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IN THE SENATE

BY SENATOR OWEN

SENATE BILL NO. 2

IN THE LEGISLATURE OF THE TERRITORY OF ALASKA

TWENTY-SECOND SESSION

A BILL

For an Act entitled: "An Act relating to workmens compensation; defining coverage and benefit care of injured workmen; repealing sections 43-3-1, 43-3-2, and 43-3-3, ACLA, 1949, as amended; and setting an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE TERRITORY OF ALASKA:

Section 1. Employments covered. Any person, or persons, partnership, joint stock company, association or corporation, employing one or more employees in connection with any business, occupation, work, employment or industry, carried on in this Territory, including any department, agency or instrumentality of the Territorial Government, Municipality or Public Utility District, Port District, Health District, or other local government subdivision, except domestic service, agriculture, dairying, cattle raising, or the operation of railroads as common carriers, shall be liable to pay compensation in accordance with the schedule herein adopted, to each of his, her, their or its employees who received a personal injury arising out of and in the course of his or her employment or to the beneficiaries named herein, as the same are hereinafter designated and defined in all cases where the employee shall be so injured and such injuries shall result in his or her death.

Sec. 2. Compensation allowed. The compensation to which such employee so injured, or, in case of his or her death, if

1 death results from such injury, such beneficiaries shall be en-
2 titled, and for which such employer shall be legally liable,
3 shall be as follows:
4

5 (a) Funeral expenses. Reasonable funeral expenses not
6 exceeding Seven Hundred (\$700.00) Dollars.

7 (b) Amount of death benefits. In the event of the
8 death of any such employee resulting from such injury, where such
9 employee at the time of his death had beneficiaries as defined
10 in this Act, said beneficiaries shall be entitled to receive
11 compensation as follows:

12 (1) Spouse. The surviving spouse shall be
13 entitled to receive 35% of the weekly benefit as set
14 forth in Section 7, for life, or until remarriage,
15 and upon remarriage a lump sum payment covering 26
16 weeks will be made.

17 (2) Children. In those cases where such married
18 employee had a child or children under the age of
19 eighteen (18) years at the time of death, or there-
20 after, if the child is physically incapacitated or
21 mentally retarded, or unborn or posthumous child left
22 by deceased, the surviving spouse shall be entitled to
23 receive an additional 10%, but in no case shall the
24 amount received exceed the maximum set forth in
25 Section 7.

26 (c) Dependent parents. In those cases where such
27 employee left either father or mother or both, dependent upon
28 him or her for support at the time of death, each father or
29 mother shall be entitled to 25% of the weekly benefit set forth
30 in Section 7 in addition to the sum provided for and made payable

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to the surviving spouse and children. However, in no case shall the total benefits paid exceed the maximum set forth in Section 7.

(d) Widow or widower with dependent minors; guardian.
In those cases where such deceased employee was a widow or widower at the time of his death, but left one or more minor children or orphan children under the age of eighteen (18) or child wholly dependent upon the deceased for support, by reason of mental or physical incompetency, there shall be paid 35% for the first child and 10% for each additional child, but in no event shall the amount exceed the maximum set forth in Section 7, and the judge of the probate court of the precinct wherein such accident or injury occurred, shall appoint a guardian for all of said children, who shall be entitled to, and who shall be paid, the amount specified in this sub-section, for the benefit of said orphan or orphans.

(e) Amounts paid non-resident non-citizen beneficiaries. If such beneficiary or beneficiaries as described in subsections (a) through (d) inclusive, immediately preceding this subsection be neither resident or a citizen of the United States of America, then the amount due and payable to such beneficiary or beneficiaries shall be in amounts as follows: as to a spouse or minor children fifty per centum (50%) of the sums set forth in subsections (a) through (d) immediately preceding, and fifty per centum (50%) to the second injury fund, for the sole benefit of those entitled to participate therein.

(f) Funeral expenses; payment to second injury fund.
In those cases where such deceased employee was, at the time of death unmarried, and leaves no children nor dependent father nor

1 dependent mother, the employer shall be required to pay the
2 funeral expenses of the deceased not to exceed the sum of Seven
3 Hundred (\$700.00) Dollars, and in addition thereto shall pay to
4 the second injury fund the sum of One Thousand Five Hundred
5 (\$1,500.00) Dollars, for the sole benefit of those entitled to
6 participate therein.

