

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 112(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 4/6/18

Referred: Finance

Sponsor(s): SENATOR GIESSEL

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to workers' compensation; relating to attorney fees for workers'**
2 **compensation claims; excluding independent contractors from workers' compensation**
3 **coverage; and establishing a workers' compensation working group in the Department**
4 **of Commerce, Community, and Economic Development."**

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

6 * **Section 1.** AS 23.30.145 is repealed and reenacted to read:

7 **Sec. 23.30.145. Attorney fees.** (a) Fees for legal services rendered with respect
8 to a claim are not valid unless approved by the board. Except as provided under (b) of
9 this section, attorney fees may not exceed the following percentage of the contested
10 amount of compensation benefits secured as a result of a claim filed by an attorney:

- 11 (1) 25 percent of the settlement amount between the parties;
12 (2) 30 percent of the amount awarded by the board after a hearing or
13 upon appeal to the commission;
14 (3) 35 percent of the amount awarded after a successful appeal to the

1 Alaska Supreme Court.

2 (b) If a written offer to settle an issue pending before the board is made at least
3 30 days before a hearing on the claim, for purposes of calculating the amount of
4 attorney fees to be paid under (a) of this section, only the amount of benefits awarded
5 to the employee above the amount specified in the offer to settle may be considered. If
6 multiple issues are pending before the board, the offer to settle must address each issue
7 and clearly state whether or not the offer on each issue is severable. Any written offer
8 to settle must be kept confidential and not disclosed to the board until after the final
9 decision on the merits of the case has been decided. After the final decision on the
10 merits of the case has been issued, the parties shall file the offer to settle with the
11 board so that the board can award appropriate attorney fees and costs.

12 (c) Attorney fees and costs may be paid in a lump sum on the present value of
13 the settlement or adjudicated amount.

14 (d) In this section, "benefits secured" does not include medical benefits
15 awarded three or more years after the date of injury.

16 * **Sec. 2.** AS 23.30.230(a) is amended to read:

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

- 18 (1) a part-time baby-sitter;
- 19 (2) a cleaning person;
- 20 (3) harvest help and similar part-time or transient help;
- 21 (4) a person employed as a sports official on a contractual basis and
22 who officiates only at sports events in which the players are not compensated; in this
23 paragraph, "sports official" includes an umpire, referee, judge, scorekeeper,
24 timekeeper, organizer, or other person who is a neutral participant in a sports event;
- 25 (5) a person employed as an entertainer on a contractual basis;
- 26 (6) a commercial fisherman, as defined in AS 16.05.940;
- 27 (7) an individual who drives a taxicab whose compensation and written
28 contractual arrangement is as described in AS 23.10.055(a)(13), unless the hours
29 worked by the individual or the areas in which the individual may work are restricted
30 except to comply with local ordinances;
- 31 (8) a participant in the Alaska temporary assistance program

1 (AS 47.27) who is engaged in work activities required under AS 47.27.035 other than
2 subsidized or unsubsidized work or on-the-job training;

3 (9) a person employed as a player or coach by a professional hockey
4 team if the person is covered under a health care insurance plan provided by the
5 professional hockey team, the coverage is applicable to both work-related and
6 nonwork-related injuries, and the coverage provides medical and related benefits as
7 required under this chapter, except that coverage may not be limited to two years from
8 the date of injury as described under AS 23.30.095(a); in this paragraph, "health care
9 insurance" has the meaning given in AS 21.12.050;

10 (10) a person working as a qualified real estate licensee who performs
11 services under a written contract that provides that the person will not be treated as an
12 employee for federal income tax or workers' compensation purposes; in this
13 paragraph, "qualified real estate licensee" means a person who is required to be
14 licensed under AS 08.88.161 and whose payment for services is directly related to
15 sales or other output rather than the number of hours worked; [AND]

16 (11) a transportation network company driver who provides a
17 prearranged ride or is otherwise logged onto the digital network of a transportation
18 network company as a driver; **and**

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

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

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

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

31 **(D) has an opportunity for profit and loss as a result of the**

1 services performed for the other individual or entity;

2 (E) is free to hire and fire employees to help perform the
3 services for the contracted work;

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

7 (G) follows federal Internal Revenue Service requirements
8 by

9 (i) obtaining an employer identification number, if
10 required;

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

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

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

19 (i) the person is responsible for the satisfactory
20 completion of services that the person has contracted to perform
21 and is subject to liability for a failure to complete the contracted
22 work, or maintains liability insurance or other insurance policies
23 necessary to protect the employees, financial interests, and
24 customers of the person's business;

25 (ii) the person maintains a business location or a
26 business mailing address separate from the location of the
27 individual for whom, or the entity for which, the services are
28 performed;

29 (iii) the person provides contracted services for two
30 or more different customers within a 12-month period or engages
31 in any kind of business advertising, solicitation, or other marketing

1 **efforts reasonably calculated to obtain new contracts to provide**
 2 **similar services.**

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

5 APPLICABILITY. Sections 1 and 2 of this Act apply to claims for injuries filed on or
 6 after the effective date of those sections.

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

9 WORKERS' COMPENSATION WORKING GROUP. (a) A workers' compensation
 10 working group is established in the Department of Commerce, Community, and Economic
 11 Development, division of insurance, to review the state's workers' compensation system,
 12 including the procedures, compensable injuries, treatment guidelines, monitoring of
 13 controlled substance prescription and use, and the burden of proof to support a claim.

14 (b) The working group consists of seven members appointed by the governor as
 15 follows:

16 (1) the commissioner of commerce, community, and economic development,
 17 who shall serve as chair;

18 (2) the commissioner of labor and workforce development;

19 (3) one member of the medical services review committee established under
 20 AS 23.30.095(j);

21 (4) one representative of organized labor;

22 (5) one school district administrator; and

23 (6) two representatives of the state's business community.

24 (c) Members appointed under (b) of this section serve at the pleasure of the governor.

25 (d) The working group shall meet at the call of the chair or a majority of its members
 26 and may conduct business by teleconference. Members of the group receive no compensation,
 27 but are entitled to per diem and travel expenses authorized for boards and commissions under
 28 AS 39.20.180.

29 (e) The working group may be supported by staff of the Department of Commerce,
 30 Community, and Economic Development, division of insurance.

31 (f) The working group shall prepare a report recommending reform of the system to

1 the legislature for consideration during the First Regular Session of the Thirty-First Alaska
2 State Legislature. The working group shall submit the report to the senate secretary and chief
3 clerk of the house of representatives for distribution to all legislators on or before
4 December 1, 2018, and shall notify the legislature that the report is available.

5 (g) The working group terminates January 31, 2019.