the employer as a trust fund to pay
 4 compensation and the cost of benefits as they become due and to pay any
 5 finally remaining excess sum to the person entitled to compensation or to the
 6 representative; and

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

9 * **Sec. 9.** AS 23.30.015(j) is amended to read:

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

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

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

23 * **Sec. 11.** AS 23.30.030(5) is amended to read:

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

1 employer in order to keep the policy in force. If, however, the employer has secured
 2 insurance with another insurance carrier, cancellation is effective as of the date of the
 3 new coverage.

4 * **Sec. 12.** AS 23.30.041(a) is amended to read:

5 (a) The **director** [BOARD] shall select and employ a reemployment benefits
 6 administrator. The **director** [BOARD] may authorize the administrator to select and
 7 employ additional staff. The administrator is in the partially exempt service under
 8 AS 39.25.120.

9 * **Sec. 13.** AS 23.30.041(b) is amended to read:

10 (b) The administrator shall

11 (1) enforce regulations adopted by the board to implement this section;

12 (2) recommend regulations for adoption by the board that establish
 13 performance and reporting criteria for rehabilitation specialists;

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

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

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

23 (A) the estimated and actual cost of each active rehabilitation
 24 plan;

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

26 (C) a status report on all individuals **requesting, waiving,**
 27 **beginning,** completing, or terminating a reemployment benefits program
 28 including

29 **(i) reasons for denial, waiver, suspension, or**
 30 **termination;**

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

(iii) other information required by the director

[DATE];

(D) the cost of reemployment benefits;

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

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

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

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

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

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

(c) An employee and an employer may stipulate to the employee's eligibility for reemployment benefits at any time. If an employee suffers a compensable injury and, as a result of the injury, the employee is totally unable, for 45 consecutive days, to return to the employee's employment at the time of injury, the administrator shall notify the employee of the employee's rights under this section within 14 days after the 45th day. If the employee is totally unable to return to the employee's employment for 60 consecutive days as a result of the injury, the employee or employer may request an eligibility evaluation. The administrator may approve the request if the employee's injury may permanently preclude the employee's return to the employee's occupation at the time of the injury. If the employee is totally unable to return to the employee's employment at the time of the injury for 90 consecutive days as a result of the injury, the administrator shall, without a request, order an eligibility evaluation unless a stipulation of eligibility was submitted. If the administrator approves a request or orders an evaluation, the administrator shall, on a rotating and geographic basis, select a rehabilitation specialist from the list maintained under (b)(6) of this section to

1 perform the eligibility evaluation. If the person that employs a rehabilitation specialist
 2 selected by the administrator to perform an eligibility evaluation under this subsection
 3 is performing any other work on the same workers' compensation claim involving the
 4 injured employee, the administrator shall select a different rehabilitation specialist.

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 benefits
 21 shall then be paid at the employee's temporary total disability rate. If the employee's
 22 permanent impairment benefits are exhausted before the completion or termination of
 23 the reemployment process [PLAN], the employer shall provide compensation equal to
 24 70 percent of the employee's spendable weekly wages, but not to exceed 105 percent
 25 of the average weekly wage, until the completion or termination of the process
 26 [PLAN], except that any compensation paid under this subsection is reduced by wages
 27 earned by the employee while participating in the process [PLAN] to the extent that
 28 the wages earned, when combined with the compensation paid under this subsection,
 29 exceed the employee's temporary total disability rate. If permanent partial disability
 30 or permanent partial impairment benefits have been paid in a lump sum before the
 31 employee requested or was found eligible for reemployment benefits, payment of

1 benefits under this subsection is suspended until permanent partial disability benefits
 2 would have ceased, had those benefits been paid at the employee's temporary total
 3 disability rate, notwithstanding the provisions of AS 23.30.155(j). A permanent
 4 impairment benefit remaining unpaid upon the completion or termination of the plan
 5 shall be paid to the employee in a single lump sum. An employee may not be
 6 considered permanently totally disabled so long as the employee is involved in the
 7 rehabilitation process under this chapter. The fees of the rehabilitation specialist or
 8 rehabilitation professional shall be paid by the employer and may not be included in
 9 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 23.30.065 is amended to read:

29 **Sec. 23.30.065. Employer's record of injuries.** An employer shall keep a
 30 record **with** [IN] respect of an injury to an employee. The record must contain the
 31 information of disease, other disability, or death **with** [IN] respect to an injury that the

1 **division** [BOARD] requires, and must be available to inspection by the **division**
 2 [BOARD] or by a state authority at the times and under the conditions that the
 3 **department** [BOARD] prescribes by regulation.

