

Original sponsor: Rules/Legislative Council

Offered: 5/11/82
Referred: Judiciary

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 159 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to workers' compensation; and provid-
7 ing for an effective date."

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

9 * Section 1. LEGISLATIVE INTENT. It is the intent of the legislature in
10 enacting AS 23.30.041, added in sec. 3 of this Act, that an injured worker
11 receive rehabilitation services that enhance his returning to suitable gain-
12 ful employment as quickly as possible. In enacting AS 23.30.041, the legis-
13 lature recognizes the following five rehabilitation goals of a workers'
14 compensation program:

- 15 (1) early identification of injured workers who need rehabilita-
16 tion;
17 (2) use of competent rehabilitation providers;
18 (3) opportunities for return to direct employment;
19 (4) maintaining an atmosphere conducive to rehabilitation;
20 (5) providing incentives and removing disincentives to rehabili-
21 tation.

22 * Sec. 2. AS 23.30.040(b) is amended to read:

23 (b) If an employee suffers a compensable injury that results in
24 temporary total disability, temporary partial disability, permanent
25 partial disability, or permanent total disability, the employer or
26 insurance carrier shall contribute to the second injury fund. The
27 contribution shall be made by one year from the date of the injury or on
28 termination of the employee's claim, whichever is sooner. If the claim
29 is not terminated within one year, subsequent contributions shall be

1 made yearly until the termination of the employee's claim. The amount
 2 of the contribution is the product of the compensation to which the
 3 employee is entitled for temporary total disability, temporary partial
 4 disability, permanent partial disability, or permanent total disability
 5 [, OR FOR REHABILITATION UNDER AS 23.30.191] and the applicable contri-
 6 bution rate set out in column A of this subsection. Payment need not be
 7 made to the second injury fund if the total contribution under this sec-
 8 tion is less than \$20. By December 15 of each year the commissioner
 9 shall determine and make available to the public the applicable contribu-
 10 tion rate for the following calendar year according to the reserve rate
 11 of the second injury fund in column B of this subsection:

Column A	Column B	
Second Injury Fund	Reserve Rate	
Contribution Rate	At Least	But Less Than
(Percent)	(Percent)	(Percent)
6	0	50
5	50	75
4	75	100
3	100	125
2	125	150
1	150	175
0	175	

23 * Sec. 3. AS 23.30 is amended by adding a new section to read:

24 Sec. 23.30.041. REHABILITATION OF INJURED WORKERS. (a) The board
 25 shall select and employ a rehabilitation administrator and may authorize
 26 the rehabilitation administrator to select and employ additional rehabi-
 27 litation staff. The rehabilitation administrator is in the partially
 28 exempt service under AS 39.25.120.

29 (b) The rehabilitation administrator shall implement the provi-

1 sions of this section, study the issue of rehabilitation, both physical
2 and vocational, on a continuing basis.

3 (c) If an employee suffers a permanent disability which precludes
4 his return to suitable gainful employment, the employee is entitled to
5 be fully evaluated for participation in a rehabilitation plan within 90
6 days after the date of injury. A full evaluation shall be performed by
7 a qualified rehabilitation professional. If, in the opinion of the
8 qualified rehabilitation professional, the medical, physical, or
9 emotional state of the employee precludes a full evaluation, the re-
10 habilitation professional shall prepare a preliminary evaluation. A
11 preliminary evaluation shall include the reasons why a full evaluation
12 cannot be made, an opinion as to when the employee will be eligible for
13 a full evaluation, and any information that would be included in a full
14 evaluation which can be determined and reported by the rehabilitation
15 professional at the time of the preliminary evaluation. If the employer
16 does not timely schedule an evaluation under this subsection, the board
17 or a person designated by the board may retain a qualified rehabilita-
18 tion professional to perform the evaluation. The employer shall pay the
19 reasonable costs of an evaluation under this subsection.