7
8 **Sec. 3. Second Injury Fund.** There is hereby created a
9 Second Injury Fund, to be administered by the Commissioner of
10 Labor in accordance with the orders and awards of the Alaska
11 Industrial Board.

12 (a) Payments to second injury fund. Whenever an
13 employee shall suffer a compensable injury which results in per-
14 manent partial disability the employer, or his insurance carrier,
15 shall, in addition to the compensation provided for pay into the
16 second injury fund a lump sum, equal to two per centum (2%) of
17 the total compensation to which the employee is entitled for the
18 said permanent partial disability, the said sum to be paid into
19 such second injury fund as soon as the total amount of the perma-
20 nent partial disability payable for the particular injury is
21 determined by the Industrial Board.

22 (b) Second injury fund beneficiaries. The sums re-
23 quired to be paid into the second injury fund shall be paid into
24 said second injury fund of the Commissioner of Labor for the
25 sole benefit of those entitled to participate therein under the
26 provisions of sub-sections (d) and (e) of this section, the same
27 to be paid out by said Commissioner of Labor in accordance with
28 the orders and awards of the Industrial Board.

29 (c) Refund of payments to second injury fund. In
30 case a deposit or payment has been made into such second injury

1 fund, and it is later shown that there are other beneficiaries
2 or that the beneficiaries designated are entitled to further or
3 greater benefits, or, if deposits or payment has been made by
4 mistake or inadvertence or under such circumstances that justice
5 requires a refund thereof, the Industrial Board is hereby
6 authorized to refund such deposit or payment.

7
8 (d) Injury causing total permanent disability when
9 combined with previous disability. In those cases where an
10 employee receives an injury arising out of and in the course of
11 his or her employment which, of itself, would cause only perma-
12 nent partial disability but which, combined with a previous dis-
13 ability or injury, does in fact cause permanent total disability,
14 the employer shall only be liable for the permanent partial dis-
15 ability caused by the subsequent injury; provided, however, that
16 in addition to compensation for such permanent partial disability
17 and after the cessation of the payments for the amounts pre-
18 scribed therefor, the injured employee shall be paid the remain-
19 der of the compensation that would be due for permanent total
20 disability out of the second injury fund hereinafter created
21 and provided.

22 (e) Vocational training. The Industrial Board is
23 authorized to direct and provide the vocational retraining and
24 rehabilitation of permanently disabled persons, whose condition
25 is the result of an injury compensable under this Act, by making
26 cooperative arrangements with insurance carriers, private or-
27 ganizations and institutions or Territorial, State or Federal
28 agencies. The expense of such retraining or rehabilitation
29 shall be paid out of that portion of the Second Injury Fund as
30 shall exceed the sum of Ten Thousand (\$10,000.00) Dollars.

Such persons shall be entitled to receive compensation necessary for maintenance, during the period of retraining and rehabilitation, not exceeding Fifty (\$50.00) Dollars per month. Provided, however, that the total expenditure for additional compensation, treatment, instruction, and necessary transportation shall not exceed Three Thousand (\$3,000.00) Dollars for any one person.

Sec. 4. Total and permanent disability. Where any such employee receiving an injury arising out of, and in the course of his or her employment, as the result of which he or she is totally or permanently disabled, he or she shall be entitled to receive compensation as follows:

(a) Married person. If such employee was at the time of his injury married, he or she shall be entitled to receive weekly benefits as set forth in Section 7 of this Act, for life.

(b) Minor children. In those cases, where such employee was at the time of his injury, a widower, widow, or was divorced, but had minor children, he or she, shall receive an additional 10% for each such child below the age of eighteen (18) years, or thereafter, if the child is physically incapacitated or mentally deficient, as set forth in Section 7 of this Act, but in no event shall the payments exceed the maximum set forth in said section.

(c) No dependents. In those cases where such employee so injured at the time of injury was unmarried, he or she shall receive weekly benefits as set forth in Section 7 of this Act for life.

(d) Dependent parents. In those cases where such employee so injured at the time of injury had a dependent father

1
2 or mother or both, payment shall be made as set forth in Section
3 2 (e) of this Act.

