

CS FOR HOUSE BILL NO. 79(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 2/21/18

Referred: Rules

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

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to workers' compensation; relating to the second injury fund; relating**
2 **to service fees and civil penalties for the workers' safety programs and the workers'**
3 **compensation program; relating to the liability of business entities and certain persons**
4 **for payment of workers' compensation benefits and civil penalties; relating to civil**
5 **penalties for underinsuring or failing to insure or provide security for workers'**
6 **compensation liability; relating to preauthorization and timely payment for medical**
7 **treatment and services provided to injured employees; relating to incorporation of**
8 **reference materials in workers' compensation regulations; relating to proceedings**
9 **before the Alaska Workers' Compensation Board; relating to the authorization of the**
10 **workers' compensation benefits guaranty fund to claim a lien; excluding independent**
11 **contractors from workers' compensation coverage; establishing the circumstances under**
12 **which certain nonemployee executive corporate officers and members of limited liability**

1 companies may obtain workers' compensation coverage; relating to the duties of injured
 2 employees to report income or work; relating to misclassification of employees and
 3 deceptive leasing; defining 'employee'; relating to the Alaska Workers' Compensation
 4 Board's approval of attorney fees in a settlement agreement; and providing for an
 5 effective date."

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

7 * **Section 1.** AS 23.05.067(a) is amended to read:

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

13 (1) for each employer,

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

17 (B) the service fee is 2.9 percent of all payments reported to the
 18 division of workers' compensation in the department under AS 23.30.155(m)
 19 or (n), except second injury fund payments; and

20 (2) for each insurer, the director of the division of insurance shall,
 21 under (e) of this section, deposit from funds received from the insurer under
 22 AS 21.09.210 a service fee of 2.5 [1.82] percent of the direct premium income for
 23 workers' compensation insurance received by the insurer during the year ending on the
 24 preceding December 31, subject to all the deductions specified in AS 21.09.210(b).

25 * **Sec. 2.** AS 23.05.067(e) is amended to read:

26 (e) Annual service fees and civil penalties collected under this section **and**
 27 **AS 23.30.155(c) and (m)** shall be deposited in the workers' safety and compensation
 28 administration account in the state treasury. Under AS 37.05.146(c), the service fees
 29 and civil penalties shall be accounted for separately, and appropriations from the

1 account are not made from the unrestricted general fund. The legislature may
 2 appropriate money from the account for expenditures by the department for necessary
 3 costs incurred by the department in the administration of the workers' safety programs
 4 contained in AS 18.60 and of the Alaska Workers' Compensation Act contained in
 5 AS 23.30. Nothing in this subsection creates a dedicated fund or dedicates the money
 6 in the account for a specific purpose. Money deposited in the account does not lapse at
 7 the end of a fiscal year unless otherwise provided by an appropriation.

8 * **Sec. 3.** AS 23.30.070(a) is amended to read:

9 (a) Within 10 days from the date the employer has knowledge of an injury or
 10 death or from the date the employer has knowledge of a disease or infection, alleged
 11 by the employee or on behalf of the employee to have arisen out of and in the course
 12 of the employment, the employer shall **file with** [SEND TO] the division a report
 13 setting out

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

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

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

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

19 (5) the other information that the division may require.

20 * **Sec. 4.** AS 23.30.070(b) is amended to read:

21 (b) Additional reports with respect to the injury and to the condition of the
 22 employee shall be **filed** [SENT] by the employer **with** [TO] the division at the times
 23 and in the manner that the director prescribes.

24 * **Sec. 5.** AS 23.30.070(d) is amended to read:

25 (d) **Filing** [MAILING] of the report **with** [AND A COPY TO] the division **in**
 26 **a format prescribed by the director** [IN A STAMPED ENVELOPE], within the
 27 time prescribed in (a) or (b) of this section, is compliance with this section.

28 * **Sec. 6.** AS 23.30.070(f) is amended to read:

29 (f) An employer who fails or refuses to **file** [SEND] a report required of the
 30 employer by this section or who fails or refuses to **file** [SEND] the report required by
 31 (a) of this section within the time required shall, if so required by the board, pay the

1 employee or the legal representative of the employee or other person entitled to
 2 compensation by reason of the employee's injury or death an additional award equal to
 3 20 percent of the amounts that were unpaid when due. The award shall be against
 4 either the employer or the insurance carrier, or both.

5 * **Sec. 7.** AS 23.30.075(b) is repealed and reenacted to read:

6 (b) If an employer is a business entity that is a corporation, limited liability
 7 company, or limited liability partnership, a person who, at the time of an employee's
 8 injury or death, has at least a 10 percent ownership in the business entity, is actively in
 9 charge of the operations of the business entity, or has the authority to insure the
 10 business entity or apply for a certificate of self insurance, is personally, jointly, and
 11 severally liable, with the business entity, for the payment of

12 (1) all compensation or other benefits for which the business entity is
 13 liable under this chapter if the business entity is not insured or qualified as a self-
 14 insurer at the time of the injury or death; and

15 (2) a civil penalty under AS 23.30.080 for which the business entity is
 16 liable.