20 (d) A full evaluation by a qualified rehabilitation professional
21 shall include a determination whether a rehabilitation plan is necessary
22 and shall include the following specific determinations:

23 (1) whether the rehabilitation plan will enable the employee
24 to return to suitable gainful employment;

25 (2) whether the employee can return to suitable gainful
26 employment without the rehabilitation plan;

27 (3) the cost of the rehabilitation plan, including all costs
28 to be incurred by the employer during the rehabilitation plan and an
29 estimate of whether the continuing benefits and compensation due to the

1 employee under this chapter after the conclusion of the rehabilitation
2 plan will be more or less than the benefits and compensation payable to
3 the employee under this chapter if a rehabilitation plan is not imple-
4 mented.

5 (e) A rehabilitation plan may consist of any of the following;
6 however, if the employee can be restored to suitable gainful employment
7 with rehabilitation plans of higher preference, then a rehabilitation
8 plan of a lower preference need not be offered by the employer. The
9 order of preference for rehabilitation plans is

10 (1) prosthetic devices and training enabling work at the same
11 or similar occupation as at the time of injury;

12 (2) work site modification and vocational training for the
13 same or similar occupation;

14 (3) on-the-job training for a new occupation;

15 (4) vocational training for a new occupation; and

16 (5) academic training for a new occupation if the educational
17 level is attainable by the employee and employment in the new occupation
18 is believed to be available to the employee in his community at the time
19 academic training is completed.

20 (f) The employer and employee may agree on a vocational rehabili-
21 tation plan. If the employer and employee fail to agree on a vocational
22 rehabilitation plan, any of the parties may submit a plan for approval
23 with the rehabilitation administrator. The rehabilitation administrator
24 shall approve, modify, or deny a plan within 14 days after the plan is
25 submitted. Within 10 days of the rehabilitation administrator's
26 decision any party may seek review of the decision by requesting a
27 hearing in accordance with AS 23.30.110.

28 (g) Vocational rehabilitation services may not exceed 37 weeks,
29 except that vocational rehabilitation services may be extended an addi-

1 tional 37 weeks if the rehabilitation administrator determines that
2 special circumstances exist. This subsection does not prohibit an
3 employer or carrier from providing extended vocational rehabilitation
4 services on a voluntary basis. If rehabilitation requires residence
5 away from the employee's customary residence, reasonable cost of board,
6 lodging, and travel shall be paid by the employer. Temporary disability
7 under AS 23.30.185 or AS 23.30.200 shall be paid throughout the rehabi-
8 litation process. The board may award an employee being rehabilitated
9 under this section an additional \$200 a month if it finds that a case of
10 extreme financial hardship exists. The employer shall pay all costs of
11 a rehabilitation plan under this section.

12 (h) Refusal by an injured employee to participate in an evaluation
13 or a rehabilitation plan approved by the rehabilitation administrator or
14 agreed to by the parties results in forfeiture of disability compensa-
15 tion for the period the refusal continues. However, if an employee
16 begins participation in a rehabilitation plan within two months from the
17 date of refusal, and successfully completes the rehabilitation plan and
18 becomes employed for a period of 30 consecutive business days following
19 the completion of the rehabilitation plan, the employee shall receive a
20 lump-sum payment of 25 percent of the compensation forfeited by him.
21 The lump-sum payment is available only once to an employee refusing
22 rehabilitation. The rehabilitation administrator may find that an
23 employee refuses to participate in an evaluation or rehabilitation plan
24 if the employee fails to cooperate with the rehabilitation provider.

25 (i) For purposes of this section, an employee is restored to
26 suitable gainful employment if he can return to (1) work at the same or
27 similar occupation with the same employer or an employer in the same
28 industry as the employer at the time of injury; (2) an occupation using
29 essentially the same skills as the job at time of injury but in a

1 different industry; (3) an occupation using different skills but using
2 the employee's academic achievement level at the time of injury; or (4)
3 an occupation requiring an academic achievement level that is different
4 from that attained at the time of injury. An employee shall be returned
5 to suitable gainful employment in the order indicated in (1) - (4) of
6 this subsection.