4 **Sec. 5. Partial Permanent Disability.** Where any such em-
5 ployee receives an injury arising out of, and in the course of
6 his or her employment resulting in his or her partial permanent
7 disability, he or she shall be paid weekly benefits as set forth
8 in Section 7, plus a sum in accordance with the following
9 schedule payable at the weekly benefit rate set forth above.
10 However, the additional sum may be paid in a lump sum at the
11 discretion of the Industrial Board if after investigation, such
12 a lump sum payment is in the Board's judgment warranted.

13 **SCHEDULE**

14 1. For the loss of an Arm: Twelve Thousand Two Hundred
15 Fifty (\$12,250.00) Dollars.

16 2. For the loss of a Hand: Nine Thousand Four Hundred
17 (\$9,400.00) Dollars.

18 3. For the loss of a Thumb: Two Thousand Two Hundred
19 Thirty (\$2,230.00) Dollars.

20 4. For the loss of a First Finger: One Thousand Two
21 Hundred Twenty Five (\$1,225.00) Dollars.

22 5. For the loss of a Second Finger: Seven Hundred Eighty
23 Five (\$785.00) Dollars.

24 6. For the loss of a Third Finger: Seven Hundred Forty
25 Five (\$745.00) Dollars.

26 7. For the loss of a Little Finger: Three Hundred Ten
27 (\$310.00) Dollars.

28 8. For the loss of a Leg: Ten Thousand Eight Hundred
29 Fifty (\$10,850.00) Dollars.

30 9. For the loss of a Foot: Seven Thousand Five Hundred

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Seventy (\$7,570.00) Dollars.

10. For the loss of a Great Toe: One Thousand One Hundred Thirty Five (\$1,135.00) Dollars.

11. For the loss of other Toe: Three Hundred Fifty (\$350.00) Dollars.

12. For the loss of the sight of Eye: Six Thousand One Hundred Twenty Five (\$6,125.00) Dollars.

13. For the loss of hearing, one Ear: Two Thousand Two Hundred Seventy Five (\$2,275.00) Dollars.

14. For the loss of hearing, both Ears: Eight Thousand Seven Hundred Fifty (\$8,750.00) Dollars.

Sec. 6. Disfigurement. The Industrial Board may award proper and equitable compensation for serious head, neck, facial or other disfigurement, not exceeding the sum of Four Thousand Three Hundred Seventy Five (\$4,375.00) Dollars.

Sec. 7. Temporary disability. For all injuries causing temporary disability, the employer shall pay the employee, during the period of such disability, sixty-five per centum (65%) of his daily average wages. Such compensation for temporary total disability shall not exceed One Hundred (\$100.00) Dollars per week for an unmarried employee without dependents. However, where the injured employee had dependents at the time of the injury, he or she shall receive in addition, ten per centum (10%) for each dependent, but in no event will benefits in any case exceed One Hundred Twenty Five (\$125.00) Dollars per week.

Weekly benefits paid under this Section shall continue during the time of disability and during the healing period for partial permanent disability injuries. Payment for such temporary disability shall be made at the time compensation is customarily

1 paid for labor performed or services rendered at the plant or
2 establishment of the employer liable therefor and not less than
3 once a month in any event.

4
5 The average daily wage earning capacity of an injured em-
6 ployee in case of temporary disability shall be determined by
7 his actual earning if such actual earnings fairly and reasonably
8 represent his daily wage earning capacity. If such earnings do
9 not fairly and reasonably represent his daily wage earning capa-
10 city, the Industrial Board shall fix such daily wage earning
11 capacity as shall be reasonable and have a due regard for the
12 nature of his injury, the degree of temporary impairment, his
13 usual employment and any other factor or circumstance in the
14 case which may affect his capacity to earn wages in his disabled
15 condition.

16 Sec. 8. Attorney's fees; costs.

17 (a) If the employer or carrier shall file notice of
18 controversy or shall decline to pay a claim on or before the
19 twenty-first day after they have notice of same, or shall other-
20 wise resist unsuccessfully the payment of compensation, and the
21 injured person shall have employed an attorney at law in the
22 successful prosecution of his claim there shall, in addition to
23 the award for compensation be awarded reasonable attorney's fee,
24 to be approved by the Commission which may be paid direct to the
25 attorney for the claimant in a lump sum. If any proceedings are
26 had for review of any claim, award, or compensation order before
27 any court, the court may allow or increase the attorney's fees,
28 in its discretion, which fees shall be in addition to the com-
29 pensation paid the claimants, and shall be paid as the court may
30 direct.