17 * **Sec. 8.** AS 23.30.080(e) is amended 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 representative shall inform the employer. The
 22 representative may request the director to issue a stop order prohibiting the use of
 23 employee labor by the employer until the employer insures or provides security as
 24 required by AS 23.30.075. The director may issue a stop order, without a hearing,
 25 based on the representative's investigation. The director shall dissolve a stop order
 26 issued under this subsection upon receipt of substantial evidence that the employer is
 27 insured or has provided security as required by AS 23.30.075(a). If an employer fails
 28 to comply with a stop order issued under this subsection, the division may [PETITION
 29 THE BOARD TO ASSESS A CIVIL PENALTY. THE BOARD MAY] assess a civil
 30 penalty of \$1,000 a day. An employer who is assessed a penalty under this subsection
 31 may not obtain a public contract with the state or a political subdivision of the state for

1 the three years following violation of the stop order.

2 * **Sec. 9.** AS 23.30.080(f) is repealed and reenacted to read:

3 (f) If, after an investigation, the division finds substantial evidence that an
 4 employer has failed to insure or provide security as required by AS 23.30.075 or is
 5 underinsured as a result of misclassifying employees or engaging in deceptive leasing
 6 practices as defined in AS 23.30.250, the division may assess a civil penalty of up to
 7 three times the workers' compensation insurance premium that the employer would
 8 have paid if the employer had insured, provided the required security, or properly
 9 classified employees. The division shall calculate the premium based on the
 10 employer's payroll, including payments that would be considered wages if the
 11 employer had not misclassified employees or engaged in deceptive leasing practices
 12 under AS 23.30.250, and the assigned risk rates approved by the division of insurance
 13 in effect at the time the employer was uninsured or underinsured. The division shall
 14 apply aggravating and mitigating factors adopted in regulation to set the penalty
 15 amount. Notwithstanding AS 23.30.250(e), a civil penalty under this subsection may
 16 be assessed against an employer that misclassifies employees or engages in deceptive
 17 leasing practices, even if the employer does not do so knowingly and with the purpose
 18 of evading full payment for workers' compensation insurance premiums.

19 * **Sec. 10.** AS 23.30.080(g) is amended to read:

20 (g) **The** [IF AN EMPLOYER FAILS TO PAY A CIVIL PENALTY ORDER
 21 ISSUED UNDER (d), (e), OR (f) OF THIS SECTION WITHIN SEVEN DAYS
 22 AFTER THE DATE OF SERVICE OF THE ORDER UPON THE EMPLOYER,
 23 THE] director may declare **an** [THE] employer in default **if the employer fails to pay**
 24 **or contest a civil penalty assessed under this section not later than 30 days after**
 25 **the date of service of notice on the employer, fails to pay a civil penalty not later**
 26 **than 30 days after the board orders payment, or fails to pay a civil penalty in**
 27 **accordance with the terms of a payment plan.** The director shall file a certified copy
 28 of the penalty order, **notice, or payment plan,** and declaration of default with the
 29 clerk of the superior court. The court shall, upon the filing of the copy [OF THE
 30 ORDER] and declaration, enter judgment for the amount declared in default if it is in
 31 accordance with law. **Any time** [ANYTIME] after a declaration of default, the

1 attorney general shall, when requested to do so by the director, take appropriate action
 2 to ensure collection of the defaulted payment. Review of the judgment may be had as
 3 provided under the Alaska Rules of Civil Procedure. Final proceedings to execute the
 4 judgment may be had by writ of execution.

5 * **Sec. 11.** AS 23.30.080 is amended by adding new subsections to read:

6 (h) If the division requests copies of records required to be kept under
 7 AS 23.05.080 or information relating to an investigation of an employer's compliance
 8 with the insurance provisions of this chapter, and the employer does not provide the
 9 requested records or information not later than 30 days after service of the written
 10 request, the division may assess a civil penalty against the employer of \$150 for each
 11 day the employer is late, up to a maximum penalty of \$10,000.

12 (i) A civil penalty assessed under this section may not be suspended in full or
 13 in part.

14 (j) The division and an employer may agree to a payment plan for a civil
 15 penalty assessed under this section. The board, in reviewing an assessed civil penalty
 16 under (k) of this section, may order a payment plan. Interest under a payment plan
 17 accrues at the rate specified in AS 09.30.070(a) that is in effect on the date that the
 18 payment plan is agreed to or ordered.

19 (k) An employer may contest a civil penalty assessed by the division under
 20 (e), (f), or (h) of this section by filing a petition with the board not later than 30 days
 21 after the notice of the civil penalty is served on the employer. The board shall schedule
 22 a prehearing not later than 30 days after the filing date of the petition for the purpose
 23 of setting a hearing date. The board may not consider a late petition unless the
 24 employer shows good cause for the late filing. The failure of an employer to file
 25 evidence of compliance as required by AS 23.30.085 creates a rebuttable presumption
 26 that the employer failed to insure or provide security as required by AS 23.30.075. If
 27 the employer disputes the division's calculation of the amount that the employer would
 28 have paid for workers' compensation insurance during the time the employer was
 29 uninsured or underinsured, the employer bears the burden of producing evidence and
 30 proving that the workers' compensation insurance premium would have been less than
 31 the division's calculation. If the employer does not file a petition, the assessment of the

1 civil penalty is considered final and not subject to review by the board, commission, or
2 a court.