7 (j) "Qualified rehabilitation professional" means a person who by
8 education and experience has the skills to make judgments, administer
9 and interpret tests, counsel, and make recommendations concerning the
10 medical, intellectual, emotional, physical, or motivational capacity of
11 a person to accept and perform suitable gainful employment, and to
12 design, implement and supervise programs that tend to enhance a person's
13 medical, intellectual, emotional, physical, or motivational capacity to
14 accept suitable gainful employment.

15 * Sec. 4. AS 23.30.045(a) is amended to read:

16 (a) An employer is liable for and shall secure the payment to his
17 employees of the compensation payable under AS 23.30.041, 23.30.050,
18 23.30.095, 23.30.145, and 23.30.180 - 23.30.215. If the employer is a
19 subcontractor, the contractor is liable for and shall secure the payment
20 of the compensation to employees of the subcontractor unless the subcon-
21 tractor secures the payment.

22 * Sec. 5. AS 23.30.045(c) is amended to read:

23 (c) For a person eligible for vocational rehabilitation service
24 under this chapter or AS 23.15.080 [AND] who is placed with an employer
25 for service [WITHOUT WAGES] at the request of the rehabilitation admin-
26 istrator or division [OFFICE] of vocational rehabilitation to provide
27 [GIVE HIM] on the job training, work readiness, [OR] work therapy ex-
28 perience [,] or work sampling, the liability set out in (a) of this
29 section applies to the state rather than to the employer. However, an

1 employer may elect to assume the liabilities in (a) of this section.

2 * Sec. 6. AS 23.30.080 is amended by adding a new subsection to read:

3 (d) If an employer fails to insure or provide security as required
4 by AS 23.30.075, the board may issue a stop order prohibiting the use of
5 employee labor by the employer until the employer insures or provides
6 security as required by AS 23.30.075. The failure of an employer to
7 file evidence of compliance as required by AS 23.30.085 creates a rebut-
8 able presumption that the employer has failed to insure or provide
9 security as required by AS 23.30.075. If an employer fails to comply
10 with a stop order issued under this section, the board shall assess a
11 civil penalty of \$1,000 per day. The employer may not obtain a public
12 contract with the state or a political subdivision of the state for
13 three years following the violation of the stop order.

14 * Sec. 7. AS 23.30.095(c) is amended to read:

15 (c) No claim for medical or surgical treatment is valid and en-
16 forceable as against the employer unless, within 20 [TWENTY] days follow-
17 ing the first treatment and following the time set by the board for
18 notice of subsequent treatments, the physician giving the treatment or
19 the employee receiving it furnishes to the employer and the board notice
20 of the injury and treatment, preferably on a form prescribed by the
21 board. The board shall [MAY], however, excuse the failure to furnish
22 notice within 20 days when it finds it to be in the interest of justice
23 to do so, and it may, upon application by a party in interest, make an
24 award for the reasonable value of the medical or surgical treatment so
25 obtained by the employee.

26 * Sec. 8. AS 23.30.095(e) is amended to read:

27 (e) The employee shall, after an injury, at reasonable times
28 during the continuance of his disability if requested by his employer
29 or, when ordered by the board, submit himself to an examination by a