4 * **Sec. 21.** AS 23.30.070(a) is amended to read:

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

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

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

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

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

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

16 * **Sec. 22.** AS 23.30.070(b) is amended to read:

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

20 * **Sec. 23.** AS 23.30.070(d) is amended to read:

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

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

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

1 or bond to secure the payment of compensation liabilities as they are incurred.

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

13 * **Sec. 25.** AS 23.30.075 is amended by adding a new subsection to read:

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

19 * **Sec. 26.** AS 23.30.080(d) is amended to read:

20 (d) If an employer fails to insure or provide security as required by
21 AS 23.30.075, the **director** [BOARD] may issue a stop order prohibiting the use of
22 employee labor by the employer until the employer insures or provides security as
23 required by AS 23.30.075. The failure of an employer to file evidence of compliance
24 as required by AS 23.30.085 creates a rebuttable presumption that the employer has
25 failed to insure or provide security as required by AS 23.30.075. If an employer fails
26 to comply with a stop order issued under this section, the board shall assess a civil
27 penalty of \$1,000 a [PER] day. The employer may not obtain a public contract with
28 the state or a political subdivision of the state for three years following the violation of
29 the stop order.

30 * **Sec. 27.** AS 23.30.080 is amended by adding new subsections to read:

31 (e) If a representative of the department investigates an employer's failure to

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

14 (f) If an employer fails to insure or provide security as required by
15 AS 23.30.075, the division may petition the board to assess a civil penalty of up to
16 \$1,000 for each employee for each day an employee is employed while the employer
17 failed to insure or provide the security required by AS 23.30.075. The failure of an
18 employer to file evidence of compliance as required by AS 23.30.085 creates a
19 rebuttable presumption that the employer failed to insure or provide security as
20 required by AS 23.30.075.

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

1 * **Sec. 28.** AS 23.30.085(a) is amended to read:

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

9 * **Sec. 29.** AS 23.30.095(h) is amended to read:

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

18 * **Sec. 30.** AS 23.30.095(j) is amended to read:

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

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

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

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

30 **(4) four health care providers as defined in AS 09.55.560, one of**
31 **whom is a representative of the Alaska State Medical Association and one of**

1 **whom is a representative of the Alaska State Hospital and Nursing Home**
 2 **Association; except that a chiropractic physician may not be appointed under**
 3 **this paragraph.**

4 * **Sec. 31.** AS 23.30.095 is amended by adding a new subsection to read:

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

12 * **Sec. 32.** AS 23.30 is amended by adding a new section to article 2 to read:

13 **Sec. 23.30.097. Fees for medical treatment and services.** (a) All fees and
 14 other charges for medical treatment or service are subject to regulation by the board
 15 consistent with this section. A fee or other charge for medical treatment or service
 16 may not exceed the lesser of

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

20 (2) the fee or charge for the service when provided to the general
 21 public; or

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

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

28 (1) the employee's right to choose the employee's attending physician
 29 under AS 23.30.095(a) is not impaired;

30 (2) when given to the employee, the employer's preferred physician list
 31 must clearly state that the list is voluntary, that the employee's choice is not restricted

1 to the list, that the employee's rights under this chapter are not impaired by choosing
2 an attending physician from the list, and that, if the employee chooses an attending
3 physician from the list, the employee may, in the manner provided in AS 23.30.095,
4 make one change of attending physician, from the list or otherwise; and

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

8 (c) An employer, or group of employers, may negotiate with physicians and
9 other treatment service providers under this chapter to obtain reduced fees and service
10 charges and may take the fees and charges into account when forming a list of
11 preferred physicians and providers. In no event may an employer, or group of
12 employers, attempt to influence the treatment, medical decisions, or ratings by the
13 physicians in the course of the negotiations of such a preferred physician and provider
14 fee plans.