3 * **Sec. 12.** AS 23.30.082(a) is amended to read:

4 (a) The workers' compensation benefits guaranty fund is established in the
5 general fund to carry out the purposes of this section. The fund is composed of civil
6 penalty **and interest** payments made by employers under AS 23.30.080, **civil penalty**
7 **payments under AS 23.30.085**, income earned on investment of the money in the
8 fund, money deposited in the fund by the department, and appropriations to the fund,
9 if any. However, money appropriated to the fund does not lapse. Amounts in the fund
10 may be appropriated for claims against the fund, for expenses directly related to fund
11 operations and claims, and for legal expenses.

12 * **Sec. 13.** AS 23.30.085 is repealed and reenacted to read:

13 **Sec. 23.30.085. Duty of employer or insurer to file evidence of compliance.**

14 (a) An employer or insurer subject to this chapter shall, not later than 30 days after
15 acquiring insurance, initially file with the division, in the format prescribed by the
16 director, evidence of compliance with the insurance provisions of this chapter. The
17 employer or insurer also shall, not later than 30 days after the expiration or
18 termination, file evidence of compliance with the insurance provisions of this chapter.
19 The requirements in this section do not apply to an employer who has certification
20 from the division of the employer's financial ability to pay compensation directly
21 without insurance.

22 (b) If an employer or insurer fails, refuses, or neglects to comply with this
23 section, the employer or insurer is subject to a civil penalty of \$100 for each day the
24 employer or insurer is late. Total penalties under this subsection may not exceed
25 \$1,000 for each late filing and \$10,000 for each employer or insurer each year for late
26 filings under this section.

27 * **Sec. 14.** AS 23.30.097(d) is amended to read:

28 (d) An employer shall

29 **(1)** pay **or controvert** an employee's bills for medical treatment under
30 this chapter, excluding prescription charges or transportation for medical treatment,
31 **not later than** [WITHIN] 30 days after the date that the employer receives the

1 provider's bill or a completed report as required by AS 23.30.095(c), whichever is
2 later;

3 **(2) authorize or controvert medical treatment or services,**
4 **excluding prescription charges or transportation for medical treatment, not later**
5 **than 60 days after the date that the employer receives the provider's written**
6 **request for authorization for medical treatment that includes the estimated fee or**
7 **charge for the medical treatment and does not exceed the maximum**
8 **reimbursement allowed under this section.**

9 * **Sec. 15.** AS 23.30.098 is amended to read:

10 **Sec. 23.30.098. Regulations.** Under AS 44.62.245(a)(2), in adopting or
11 amending regulations under this chapter, the department may incorporate future
12 amended versions of a document or reference material incorporated by reference if the
13 document or reference material is one of the following:

14 (1) Current Procedural Terminology Codes, produced by the American
15 Medical Association;

16 (2) Healthcare Common Procedure Coding System, produced by the
17 **federal Centers for Medicare and Medicaid Services** [AMERICAN MEDICAL
18 ASSOCIATION];

19 (3) International Classification of Diseases, published by the **World**
20 **Health Organization** [AMERICAN MEDICAL ASSOCIATION];

21 (4) Relative Value Guide, produced by the American Society of
22 Anesthesiologists;

23 (5) Diagnostic and Statistical Manual of Mental Disorders, produced
24 by the American Psychiatric Association;

25 (6) Current Dental Terminology, published by the American Dental
26 Association;

27 (7) Resource-Based Relative Value Scale, produced by the federal
28 Centers for Medicare and Medicaid Services;

29 (8) Ambulatory Payment Classifications, produced by the federal
30 Centers for Medicare and Medicaid Services; [OR]

31 (9) Medicare Severity Diagnosis Related Groups, produced by the

1 federal Centers for Medicare and Medicaid Services;

2 **(10) International Classification of Diseases, Tenth Revision,**
 3 **Clinical Modification, developed by the National Center for Health Statistics;**

4 **(11) Clinical Diagnostic Laboratory Services, produced by the**
 5 **federal Centers for Medicare and Medicaid Services;**

6 **(12) Durable Medical Equipment, Prosthetics, Orthotics, and**
 7 **Supplies, produced by the federal Centers for Medicare and Medicaid Services;**

8 **(13) Payment Allowance Limits for Medicare Part B Drugs,**
 9 **Average Sale Price, produced by the federal Centers for Medicare and Medicaid**
 10 **Services; or**

11 **(14) Ambulance Fee Schedule, produced by the federal Centers for**
 12 **Medicare and Medicaid Services.**

13 * **Sec. 16.** AS 23.30.100(a) is amended to read:

14 (a) Notice of an injury or death in respect to which compensation is payable
 15 under this chapter shall be given within 30 days after the date of such injury or death
 16 [TO THE BOARD AND] to the employer.

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

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

24 * **Sec. 18.** AS 23.30.100(c) is amended to read:

25 (c) Notice shall be given [TO THE BOARD BY DELIVERING IT OR
 26 SENDING IT BY MAIL ADDRESSED TO THE BOARD'S OFFICE, AND] to the
 27 employer by delivering it to the employer or by sending it by mail addressed to the
 28 employer at the employer's last known place of business. If the employer is a
 29 partnership, the notice may be given to a partner, **if a limited liability company, the**
 30 **notice may be given to a member,** or if a corporation, the notice may be given to an
 31 agent or officer **on** [UPON] whom legal process may be served or who is in charge of

1 the business in the place where the injury occurred.