1 physician or surgeon authorized to practice medicine under the laws of
2 the state in which the employee may be found, furnished and paid for by
3 the employer. [THE EMPLOYEE HAS THE RIGHT TO HAVE A PHYSICIAN, PAID FOR
4 BY THE EMPLOYER, PRESENT AT THE EXAMINATION OR EXAMINATIONS.] No fact
5 relative to the injury or claim communicated to or otherwise learned by
6 a physician or surgeon who may have attended or examined the employee,
7 or who may have been present at an examination is privileged, either in
8 the hearings provided for in this chapter or an action to recover
9 damages against an employer who is subject to the compensation provi-
10 sions of this chapter. If an employee refuses to submit himself to any
11 examination provided for in this section [HEREIN], his rights to compen-
12 sation shall be suspended until the obstruction or refusal ceases, and
13 his compensation during the period of suspension may, in the discretion
14 of the board or the court determining an action brought for the recovery
15 of damages under this chapter [HEREUNDER], be forfeited. The board in
16 any case of death may require an autopsy at the expense of the party
17 requesting the autopsy. No autopsy may be held without notice first
18 being given to the widow or widower or next of kin if they reside in the
19 state or their whereabouts can be reasonably ascertained, of the time
20 and place of the autopsy and reasonable time and opportunity given the
21 widow or widower or next of kin to have a representative present to
22 witness the autopsy. If no adequate notice is given, the findings from
23 the autopsy may be suppressed on motion made to the board or to the
24 superior court, as the case may be.

25 * Sec. 9. AS 23.30.095 is amended by adding a new subsection to read:

26 (j) The board shall adopt and use a schedule for determining the
27 existence and degree of permanent impairment consistent with the Ameri-
28 can Medical Association Guide to the Evaluation of Permanent Impairment.

29 * Sec. 10. AS 23.30 is amended by adding a new section to article 3 to

1 read:

2 Sec. 23.30.097. RELEASE OF INFORMATION. Upon request the employee
3 shall provide written authority to the employer, carrier, rehabilitation
4 provider, or rehabilitation administrator to obtain medical and rehabi-
5 litation information relative to the employee's injury.

6 * Sec. 11. AS 23.30.100(d)(2) is amended to read:

7 (2) if the board excuses the failure on the ground that for
8 some satisfactory reason notice could not be given; however, if delay
9 in giving notice is excused by the board, the burden of proof of the
10 validity of the claim shifts to the employee notwithstanding the pro-
11 visions of AS 23.30.120;

12 * Sec. 12. AS 23.30.110(c) is amended to read:

13 (c) The board shall make the investigation which it considers
14 necessary with [IN] respect to [OF] the claim, and upon application of
15 an interested party shall provide an opportunity for [ORDER] a hearing
16 on it. If a hearing on a claim is ordered, the board shall give the
17 claimant and other interested parties at least 10 days' notice of the
18 hearing, served personally upon the claimant and other interested parties
19 or sent by registered mail, and shall, within 30 [20] days after the
20 hearing record closes [IS HAD], by order, reject the claim or make an
21 award in respect to it. If a hearing is continued by the board, addi-
22 tional notice under this subsection is not required. If a claim is
23 controverted by the employer and the employee does not request a hearing
24 for a period of two years following the date of controversion, the claim
25 is denied. [IF NO HEARING IS ORDERED WITHIN 20 DAYS AFTER NOTICE IS
26 GIVEN AS PROVIDED IN (b) OF THIS SECTION, THE BOARD SHALL BY ORDER REJECT
27 THE CLAIM OR MAKE AN AWARD IN RESPECT TO IT.]

28 * Sec. 13. AS 23.30.120(3) is amended to read:

29 (3) the injury was not proximately caused by the intoxication

1 of the injured employee or proximately caused by the [OCCASIONED SOLELY
2 BY THE INTOXICATION OF THE INJURED] employee being under the influence
3 of drugs unless the drugs were taken as prescribed by the employee's
4 physician;

5 * Sec. 14. AS 23.30 is amended by adding a new section to read:

6 Sec. 23.30.122. CREDIBILITY OF WITNESSES. The board has the sole
7 power to determine the credibility of a witness. A finding by the board
8 concerning the weight to be accorded a witness's testimony, including
9 medical testimony and reports, is conclusive even if the evidence is
10 conflicting or susceptible to contrary conclusions. The findings of the
11 board are subject to the same standard of review as a jury's finding in
12 a civil action.