15 (d) An employer shall pay an employee's bills for medical treatment under this
16 chapter, excluding prescription charges or transportation for medical treatment, within
17 30 days after the date that the employer receives the provider's bill or a completed
18 report as required by AS 23.30.095(c), whichever is later.

19 (e) A physician or other provider of treatment services under this chapter,
20 including hospital services, that submits a bill for medical treatment to the insurer or
21 self-insured employer shall also submit a copy of the bill to the employee to whom the
22 treatment was provided. An employee who notifies the insurer or self-insured
23 employer's adjuster in writing of an overcharge in the bill that was not previously
24 identified by the insurer or self-insured employer's adjuster shall be entitled to a
25 reward equal to 25 percent of the billing reduction or reimbursement achieved due to
26 the employee's report. This reward does not apply to overcharges of an amount under
27 \$100 if the insurer or self-insured employer's adjuster elects not to pursue correction
28 of the bill.

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

31 (g) Unless the employer controverts a charge, the employer shall reimburse an

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

13 * **Sec. 33.** AS 23.30.100(b) is amended to read:

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

20 * **Sec. 34.** AS 23.30.107 is amended to read:

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

31 (b) Medical or rehabilitation records in an employee's file maintained by the

1 **division and individually identifiable information concerning employees and**
 2 **employers in files maintained by the division** [BOARD] are not public records
 3 subject to public inspection and copying under AS 40.25. This subsection does not
 4 prohibit

5 (1) the reemployment benefits administrator, **the division**, the board,
 6 or the department from releasing medical or rehabilitation records in an employee's
 7 file, **or releasing individually identifiable information concerning employees and**
 8 **employers in files maintained by the division**, without the employee's **or the**
 9 **employer's** consent, to a physician providing medical services under AS 23.30.095(k)
 10 or 23.30.110(g), **an employer of the employee, an employee of the employer**, a
 11 party to a claim **regarding** [FILED BY] the employee, or a governmental agency;
 12 [OR]

13 (2) the quoting or discussing of [MEDICAL OR REHABILITATION]
 14 records contained in an employee's file during a hearing on a claim for compensation,
 15 **in a determination by the reemployment benefits administrator**, or in a decision
 16 and order of the board; **or**

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

19 * **Sec. 35.** AS 23.30.107 is amended by adding a new subsection to read:

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

22 * **Sec. 36.** AS 23.30.140 is amended to read:

23 **Sec. 23.30.140. Appointment of guardian by court.** The **director**
 24 [BOARD] may require the appointment of a guardian or other representative by a
 25 competent court for any person who is mentally incompetent or a minor to receive
 26 compensation payable to the person under this chapter and to exercise the powers
 27 granted to or to perform the duties required of the person under this chapter. If the
 28 **director** [BOARD] does not require the appointment of a guardian to receive the
 29 compensation of a minor, appointment for this purpose is not necessary.

30 * **Sec. 37.** 23.30.145(b) is amended to read:

31 (b) If an employer fails to file timely notice of controversy or fails to pay

1 compensation or medical and related benefits within 15 days after it becomes due or
2 otherwise resists the payment of compensation or medical and related benefits and if
3 the claimant has employed an attorney in the successful prosecution of the claim, the
4 board shall make an award to reimburse the claimant for the costs in the proceedings,
5 including [A] reasonable attorney **fees** [FEE]. The award is in addition to the
6 compensation or medical and related benefits ordered.