2 * **Sec. 19.** AS 23.30.110(c) is repealed and reenacted to read:

3 (c) The board shall schedule a prehearing not later than 30 days after a claim
4 is filed. At the prehearing, the board or the board's designee shall issue a scheduling
5 order that includes a discovery plan, appropriate deadlines, and the hearing date. The
6 board or the board's designee may modify the scheduling order, including changing
7 the hearing date, on the board's own motion or upon a showing of good cause by the
8 party seeking the modification. The board shall serve notice on each party at least 10
9 days before the hearing.

10 * **Sec. 20.** AS 23.30.110(d) is amended to read:

11 (d) At the hearing, each party may [THE CLAIMANT AND THE
12 EMPLOYER MAY EACH] present evidence with [IN] respect to the claim and may
13 be self-represented or represented by any person authorized by regulation of the
14 board [IN WRITING] for that purpose.

15 * **Sec. 21.** AS 23.30.110 is amended by adding a new subsection to read:

16 (i) The board shall file its decision not later than 30 days after the hearing
17 record closes.

18 * **Sec. 22.** AS 23.30.155(a) is amended to read:

19 (a) Compensation under this chapter shall be paid periodically, promptly, and
20 directly to the person entitled to it, without an award, except where liability to pay
21 compensation is controverted by the employer. To controvert a claim, the employer
22 must file a notice, in a format [ON A FORM] prescribed by the director, stating

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

24 (2) the name of the employee;

25 (3) the name of the employer;

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

27 (5) the type of compensation and all grounds on [UPON] which the
28 right to compensation is controverted.

29 * **Sec. 23.** AS 23.30.155(b) is amended to read:

30 (b) The first installment of compensation, excluding medical benefits, shall
31 be paid [BECOMES DUE] on or before the 14th day after the employer has

1 knowledge of the injury or death. [ON THIS DATE ALL COMPENSATION THEN
 2 DUE SHALL BE PAID.] Subsequent compensation, excluding medical benefits,
 3 shall be paid in installments, every 14 days, except where the board determines that
 4 payment in installments should be made monthly or at some other period. If an
 5 installment of compensation due under this subsection is not paid within 14 days,
 6 a grace period will not be allowed and an additional amount will become due
 7 under (e) of this section. Medical benefits shall be paid in accordance with
 8 AS 23.30.095 and 23.30.097.

9 * **Sec. 24.** AS 23.30.155(c) is amended to read:

10 (c) The insurer or adjuster shall notify the division in a format [AND THE
 11 EMPLOYEE ON A FORM] prescribed by the director that the payment of
 12 compensation has begun or has been increased, decreased, suspended, terminated,
 13 resumed, or changed in type. An initial report shall be filed not later than [WITH
 14 THE DIVISION AND SENT TO THE EMPLOYEE WITHIN] 28 days after the date
 15 of issuing the first payment of compensation. If, at any time, 21 days or more pass and
 16 no compensation payment is issued, a report notifying the division [AND THE
 17 EMPLOYEE] of the termination or suspension of compensation shall be filed not
 18 later than [WITH THE DIVISION AND SENT TO THE EMPLOYEE WITHIN] 28
 19 days after the date the last compensation payment was issued. A report shall also be
 20 filed not later than [WITH THE DIVISION AND SENT TO THE EMPLOYEE
 21 WITHIN] 28 days after the date of issuing a payment increasing, decreasing,
 22 resuming, or changing the type of compensation paid. When the insurer or adjuster
 23 files a report, the division shall notify the employee of the payment or change in
 24 payment of compensation. If the division is [AND THE EMPLOYEE ARE] not
 25 notified within the 28 days prescribed by this subsection for reporting, the insurer or
 26 adjuster shall pay a civil penalty of \$100 for the first day plus \$10 for each day after
 27 the first day that the notice was not given. Total penalties under this subsection may
 28 not exceed \$1,000 for a failure to file a required report. Penalties assessed under this
 29 subsection are eligible for reduction under (m) of this section. A penalty assessed
 30 under this subsection after penalties have been reduced under (m) of this section shall
 31 be increased by 25 percent and shall bear interest at the rate established under

1 AS 45.45.010.

2 * **Sec. 25.** AS 23.30.155(d) is amended to read:

3 (d) If the employer controverts the right to compensation, the employer shall
 4 file with the division, in a format prescribed by the director, [AND SEND TO THE
 5 EMPLOYEE] a notice of controversion on or before the 21st day after the employer
 6 has knowledge of the alleged injury or death. If the employer controverts the right to
 7 compensation, excluding medical benefits, after payments have begun, the employer
 8 shall file with the division, in a format prescribed by the director, [AND SEND TO
 9 THE EMPLOYEE] a notice of controversion not later than the date [WITHIN
 10 SEVEN DAYS AFTER] an installment of compensation payable without an award is
 11 due under (b) of this section. If the employer controverts medical treatment, the
 12 employer shall file with the division, in a format prescribed by the director, a
 13 notice of controversion not later than the date the payment, reimbursement, or
 14 authorization for medical treatment is due under AS 23.30.097. When the
 15 employer files a notice of controversion, the division shall notify the employee of
 16 the controversion. When payment of temporary disability benefits is controverted
 17 solely on the grounds that another employer or another insurer of the same employer
 18 may be responsible for all or a portion of the benefits, the most recent employer or
 19 insurer who is party to the claim and who may be liable shall make the payments
 20 during the pendency of the dispute. When a final determination of liability is made,
 21 any reimbursement required, including interest at the statutory rate, and all costs and
 22 attorney fees incurred by the prevailing employer, shall be made not later than
 23 [WITHIN] 14 days after the determination.

