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IN THE HOUSE BY COMMERCE AND LABOR COMMITTEE

CS FOR HOUSE BILL NO. 128

IN THE LEGISLATURE OF THE STATE OF ALASKA

SECOND LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the Alaska Workmen's Compensation Act; amending Secs. 4, 6, 7, 12, 13, 30, and 32, Ch. 193, SLA 1959; repealing and re-enacting Secs. 6(2) and 7(8), Ch. 193, SLA 1959."

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

Section 1. Sec. 4, Ch. 193, SLA 1959, is amended to read:

Sec. 4. EXCLUSIVENESS OF LIABILITY. The liability of an employer prescribed in Section 3 shall be exclusive and in place of all other liability of such employer and any fellow employee to the employee, his legal representative, husband [,] or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this Act, an injured employee, or his legal representative in case death results from the injury, may elect to claim compensation under this Act, or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, nor that the employee assumed the risk of his employment, nor that the injury was due to the contributory negligence of the employee.

1 Sec. 2. Subsec. (1), Sec. 6, Ch. 193, SLA 1959, is amended
2 to read:

3 (1) The employer shall furnish such medical, surgical,
4 and other attendance or treatment, nurse and hospital
5 service, medicine, crutches, and apparatus, for such period
6 as the nature of the injury or the process of recovery may
7 require, not exceeding four years from and after the date of
8 injury to any such employee; provided, however, that if the
9 condition requiring such treatment, apparatus or medicine
10 is a latent one, the four year period shall run from the
11 time the employee has knowledge of the nature of his dis-
12 ability and its relationship to his employment and after-
13 disablement. Whenever medical care is required, the injured
14 employee may designate any licensed physician within the
15 state to render such care except in cases where, in the
16 judgment of the Board, care and/or treatment can best be
17 administered by the selection of another physician. Upon
18 procuring the services of such physician, the injured employ-
19 ee shall give proper notification of his selection to the
20 employer within a reasonable time after first being treated.
21 If for any reason during the period when medical care is re-
22 quired, the employee wishes to change to another physician,
23 he may do so in accordance with rules prescribed by the
24 Board. If the employee is unable to designate a physician
25 and the emergency nature of the injury requires immediate
26 medical care, or if he does not desire to designate a
27 physician and so advises the employer, the employer shall
28 designate the physician. The foregoing provision shall not,
29 however, deprive the employee from subsequently designating

1 a physician for continuance of required medical care. No
2 claim for medical or surgical treatment shall be valid and
3 enforceable, as against such employer, unless within twenty
4 days following the first treatment the physician giving such
5 treatment or the employce receiving such treatment furnished
6 to the employer and the Board notice of such injury and
7 treatment, preferably on a form or forms prescribed by the
8 Board. The Board may, however, excuse the failure to furnish
9 such notice within twenty days when it finds it to be in the
10 interest of justice to do so, and it may, upon application
11 by a party in interest, make an award for the reasonable
12 value of such medical or surgical treatment so obtained by
13 the employee. If at any time during such period the employ-
14 ee unreasonably refuses to submit to medical or surgical
15 treatment, the Board may, by order, suspend the payment of
16 further compensation during such time as such refusal con-
17 tinues, and no compensation shall be paid at any time during
18 the period of such suspension, unless the circumstances
19 justified the refusal.

20 Sec. 3. Subsec. (2), Sec. 6, Ch. 193, SLA 1959, is repealed
21 and re-enacted to read:

22 (2) The employee shall after an injury at reasonable
23 times during the continuance of his or her disability, if
24 so requested by his or her employer, or when ordered by the
25 Board, submit himself or herself to an examination by a
26 physician or surgeon authorized to practice medicine under
27 the laws of the state in which such employee may be found,
28 furnished and paid for by the employer, or by the Board.

29 The employee shall have the right to have a physician,

1 provided and paid for by himself or herself, present at
2 such examination or examinations. No fact communicated to,
3 or otherwise learned by any physician or surgeon who may
4 have attended or examined the employee, or who may have been
5 present at any examination, shall be privileged, either in
6 the hearings provided for in this Act, or any action to re-
7 cover damages against any employer who is subject to the
8 compensation provisions of this Act. If any employee
9 refuses to submit himself or herself to any such examination
10 or examinations provided for herein, his or her rights to
11 compensation shall be suspended until such obstruction or
12 refusal ceases, and his or her compensation, during such
13 period of suspension, may, in the discretion of the Board,
14 or the court determining an action brought for the recovery
15 of damages hereunder, be forfeited. The employer, or the
16 Board, shall have the right in any case of death to require
17 an autopsy at the expense of the party requesting same. No
18 autopsy shall be held in any case without notice first being
19 given to the widow or next of kin, if they reside in the
20 state, or their whereabouts can be reasonably ascertained,
21 of the time and place thereof and reasonable time and oppor-
22 tunity given such widow or next of kin to have a representa-
23 tive present to witness the autopsy. If no adequate notice
24 is given, the findings from the autopsy may be suppressed
25 on motion duly made to the Board, or to the superior court,
26 as the case may be.

27 Sec. 4, Sec. 6, Ch. 193, SLA 1959, is amended by adding a
28 new Subsec. (6) to read:

29 (6) Upon the filing with the Board by any party in

1 interest of an application or other pleading, all parties to
2 the proceeding must immediately, or in any event within five
3 days after service of such pleading, send to the Board the
4 original signed reports of all physicians relating to the
5 proceedings which they may have in their possession or under
6 their control and copies of such reports shall be served by
7 the party forthwith on the adverse party. There shall be a
8 continuing duty on the parties so to file and serve all such
9 reports during the pendency of the proceeding.