7 * **Sec. 38.** AS 23.30.155(a) is amended to read:

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

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

13 (2) the name of the employee;

14 (3) the name of the employer;

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

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

18 * **Sec. 39.** AS 23.30.155(c) is amended to read:

19 (c) The insurer or adjuster shall notify the **division** [BOARD] and the
20 employee on a form prescribed by the **director** [BOARD] that the payment of
21 compensation has begun or has been increased, decreased, suspended, terminated,
22 resumed, or changed in type. An initial report shall be filed with the **division**
23 [BOARD] and sent to the employee within 28 days after the date of issuing the first
24 payment of compensation. If at any time 21 days or more pass and no compensation
25 payment is issued, a report notifying the **division** [BOARD] and the employee of the
26 termination or suspension of compensation shall be filed with the **division** [BOARD]
27 and sent to the employee within 28 days after the date the last compensation payment
28 was issued. A report shall also be filed with the **division** [BOARD] and sent to the
29 employee within 28 days after the date of issuing a payment increasing, decreasing,
30 resuming, or changing the type of compensation paid. If the **division** [BOARD] and
31 the employee are not notified within the 28 days prescribed by this subsection for

1 reporting, the insurer or adjuster shall pay a civil penalty of \$100 for the first day plus
2 \$10 for each day after the first day [THEREAFTER] that the notice was not given.
3 Total penalties under this subsection may not exceed \$1,000 for a failure to file a
4 required report. Penalties assessed under this subsection are eligible for reduction
5 under (m) of this section. A penalty assessed under this subsection after penalties have
6 been reduced under (m) of this section shall be increased by 25 percent and shall bear
7 interest at the rate established under AS 45.45.010.

8 * **Sec. 40.** AS 23.30.155(d) is amended to read:

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

23 * **Sec. 41.** AS 23.30.155(e) is amended to read:

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

1 **recipient to whom the unpaid installment was to be paid.**

2 * **Sec. 42.** AS 23.30.155(f) is amended to read:

3 (f) If compensation payable under the terms of an award is not paid within 14
4 days after it becomes due, there shall be added to that unpaid compensation an amount
5 equal to 25 percent of **the unpaid installment. The additional amount** [IT,
6 WHICH] shall be paid at the same time as, but in addition to, the compensation, unless
7 review of the compensation order making the award [IS HAD] as provided in **the**
8 **Alaska Rules of Appellate Procedure** [AS 23.30.125] and an interlocutory injunction
9 staying payments is allowed by the court. **The additional amount shall be paid**
10 **directly to the recipient to whom the unpaid compensation was to be paid.**

11 * **Sec. 43.** AS 23.30.155(i) is amended to read:

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

16 * **Sec. 44.** AS 23.30.155(k) is amended to read:

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

21 * **Sec. 45.** AS 23.30.155(m) is amended to read:

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

1 the insurer or adjuster filed at least 99 percent of the reports on time, the penalties
 2 assessed under (c) of this section shall be waived. If, during the preceding year, the
 3 insurer or adjuster filed at least 97 percent of the reports on time, 75 percent of the
 4 penalties assessed under (c) of this section shall be waived. If, during the preceding
 5 year, the insurer or adjuster filed 95 percent of the reports on time, 50 percent of the
 6 penalties assessed under (c) of this section shall be waived. If, during the preceding
 7 year, the insurer's or adjuster's reports have not been filed on time at least 95 percent
 8 of the time, none of the penalties assessed under (c) of this section shall be waived.
 9 The penalties that are not waived are due and payable when the insurer or adjuster
 10 receives notification from the **director** [COMMISSIONER] regarding the timeliness
 11 of the reports. If the annual report is not filed by March 1 of each year, the insurer or
 12 adjuster shall pay a civil penalty of \$100 for the first day the annual report is late [,]
 13 and \$10 for each additional day the report is late. If the annual report is incomplete
 14 when filed, the insurer or adjuster shall pay a civil penalty of \$1,000.