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(b) There shall be further assessed against such employer or carrier, as costs in said claim, such fees and mileage for witnesses attending the hearing at the instance of claimant, as would be allowed such witnesses in cases at law.

Sec. 9. Loss of members as total permanent disability. The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two thereof, shall constitute total and permanent disability and be compensated for in accordance with Section 4 of this Act.

Sec. 10. Amputations. Amputation between the elbow and the wrist shall be considered equivalent to the loss of an arm, and amputation between the knee and ankle shall be considered equivalent to the loss of a leg, as set forth in Section 9 of this Act.

Sec. 11. Other permanent partial injuries. Whenever such employee receives an injury arising out of and in the course of employment, as a result of which he or she is partially disabled, and the disability so received is such as to be permanent in character and such as not to come wholly within any of the specific cases for which provision is herein made, such employee shall be entitled to receive compensation as set forth in Section 7 of this Act, modified as may be determined by the Industrial Board.

To illustrate: If his or her injury would be such as to reduce his or her earning capacity twenty-five per centum (25%), then the injured employee would be entitled to twenty-five per centum (25%) of his weekly benefit for life.

Sec. 12. Total liability. The maximum total liability to the employer shall be the sum total of the payments authorized

1
2 under this Act.

3 Sec. 13. Treatment and care of injured employees. The
4 employer shall promptly provide for an injured employee such
5 medical, surgical, chiropractic, osteopathic or other attendance
6 or treatment, nurse and hospital service, medicine, crutches,
7 and apparatus for such period as the nature of the injury or
8 the process of recovery may require. The employer shall be
9 liable for the payment of the expenses of medical, surgical,
10 chiropractic, osteopathic or other attendance or treatment,
11 nurse, and hospital service, medicine, crutches, and apparatus
12 necessitated by the injury of an employee. All fees and other
13 charges for such treatment and services shall be limited to
14 such charges as prevail in the same community for similar treat-
15 ment of injured persons. The employer shall have the exclusive
16 right, and it shall be his duty to select and furnish the neces-
17 sary physicians, surgeons, chiropractors, osteopaths and hospi-
18 tals and to that end he may enter into all necessary contracts
19 with such physicians, surgeons, chiropractors, osteopaths and
20 hospitals for the furnishing of such services and treatments.
21 Provided that if it be made to appear in any suit, action or
22 proceeding brought against the employer that the injuries sus-
23 tained by the employee were aggravated on account of the incom-
24 petence or neglect of the physician, surgeon, chiropractor or
25 osteopath selected by the employer, it shall be prima facie
26 evidence that the employer failed to use due care in the selec-
27 tion of such physician, surgeon, chiropractor or osteopath and
28 in such case the employer and physician, surgeon, chiropractor
29 or osteopath shall be jointly and separately liable for all
damages resulting from such incompetence or neglect.

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Nothing contained in this Section shall be construed to limit the right of the employee, to provide in any case, at his own expense, a consulting physician, surgeon, chiropractor, or osteopath or any attending physician, whom he may desire.

Sec. 14. When right to compensation accrues. No compensation shall be paid hereunder for any injury which does not incapacitate the employee from earning full wages for a period of at least three days in addition to the day on which the injury occurred, but if incapacity extends beyond such period, compensation shall commence on the third day after the injury, but if the incapacity should continue fourteen days or more, then compensation shall be from the day after the injury occurred. It shall be the duty of every person claiming compensation under the provisions of this Act for any injury sustained by him to make or cause to be made, a report thereof to his employer as soon as practicable after sustaining the same, and no compensation shall be paid prior to the day on which such report is made.

Sec. 15. Repealer. Sections 43-3-1, 43-3-2, 43-3-3, Alaska Compiled Laws Annotated, 1949, are hereby repealed.

Sec. 16. Effective date. This Act shall take effect and be in force from and after its passage and approval, or upon its becoming law without such approval, and it is so enacted.