24 * **Sec. 26.** AS 23.30.155(e) is amended to read:

25 (e) If any installment of compensation, excluding medical benefits, payable
 26 without an award is [NOT] paid late [WITHIN SEVEN DAYS AFTER IT
 27 BECOMES DUE], as provided in (b) of this section, there shall be added to the unpaid
 28 installment an amount equal to 25 percent of the installment. If a bill for medical
 29 treatment, including prescription charges or transportation for medical
 30 treatment, is paid or reimbursed late, or a request for medical treatment is not
 31 timely authorized under AS 23.30.097, there shall be added an amount equal to

1 **25 percent of the bill, reimbursement, or estimated fee or charge for the**
 2 **requested medical treatment.** This additional amount shall be paid at the same time
 3 as, and in addition to, the installment, **bill, or reimbursement, or sent with**
 4 **authorization for medical treatment,** unless notice is filed under (d) of this section
 5 or unless the nonpayment **or late authorization** is excused by the board after a
 6 showing by the employer that, owing to conditions over which the employer had no
 7 control, the installment, **bill, or reimbursement** could not be paid **or the request**
 8 **could not be authorized** within the period prescribed for the payment **or**
 9 **authorization.** The additional amount shall be paid directly to the recipient to whom
 10 the unpaid installment, **bill, or reimbursement** was to be paid **or, if authorization of**
 11 **medical treatment was requested, to the employee seeking the medical treatment.**

12 * **Sec. 27.** AS 23.30.155(m) is amended to read:

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

1 the director regarding the timeliness of the reports. If the annual report is not filed by
 2 March 1 of each year, the insurer or adjuster shall pay a civil penalty of \$100 for the
 3 first day the annual report is late and \$10 for each additional day the report is late. If
 4 the annual report is incomplete when filed, the insurer or adjuster shall pay a civil
 5 penalty of \$1,000.

6 * **Sec. 28.** AS 23.30.165(a) is amended to read:

7 (a) **If an [EACH] employee, a [AND] beneficiary, or the workers'**
 8 **compensation benefits guaranty fund (AS 23.30.082) is** entitled to compensation
 9 under the provisions of this chapter, **the person or the fund** has a lien for the full
 10 amount of the compensation the person **or the fund** is entitled to, including costs and
 11 disbursements of suit and attorney fees allowed, **on** [UPON] all of the property in
 12 connection with the construction, preservation, maintenance, or operation of which the
 13 work of the employee was being performed at the time of the injury or death. For
 14 example, [:] in the case of an employee injured or killed while engaged in mining or in
 15 work connected with mining, the lien extends to the entire mine and all property used
 16 in connection with it; and, in the case of an employee injured or killed while engaged
 17 in fishing or in the packing, canning, or salting of fish, or other branch of the fish
 18 industry, the lien extends to the entire packing, fishing, salting, or canning plant or
 19 establishment and all property used in connection with it; and this is the case with
 20 other businesses, industries, works, occupations, and employments. **If the workers'**
 21 **compensation benefits guaranty fund (AS 23.30.082) is entitled to a civil penalty**
 22 **assessed under AS 23.30.080, the fund has a lien for the full amount of the civil**
 23 **penalty on all of the property in connection with the construction, preservation,**
 24 **maintenance, or operation of the uninsured or underinsured employer.**

25 * **Sec. 29.** AS 23.30.165(d) is amended to read:

26 (d) A person **or the workers' compensation benefits guaranty fund**
 27 **(AS 23.30.082)** claiming a lien under this chapter shall, **not later than** [WITHIN] one
 28 year after the **person or the fund has knowledge** [DATE] of the injury **or death**
 29 [FROM WHICH THE CLAIM OF COMPENSATION ARISES], record in the office
 30 of the recorder of the recording district in which the property affected by the lien is
 31 located, a notice of lien signed and verified by the claimant, or someone on behalf of

1 the claimant **or the fund**, and stating [, IN SUBSTANCE,] the name of the person
 2 injured or killed out of which injury or death the claim of compensation arises, the
 3 name of the employer of the injured or deceased person at the time of the injury or
 4 death, a description of the property affected or covered by the lien, and the name of
 5 the owner or reputed owner of the property. **In claiming a lien for a civil penalty**
 6 **under AS 23.30.080, the workers' compensation benefits guaranty fund**
 7 **(AS 23.30.082) shall, not later than one year after the date of a declaration of**
 8 **default, record in the office of the recorder of the recording district in which the**
 9 **property affected by the lien is located a signed and verified notice of lien stating**
 10 **the name of the employer assessed a civil penalty under AS 23.30.080, a**
 11 **description of the property affected or covered by the lien, and the name of the**
 12 **owner or reputed owner of the property.**