15 * **Sec. 46.** AS 23.30.155(o) is amended to read:

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

21 * **Sec. 47.** AS 23.30.175(b) is amended to read:

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

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

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

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

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

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

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

10 * **Sec. 48.** AS 23.30.175(c) is amended to read:

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

15 * **Sec. 49.** AS 23.30.175 is amended by adding a new subsection to read:

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

20 * **Sec. 50.** AS 23.30.205(e) is amended to read:

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

26 * **Sec. 51.** AS 23.30.220(a) is amended to read:

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

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

1 week, the weekly amount is the employee's gross weekly earnings;

2 (2) if at the time of injury the employee's earnings are calculated by the
3 month, the employee's gross weekly earnings are the monthly earnings multiplied by
4 12 and divided by 52;

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

7 (4) if at the time of injury the [(A)] employee's earnings are calculated
8 by the day, **by the** hour, or by the output of the employee, **then** the employee's gross
9 weekly earnings are **1/50 of the total wages that the employee earned from all**
10 **occupations during either of the two calendar years immediately preceding the**
11 **injury, whichever is** [THE EMPLOYEE'S EARNINGS] most favorable to the
12 employee [COMPUTED BY DIVIDING BY 13 THE EMPLOYEE'S EARNINGS,
13 INCLUDING OVERTIME OR PREMIUM PAY, EARNED DURING ANY PERIOD
14 OF 13 CONSECUTIVE CALENDAR WEEKS WITHIN THE 52 WEEKS
15 IMMEDIATELY PRECEDING THE INJURY];

16 (B) EMPLOYEE HAS BEEN EMPLOYED FOR LESS THAN
17 13 CALENDAR WEEKS IMMEDIATELY PRECEDING THE INJURY,
18 THEN, NOTWITHSTANDING (1) - (3) OF THIS SUBSECTION AND (A)
19 OF THIS PARAGRAPH, THE EMPLOYEE'S GROSS WEEKLY
20 EARNINGS ARE COMPUTED BY DETERMINING THE AMOUNT THAT
21 THE EMPLOYEE WOULD HAVE EARNED, INCLUDING OVERTIME
22 OR PREMIUM PAY, HAD THE EMPLOYEE BEEN EMPLOYED BY THE
23 EMPLOYER FOR 13 CALENDAR WEEKS IMMEDIATELY PRECEDING
24 THE INJURY AND DIVIDING THIS SUM BY 13];

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

29 (6) if at the time of injury **the employee's earnings are calculated by**
30 **the week under (a)(1) of this section or by the month under (a)(2) of this section**
31 **and** the employment is exclusively seasonal or temporary, then [,

1 NOTWITHSTANDING (1) - (5) OF THIS SUBSECTION,] the gross weekly
2 earnings are 1/50 of the total wages that the employee has earned from all occupations
3 during the 12 calendar months immediately preceding the injury;

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

7 (8) if an employee when injured is a minor, an apprentice, or a trainee
8 in a **formalized** [FORMAL] training program, as determined by the board, whose
9 wages under normal conditions would increase during the period of disability, the
10 projected increase may be considered by the board in computing the gross weekly
11 earnings of the employee; **if the minor, apprentice, or trainee would have likely**
12 **continued that training program, then the compensation shall be the average**
13 **weekly wage at the time of injury rather than that based on the individual's prior**
14 **earnings;**

15 (9) if the employee is injured while performing duties as a volunteer
16 ambulance attendant, volunteer police officer, or volunteer fire fighter, then,
17 notwithstanding (1) - (6) of this subsection, the gross weekly earnings for calculating
18 compensation shall be the minimum gross weekly earnings paid a full-time ambulance
19 attendant, police officer, or fire fighter employed in the political subdivision where the
20 injury occurred, or, if the political subdivision has no full-time ambulance attendants,
21 police officers, or fire fighters, at a reasonable figure previously set by the political
22 subdivision to make this determination, but in no case may the gross weekly earnings
23 for calculating compensation be less than the minimum wage computed on the basis of
24 40 hours work per week;

25 (10) if an employee is entitled to compensation under AS 23.30.180
26 and the board determines that calculation of the employee's gross weekly earnings
27 under (1) - (7) of this subsection does not fairly reflect the employee's earnings during
28 the period of disability, the board shall determine gross weekly earnings by
29 considering the nature of the employee's work, work history, and resulting disability,
30 but compensation calculated under this paragraph may not exceed the employee's
31 gross weekly earnings at the time of injury.