13 * Sec. 15. AS 23.30.155(j) is amended to read:

14 (j) If an employer has made advance payments or overpayments of
15 compensation, he is entitled to be reimbursed by withholding up to 20
16 percent out of each [ANY] unpaid installment or installments of compen-
17 sation due. More than 20 percent of unpaid installments of compensation
18 due may be withheld from an employee only on approval of the board.

19 * Sec. 16. AS 23.30.175(b) is repealed and reenacted to read:

20 (b) After June 30 and before December 1 of each year, the commis-
21 sioner shall adopt and publish the average weekly wage for each juris-
22 diction for the preceding calendar year as published by the United
23 States Secretary of Labor for the purposes of unemployment insurance.
24 In determining the rate of compensation the commissioner shall use the
25 average weekly wage figure for each jurisdiction, including Alaska, for
26 which the Secretary of Labor computes an average weekly wage. These
27 figures are the applicable average weekly wages for those jurisdictions
28 for the following calendar year.

29 * Sec. 17. AS 23.30.175(c) is repealed and reenacted to read:

1 (c) The following rules apply to recipients who do not reside in
2 Alaska:

3 (1) The weekly rate of compensation shall be calculated by
4 multiplying the recipient's weekly compensation rate calculated in
5 accordance with AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.
6 215 times the ratio of the average weekly wage of the jurisdiction in
7 which the recipient resides to the average weekly wage of Alaska. The
8 ratio is based on the average weekly wages in effect when the recipient
9 leaves Alaska and shall be adjusted annually upon publication of the
10 average weekly wages for all jurisdictions.

11 (2) The calculation required by this subsection does not
12 apply if the recipient is absent from Alaska for medical or rehabilita-
13 tion services not reasonably available in Alaska.

14 (3) If the average weekly wage of the recipient and the
15 resulting compensation rate is determined under AS 23.30.220(2), the
16 calculation required by this subsection applies to only those wages
17 earned in Alaska.

18 (4) Application of this subsection may not result in a reduc-
19 tion of the weekly compensation rate to less than \$65 a week except as
20 provided in (a) of this section.

21 * Sec. 18. AS 23.30.175(d) is repealed and reenacted to read:

22 (d) In a jurisdiction for which no average weekly wage is computed
23 by the United States Secretary of Labor for the purposes of unemployment
24 insurance, the average weekly wage shall be as determined by the commis-
25 sioner.

26 * Sec. 19. AS 23.30 is amended by adding a new section to read:

27 Sec. 23.30.227. EFFECT OF UNEMPLOYMENT BENEFITS. Compensation is
28 not payable to an employee under AS 23.30.180 or 23.30.185 for a week in
29 which the employee receives unemployment benefits.

1 * Sec. 20. AS 23.30.235 is repealed and reenacted to read:

2 Sec. 23.30.235. CASES IN WHICH NO COMPENSATION IS PAYABLE. Compens-
3 sation under this chapter may not be allowed for an injury

4 (1) proximately caused by the employee's wilful intent to
5 injure or kill himself or another;

6 (2) proximately caused by intoxication of the injured em-
7 ployee or proximately caused by the employee being under the influence
8 of drugs unless the drugs were taken as prescribed by the employee's
9 physician.

10 * Sec. 21. AS 23.30.250 is amended to read:

11 Sec. 23.30.250. PENALTY FOR MISREPRESENTATION. A person who wil-
12 fully makes a false or misleading statement or representation for the
13 purpose of obtaining or denying a benefit or payment under this chapter
14 is guilty of theft by deception as defined in AS 11.46.180 and is pun-
15 ishable as provided in 11.46.120 - 11.46.150 [A MISDEMEANOR, AND UPON
16 CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN \$1,000, OR BY IMPRI-
17 SONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH].