13 * **Sec. 30.** AS 23.30.205(e) is amended to read:

14 (e) An employer or the employer's carrier shall notify the commissioner of
 15 labor and workforce development of any possible claim against the second injury fund
 16 as soon as practicable, but in no event later than 100 weeks after the employer or the
 17 employer's carrier has knowledge of the injury or death **or after the deadline for**
 18 **submitting a claim for reimbursement under (g) of this section.**

19 * **Sec. 31.** AS 23.30.205 is amended by adding a new subsection to read:

20 (g) An employer or the employer's insurance carrier shall satisfy all
 21 requirements for reimbursement under this section, including notice of any possible
 22 claim and payment of compensation in excess of 104 weeks, before submitting a claim
 23 for reimbursement to the second injury fund. Notwithstanding (a) and (b) of this
 24 section, a claim for reimbursement may not be submitted for an injury or death that
 25 occurs after August 31, 2018, and must be submitted before October 1, 2020. An
 26 employer that qualifies for reimbursement under this section shall continue to receive
 27 reimbursement payments on claims accepted by the fund, or ordered by the board,
 28 until the fund's liabilities for the claim are extinguished.

29 * **Sec. 32.** AS 23.30.230(a) is amended to read:

30 (a) The following persons are not covered by this chapter:

31 (1) a part-time baby-sitter;

- 1 (2) a cleaning person;
- 2 (3) harvest help and similar part-time or transient help;
- 3 (4) a person employed as a sports official on a contractual basis and
4 who officiates only at sports events in which the players are not compensated; in this
5 paragraph, "sports official" includes an umpire, referee, judge, scorekeeper,
6 timekeeper, organizer, or other person who is a neutral participant in a sports event;
- 7 (5) a person employed as an entertainer on a contractual basis;
- 8 (6) a commercial fisherman, as defined in AS 16.05.940;
- 9 (7) an individual who drives a taxicab whose compensation and written
10 contractual arrangement is as described in AS 23.10.055(a)(13), unless the hours
11 worked by the individual or the areas in which the individual may work are restricted
12 except to comply with local ordinances;
- 13 (8) a participant in the Alaska temporary assistance program
14 (AS 47.27) who is engaged in work activities required under AS 47.27.035 other than
15 subsidized or unsubsidized work or on-the-job training;
- 16 (9) a person employed as a player or coach by a professional hockey
17 team if the person is covered under a health care insurance plan provided by the
18 professional hockey team, the coverage is applicable to both work-related and
19 nonwork-related injuries, and the coverage provides medical and related benefits as
20 required under this chapter, except that coverage may not be limited to two years from
21 the date of injury as described under AS 23.30.095(a); in this paragraph, "health care
22 insurance" has the meaning given in AS 21.12.050;
- 23 (10) a person working as a qualified real estate licensee who performs
24 services under a written contract that provides that the person will not be treated as an
25 employee for federal income tax or workers' compensation purposes; in this
26 paragraph, "qualified real estate licensee" means a person who is required to be
27 licensed under AS 08.88.161 and whose payment for services is directly related to
28 sales or other output rather than the number of hours worked; [AND]
- 29 (11) a transportation network company driver who provides a
30 prearranged ride or is otherwise logged onto the digital network of a transportation
31 network company as a driver; **and**

1 **(12) a person employed as an independent contractor; a person is**
2 **an independent contractor for the purposes of this chapter only if the person**

3 **(A) has an express contract to perform the services;**

4 **(B) is free from direction and control over the means and**
5 **manner of providing services, subject only to the right of the individual**
6 **for whom, or entity for which, the services are provided to specify the**
7 **desired results, completion schedule, or range of work hours, or to**
8 **monitor the work for compliance with contract plans and specifications,**
9 **or federal, state, or municipal law;**

10 **(C) incurs most of the expenses for tools, labor, and other**
11 **operational costs necessary to perform the services, except that materials**
12 **and equipment may be supplied;**

13 **(D) has an opportunity for profit and loss as a result of the**
14 **services performed for the other individual or entity;**

15 **(E) is free to hire and fire employees to help perform the**
16 **services for the contracted work;**

17 **(F) has all business, trade, or professional licenses required**
18 **by federal, state, or municipal authorities for a business or individual**
19 **engaging in the same type of services as the person;**

20 **(G) follows federal Internal Revenue Service requirements**
21 **by**

22 **(i) obtaining an employer identification number, if**
23 **required;**

24 **(ii) filing business or self-employment tax returns for**
25 **the previous tax year to report profit or income earned for the**
26 **same type of services provided under the contract; or**

27 **(iii) intending to file business or self-employment tax**
28 **returns for the current tax year to report profit or income earned**
29 **for the same type of services provided under the contract if the**
30 **person's business was not operating in the previous tax year; and**

31 **(H) meets at least two of the following criteria:**

1 (i) the person is responsible for the satisfactory
 2 completion of services that the person has contracted to perform
 3 and is subject to liability for a failure to complete the contracted
 4 work, or maintains liability insurance or other insurance policies
 5 necessary to protect the employees, financial interests, and
 6 customers of the person's business;

7 (ii) the person maintains a business location or a
 8 business mailing address separate from the location of the
 9 individual for whom, or the entity for which, the services are
 10 performed;

11 (iii) the person provides contracted services for two
 12 or more different customers within a 12-month period or engages
 13 in any kind of business advertising, solicitation, or other marketing
 14 efforts reasonably calculated to obtain new contracts to provide
 15 similar services.