1 * **Sec. 52.** AS 23.30.240 is amended to read:

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

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

18 * **Sec. 53.** AS 23.30.240 is amended by adding a new subsection to read:

19 (b) Except as provided in this subsection, a member of a limited liability
 20 company organized under AS 10.50 is not an employee of the company under this
 21 chapter. Notwithstanding any other provision of this chapter, a limited liability
 22 company may bring a member of the company within the coverage of the company's
 23 insurance contract by specifically including the member in the contract of insurance.
 24 The election to bring the member within the company's coverage continues in force
 25 for the period the contract of insurance is in effect. During that period, a member
 26 brought within the coverage of the insurance contract is an employee of the company
 27 under this chapter.

28 * **Sec. 54.** 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. 55.** 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. 56.** 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. 57.** 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. 58.** 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. 59.** 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. 60.** AS 39.25.120(c)(14) is amended to read:

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

20 * **Sec. 61.** AS 44.23.020 is amended by adding a new subsection to read:

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

24 * **Sec. 62.** AS 23.30.095(f), (l), and (m) are repealed.

25 * **Sec. 63.** AS 23.30.097(a)(1) is repealed August 1, 2007.

26 * **Sec. 64.** The uncodified law of the State of Alaska is amended by adding a new section to
 27 read:

28 INDIRECT COURT RULE AMENDMENT. AS 23.30.280(i), as enacted by sec. 58
 29 of this Act, has the effect of changing Rule 45, Alaska Rules of Civil Procedure, by changing
 30 the procedure relating to subpoenas.

31 * **Sec. 65.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

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

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

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

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

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

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

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

19 (b) The task force established under (a) of the section shall consist of 15 voting
20 members. One member shall be a state senator appointed by the president of the senate, one
21 member shall be a state representative appointed by the speaker of the house of
22 representatives, and one member shall be a member of the minority in either house jointly
23 selected by the president of the senate and the speaker of the house of representatives.
24 Twelve members shall be appointed jointly by the president of the senate and speaker of the
25 house of representatives as follows:

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

27 (2) a representative of the public;

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

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

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

31 (6) a representative of the insurance industry that provides workers'

1 compensation insurance;

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

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

6 (9) a representative of the Alaska State Hospital and Nursing Home
7 Association; and

8 (10) a representative of self-insured employers.

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

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

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

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

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

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

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

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

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

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

30 * **Sec. 66.** The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 APPLICABILITY. The amendment to AS 23.30.175(b) made by sec. 47 of this Act
2 applies to an injury occurring on or after the effective date of sec. 47 of this Act.

3 * **Sec. 67.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

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

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

15 * **Sec. 68.** The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

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

22 * **Sec. 69.** The uncodified law of the State of Alaska is amended by adding a new section to
23 read:

24 TRANSITION: MEDICAL SERVICES REVIEW COMMITTEE STUDY,
25 REPORTS, AND RECOMMENDATIONS. (a) The medical services review committee
26 appointed under AS 23.30.095(j) as amended by this Act shall proceed to study medical and
27 related benefits provided under AS 23.30 to determine the appropriateness, necessity, and cost
28 of the benefits.

29 (b) The medical services review committee appointed under AS 23.30.095(j) as
30 amended by this Act shall assist the Task Force on Workers' Compensation established in sec.
31 65 of this Act and make recommendations for medical procedure guidelines to the task force,

1 not later than December 1, 2005, which may be included in the written findings and proposed
2 legislation under sec. 65(c)(6) of this Act.

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

5 CONDITIONAL EFFECT. AS 23.30.280(i), enacted by sec. 58 of this Act, takes
6 effect only if sec 64 of this Act receives the two-thirds majority vote of each house required
7 by art. IV, sec. 15, Constitution of the State of Alaska.

8 * **Sec. 71.** Sections 30, 65, and 68 of this Act take effect immediately under
9 AS 01.10.070(c).

10 * **Sec. 72.** Sections 1, 2, 47, and 69 of this Act take effect September 1, 2005.

11 * **Sec. 73.** Except as provided in secs. 71 and 72 of this Act, this Act takes effect August 1,
12 2005.