10 Sec. 5. Subsec. (8), Sec. 7, Ch. 193, SLA 1959, is repealed
11 and re-enacted to read:

12 (8) At any time after death, or after seven days sub-
13 sequent to the date of the injury, the employer and the
14 employee or the beneficiary or beneficiaries, as the case
15 may be, shall have the right to reach an agreement in regard
16 to any claim for injury or death hereunder in accordance
17 with the applicable schedule hereof, but a memorandum of the
18 agreement in a form prescribed by the Board shall be filed
19 with the Board, otherwise the same shall be void for any
20 purpose. If approved by the Board, such agreement shall be
21 enforceable the same as any order or award of the Board and
22 shall discharge the liability of the employer for such com-
23 pensation, notwithstanding the provisions of Secs. 14(2),
24 15, and 21 of this Act. Such agreement shall be approved by
25 the Board only when the terms conform to the provisions of
26 this Act, and if it involves or is likely to involve per-
27 manent disability, the Board may require an impartial medi-
28 cal examination and a hearing in order to determine whether
29 to approve the agreement. The Board may approve lump sum

1 settlements when it appears to be to the best interest of
2 the employee or beneficiary or beneficiaries; provided, how-
3 ever, in death cases such lump sum settlements shall be
4 approved only in cases where the deceased leaves a surviving
5 widow or dependent husband and more than five years has
6 elapsed since the date of the employee's death.

7 Sec. 6. Sec. 7, Ch. 193, SLA 1959, is amended by adding a
8 new Subsec. (9) to read:

9 (9) In cases involving a person who on the date of his
10 injuries does not qualify as an Alaskan resident under the
11 residence requirements for voting in general elections of
12 the State of Alaska, compensation shall be paid in an
13 amount 25% less than the compensation otherwise provided in
14 this Act during such periods of disability as he or his
15 dependents receiving the compensation physically reside out-
16 side the boundaries of the State of Alaska. This subsection
17 shall not apply during periods that such nonresident physi-
18 cally resides within the State of Alaska. Temporary absence
19 from the state for medical treatment shall not disqualify
20 such person from receiving the full compensation provided
21 in this Act.

22 Sec. 7. Subsec. (1), Sec. 12, Ch. 193, SLA 1959, is amended
23 to read:

24 (1) The right to compensation for disability under this
25 Act shall be barred unless a claim therefor is filed within
26 two years after the employee has knowledge of the nature of
27 his disability and its relation to his employment and after
28 disablement, provided, however, that the maximum time for
29 filing such claim in any event other than arising out of an

1 occupational disease shall be four years from the date of
2 injury, and the right to compensation for death shall be
3 barred unless a claim therefor is filed within one year
4 after the death, except that if payment of compensation has
5 been made without an award on account of such injury or
6 death a claim may be filed within two years after the date
7 of the last payment.

8 Sec. 8. Subsec. (12), Sec. 13, Ch. 193, SLA 1959, is amend-
9 ed to read:

10 (12) The total compensation payable under this Act for
11 injuries shall in no event exceed the sum of \$20,000.00;
12 [PROVIDED, THAT THIS SUBDIVISION SHALL NOT APPLY TO CASES OF
13 PERMANENT TOTAL DISABILITY OR DEATH; AND] Provided [FURTHER],
14 that in cases of disability compensable under paragraph (t)
15 of subdivision (3) of Section 7 the total compensation for
16 such disability, and for any temporary total disability or
17 temporary partial disability sustained in addition thereto,
18 shall not exceed in the aggregate the sum of \$17,000.00 [.]
19 ; and provided further that in the event of the death of any
20 employee compensable under this Act, the total compensation
21 payable under this Act shall be as follows:

22 (a) If such employee at the time of his death
23 leaves only a surviving widow or dependent husband,
24 \$20,000.00.

25 (b) If such employee at the time of his death
26 leaves a widow or dependent husband and one child,
27 \$25,000.00.

28 (c) If such employee at the time of his death
29 leaves a widow or dependent husband and more than one child,

1 \$30,000.00.

2 (d) If such employee at the time of his death
3 leaves one surviving child but no widow or dependent husband,
4 \$18,500.00.

5 (e) If such employee at the time of his death
6 leaves more than one surviving child but no widow or depend-
7 ent husband, the maximum payable under item (d) of this sub-
8 section shall be increased by \$2,000.00 for each additional
9 surviving child, the total in no event, however, to exceed
10 \$25,500.00.

11 Sec. 9. Subsec. (1), Sec. 30, Ch. 193, SLA 1959, is amended
12 to read:

13 (1) If, on account of a disability or death for which
14 compensation is payable under this Act, the person entitled
15 to such compensation believes that some person other than
16 the employer or a fellow employee is liable in damages, he
17 may elect, by giving notice to the Board in such manner as
18 the Board may provide, to receive such compensation or to re-
19 cover damages against such [THIRD] person believed to be
20 liable.

21 Sec. 10. Subsec. (2), Sec. 32, Ch. 193, SLA 1959, is amend-
22 ed to read:

23 (2) Whenever an employee shall suffer a compensable
24 injury which results in permanent partial disability the em-
25 ployer, or his insurance carrier, shall, in addition to the
26 compensation provided for, pay into the second injury fund a
27 lump sum, equal to two per centum (2%) of the total compen-
28 sation to which the employee is entitled for the said perman-
29 ent partial disability, the said sum to be paid into such

1 second injury fund as soon as the total amount of the per-
2 manent partial disability payable for the particular injury
3 is determined by the Board; provided, however, the provision
4 of this subsection shall be waived in and during any
5 calendar year when the encumbered balance in the second in-
6 jury fund is equal to or exceeds the sum of \$200,000.00
7 [\$100,000.00] on January 1 of said year.
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