16 * **Sec. 33.** AS 23.30.240 is repealed and reenacted to read:

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

19 (a) Except as provided in (b) of this section, an executive officer elected or appointed
 20 and empowered in accordance with the charter and bylaws of a corporation or a
 21 member of a limited liability company organized under AS 10.50 is not an employee
 22 of the business entity under this chapter if the executive officer or member owns at
 23 least 10 percent of the business entity. Except as provided in (b) of this section, an
 24 executive officer of a municipal corporation or charitable, religious, educational, or
 25 other nonprofit corporation is not an employee of the corporation under this chapter.

26 (b) Any type of corporation or limited liability company may bring an
 27 executive officer or a member exempted under (a) of this section within the coverage
 28 of the business entity's insurance contract by specifically including the executive
 29 officer or member in the contract of insurance. The election to bring the executive
 30 officer or member within the business entity's coverage continues in force for the
 31 period during which the contract of insurance is in effect. During that period, an

1 executive officer or a member brought within the coverage of the insurance contract is
2 an employee of the business entity under this chapter.

3 * **Sec. 34.** AS 23.30.247(c) is amended to read:

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

11 * **Sec. 35.** AS 23.30.250(a) is amended to read:

12 (a) A person who (1) knowingly makes a false or misleading statement,
13 representation, or submission related to a benefit under this chapter; (2) knowingly
14 assists, abets, solicits, or conspires in making a false or misleading submission
15 affecting the payment, coverage, or other benefit under this chapter; (3) knowingly
16 misclassifies employees or engages in deceptive leasing practices for the purpose of
17 evading full payment of workers' compensation insurance premiums; or (4) employs
18 or contracts with a person or firm to coerce or encourage an individual to file a
19 fraudulent compensation claim is civilly liable to a person adversely affected by the
20 conduct, is guilty of theft by deception as defined in AS 11.46.180, and may be
21 punished as provided by AS 11.46.120 - 11.46.150. **The division may assess a civil**
22 **penalty as provided in AS 23.30.080 against an employer that misclassifies**
23 **employees or engages in deceptive leasing practices.**

24 * **Sec. 36.** AS 23.30.250 is amended by adding new subsections to read:

25 (d) While receiving compensation provided under this chapter, an employee
26 shall inform the employer or insurer of the employee's receipt of any unemployment
27 or disability benefits other than the compensation provided under this chapter, and
28 shall report any employment other than work for the employer providing the
29 compensation under this chapter. In this subsection, "employment" means any type of
30 work, whether paid or unpaid.

31 (e) An employer misclassifies employees or engages in deceptive leasing

1 practices under (a) of this section if, for the purpose of evading full payment of
 2 workers' compensation insurance premiums, the employer knowingly falsifies or
 3 misrepresents the

4 (1) job duties of employees;

5 (2) payments made to employees, including concealing payment by not
 6 reporting or underreporting wages or payments made in kind;

7 (3) true identity of the employer;

8 (4) nature of the employer's business;

9 (5) employer's history of injuries or deaths covered under this chapter;

10 or

11 (6) number of employees, including by misclassifying a worker as an
 12 independent contractor as described in AS 23.30.230(a)(12), or as a nonemployee,
 13 when that worker is an employee covered under this chapter as provided in
 14 AS 23.30.230, 23.30.239, or 23.30.240.

15 * **Sec. 37.** AS 23.30.255(a) is amended to read:

16 (a) An employer required to secure the payment of compensation under this
 17 chapter who fails to do so is guilty of a class B felony if the amount involved exceeds
 18 \$25,000 or a class C felony if the amount involved is \$25,000 or less. If the employer
 19 is a **limited liability company, limited liability partnership, or** corporation, **a**
 20 **person who, at the time of an employee's injury or death, has at least a 10 percent**
 21 **ownership in the business entity, is actively in charge of the operations of the**
 22 **business entity, or has the authority to insure the business entity or apply for a**
 23 **certificate of self insurance, is** [ITS PRESIDENT, SECRETARY, AND
 24 TREASURER ARE ALSO] severally liable **with the business entity for** [TO] the
 25 fine or imprisonment imposed for the failure of the **business entity**
 26 [CORPORATION] to secure the payment of compensation. [THE PRESIDENT,
 27 SECRETARY, AND TREASURER ARE SEVERALLY PERSONALLY LIABLE,
 28 JOINTLY WITH THE CORPORATION, FOR THE COMPENSATION OR OTHER
 29 BENEFIT WHICH ACCRUES UNDER THIS CHAPTER IN RESPECT TO AN
 30 INJURY THAT HAPPENS TO AN EMPLOYEE OF THE CORPORATION WHILE
 31 IT HAS FAILED TO SECURE THE PAYMENT OF COMPENSATION AS

1 REQUIRED BY AS 23.30.075.]

2 * **Sec. 38.** AS 23.30.255(b) is amended to read:

3 (b) An employer who knowingly transfers, sells, encumbers, assigns, or in any
4 manner disposes of, conceals, secretes, or destroys any property after one of the
5 employer's employees has been injured within the scope of this chapter, with intent to
6 avoid the payment of compensation under this chapter to the employee or the
7 employee's dependents, is guilty of a class B felony if the amount involved exceeds
8 \$25,000 or a class C felony if the amount involved is \$25,000 or less. If the employer
9 is a **limited liability company, limited liability partnership, or** corporation, **a**
10 **person who, at the time of an employee's injury or death, has at least a 10 percent**
11 **ownership in the business entity, is actively in charge of the operations of the**
12 **business entity, or has the authority to insure the business entity or apply for a**
13 **certificate of self insurance, is** [ITS PRESIDENT, SECRETARY, AND
14 TREASURER ARE ALSO] severally liable **with the business entity for** [TO] the
15 penalty of imprisonment as well as jointly liable with the **business entity**
16 [CORPORATION] for the fine.

17 * **Sec. 39.** AS 23.30.260 is amended by adding a new subsection to read:

18 (c) Notwithstanding AS 23.30.145 and (a) of this section, approval of a fee is
19 not required if the parties who reach an agreement in regard to a claim for injury or
20 death under this chapter agree to the payment of attorney fees, and the agreement in
21 regard to a claim for injury or death does not require board approval under
22 AS 23.30.012.

23 * **Sec. 40.** AS 23.30.395(19) is repealed and reenacted to read:

24 (19) "employee" means a person who is not an independent contractor
25 as described in AS 23.30.230 and who, under a contract of hire, express or implied, is
26 employed by an employer as defined in (20) of this section;

27 * **Sec. 41.** AS 23.30.040(f), 23.30.080(d), 23.30.110(h), and 23.30.155(q) are repealed.

28 * **Sec. 42.** The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 APPLICABILITY. (a) Notwithstanding AS 23.30.075(b), as repealed and reenacted
31 by sec. 7 of this Act, AS 23.30.080(e), as amended by sec. 8 of this Act, AS 23.30.080(f), as

1 repealed and reenacted by sec. 9 of this Act, AS 23.30.080(g), as amended by sec. 10 of this
 2 Act, AS 23.30.080(h) - (k), added by sec. 11 of this Act, and the repeal of AS 23.30.080(d) by
 3 sec. 41 of this Act, petitions of the division of workers' compensation against employers for a
 4 failure to insure for workers' compensation liability that are pending before the Alaska
 5 Workers' Compensation Board before the effective date of secs. 7 - 11 and 41 of this Act shall
 6 be continued and completed under AS 23.30.075(b) and 23.30.080, as those statutes read on
 7 the day before the effective date of secs. 7 - 11 and 41 of this Act.

8 (b) AS 23.30.110(c), as repealed and reenacted by sec. 19 of this Act,
 9 AS 23.30.110(d), as amended by sec. 20 of this Act, and the repeal of AS 23.30.110(h) by sec.
 10 41 of this Act apply to claims filed on or after the effective date of secs. 19, 20, and 41 of this
 11 Act. Claims pending on the effective date of secs. 19, 20, and 41 of this Act shall be
 12 continued and completed under AS 23.30.110(c), (d), and (h), as those statutes read on the
 13 day before the effective date of secs. 19, 20, and 41 of this Act.

14 (c) AS 23.30.205(e), as amended by sec. 30 of this Act, and AS 23.30.205(g), added
 15 by sec. 31 of this Act, apply to notice of any possible claims or claims for reimbursement
 16 submitted on or after the effective date of secs. 30 and 31 of this Act.

17 (d) Notwithstanding AS 23.30.240, as repealed and reenacted by sec. 33 of this Act,
 18 the terms of an insurance policy or contract in effect before the effective date of sec. 33 of this
 19 Act shall comply with AS 23.30.240, as that section read on the day before the effective date
 20 of sec. 33 of this Act. AS 23.30.240, as repealed and reenacted by sec. 33 of this Act, applies
 21 to an insurance policy or contract entered into or renewed on or after the effective date of sec.
 22 33 of this Act.

23 * **Sec. 43.** The uncodified law of the State of Alaska is amended by adding a new section to
 24 read:

25 TRANSITION: SATISFACTION OF SECOND INJURY FUND CLAIMS. Subject to
 26 appropriation, the balance of the second injury fund created under AS 23.30.040 lapses into
 27 the general fund when all liability for accepted claims under AS 23.30.205 to the second
 28 injury fund and claims ordered to be paid from that fund have been satisfied.

29 * **Sec. 44.** The uncodified law of the State of Alaska is amended by adding a new section to
 30 read:

31 TRANSITION: REGULATIONS. The Department of Labor and Workforce

1 Development and the Alaska Workers' Compensation Board may adopt regulations to
2 implement this Act. The regulations take effect under AS 44.62 (Administrative Procedure
3 Act), but not before the effective date of the law implemented by the regulation.

4 * **Sec. 45.** Sections 30, 31, and 44 of this Act take effect immediately under
5 AS 01.10.070(c).

6 * **Sec. 46.** Section 34 of this Act takes effect September 1, 2018.

7 * **Sec. 47.** Section 33 of this Act takes effect August 1, 2019.