18 * Sec. 22. AS 23.30.255(a) is amended to read:

19 (a) An employer required to secure the payment of compensation
20 under this chapter who fails to do so is guilty of a class B felony if
21 the amount involved exceeds \$25,000 or a class C felony if the amount
22 involved is \$25,000 or less [MISDEMEANOR AND UPON CONVICTION IS PUNISH-
23 ABLE BY A FINE OF NOT MORE THAN \$1,000, OR BY IMPRISONMENT FOR NOT MORE
24 THAN ONE YEAR, OR BY BOTH]. If the employer is a corporation, its
25 president, secretary, and treasurer are also severally liable to the
26 fine or imprisonment imposed [PROVIDED IN THIS SECTION] for the failure
27 of the corporation to secure the payment of compensation. The presi-
28 dent, secretary, and treasurer are severally personally liable, jointly
29 with the corporation, for the compensation or other benefit which accrues

1 under this chapter in respect to an injury which happens to an employee
2 of the corporation while it has failed to secure the payment of compen-
3 sation as required by AS 23.30.075.

4 * Sec. 23. AS 23.30.255(b) is amended to read:

5 (b) An employer who knowingly transfers, sells, encumbers, assigns,
6 or in any manner disposes of, conceals, secretes, or destroys any of his
7 property after one of his employees has been injured within the scope of
8 this chapter, with intent to avoid the payment of compensation under
9 this chapter to the employee or his dependents, is guilty of a class B
10 felony if the amount involved exceeds \$25,000 or a class C felony if
11 the amount involved is \$25,000 or less [MISDEMEANOR, AND UPON CONVICTION
12 IS PUNISHABLE BY A FINE OF NOT MORE THAN \$1,000, OR BY IMPRISONMENT FOR
13 NOT MORE THAN ONE YEAR, OR BY BOTH]. If the employer is a corporation,
14 its president, secretary, and treasurer are also severally liable to the
15 penalty of imprisonment as well as jointly liable with the corporation
16 for the fine.

17 * Sec. 24. AS 23.30.265 is amended by adding new paragraphs to read:

18 (29) "arising out of and in the course of employment" includes
19 employer-required or supplied travel to and from a remote job site;
20 activities performed at the direction or under the control of the
21 employer; and employer-sanctioned activities at employer-provided facili-
22 ties; but excludes activities of a personal nature away from employer-
23 provided facilities;

24 (30) "drugs" means a controlled substance as defined by law;

25 (31) "suitable gainful employment" means employment that is
26 reasonably attainable in light of an individual's age, education, pre-
27 vious occupation, and injury, and that offers an opportunity to restore
28 the individual as soon as practical to a remunerative occupation and as
29 nearly as possible to his average weekly wage as determined at the time

1 of injury.

2 * Sec. 25. AS 21.42 is amended by adding a new section to read:

3 Sec. 21.42.075. REIMBURSEMENT OF LOSSES. An insurer may make a
4 filing for approval by the director that provides for reimbursement by
5 an insured of losses paid by the insurer under a workers' compensation
6 insurance policy. A form that alters the obligation of the insurer to
7 an employee under AS 23.30.025 or 23.30.030 may not be approved by the
8 director. Filing for approval under this section is not a deviation
9 under AS 21.39.070.

10 * Sec. 26. AS 39.25.120 is amended by adding a new paragraph to read:

11 (20) the rehabilitation administrator of the Workers' Compensa-
12 tion Board.

13 * Sec. 27. AS 23.30.040(e), 23.30.095(g), 23.30.125(b), 23.30.175(e) and
14 (f), and 23.30.191 are repealed.

15 * Sec. 28. The board shall publish AS 23.30.235 and AS 23.30.250 as
16 enacted in secs. 20 and 21 of this Act as part of a document describing the
17 employee's rights and obligations under the Alaska Workers' Compensation Act.
18 The publication shall be mailed or otherwise made available to an injured
19 worker upon notice of an injury.

20 * Sec. 29. Sections 3, 20, and 24 of this Act apply only to injuries
21 sustained after the effective date of this Act.

22 * Sec. 30. This Act takes effect July 1, 1982.
23
24
25
26
27
28
29