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BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

2

CS FOR HOUSE BILL NO. 311 (L&C)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to Workers' Compensation; and pro-
7 viding for an effective date."

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

9 * Section 1. AS 23.30.175(a) is amended to read:

10 (a) The weekly rate of compensation for disability or death for
11 a recipient residing in Alaska may not exceed the percentage of the
12 Alaska average weekly wage in effect on the date of injury as deter-
13 mined by the table contained in this subsection and initially may not
14 be less than \$110 [\$65] a week. However, if the board determines that
15 the employee's spendable [AVERAGE] weekly wages are less than \$110
16 [\$65] a week as computed under AS 23.30.220, it shall issue an order
17 decreasing the weekly rate of compensation to a rate equal to the
18 employee's spendable [AVERAGE] weekly wages, and payments made earlier
19 in excess of the decreased rate shall be deducted from the unpaid
20 compensation in the manner the board determines. In any case, the
21 employer shall pay timely compensation.

22

On

The Rate Shall be

23

July 1, 1975 80 percent of the Alaska average weekly wage

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January 1, 1976 100 percent of the Alaska average weekly wage

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January 1, 1977 133.3 percent of the Alaska average weekly wage

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January 1, 1979 166.6 percent of the Alaska average weekly wage

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January 1, 1981 200 percent of the Alaska average weekly wage

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* Sec. 2. AS 23.30.175(c)(3) is amended to read:

29

(3) If the spendable [AVERAGE] weekly wage of the recipient

1 and the resulting compensation rate is determined under AS 23.30.-
2 220(1) [AS 23.30.220(2)], the calculation required by this subsection
3 applies to only those wages earned in Alaska.

4 * Sec. 3. AS 23.30.175(c)(4) is amended to read:

5 (4) Application of this subsection may not result in a
6 reduction of the weekly compensation rate to less than \$110 [\$65] a
7 week except as provided in (a) of this section.

8 * Sec. 4. AS 23.30.180 is amended to read:

9 Sec. 23.30.180. PERMANENT TOTAL DISABILITY. In case of total
10 disability adjudged to be permanent 80 [66 2/3] percent of the in-
11 jured employee's spendable [AVERAGE] weekly wages shall be paid to the
12 employee during the continuance of the total disability. Loss of both
13 hands, or both arms, or both feet, or both legs, or both eyes, or of
14 any two of them, in the absence of conclusive proof to the contrary,
15 constitutes permanent total disability. In all other cases permanent
16 total disability is determined in accordance with the facts.

17 * Sec. 5. AS 23.30.185 is amended to read:

18 Sec. 23.30.185. COMPENSATION FOR TEMPORARY TOTAL DISABILITY. In
19 case of disability total in character but temporary in quality, 80 [66
20 2/3] percent of the injured employee's spendable [AVERAGE] weekly
21 wages shall be paid to the employee during the continuance of the
22 disability.

23 * Sec. 6. AS 23.30.190(a) is amended to read:

24 (a) In case of disability partial in character but permanent in
25 quality the compensation is 80 [66 2/3] percent of the injured em-
26 ployee's spendable [AVERAGE] weekly wages in addition to compensation
27 for temporary total disability or temporary partial disability paid in
28 accordance with AS 23.30.185 or 23.30.200, respectively, and shall be
29 paid to the employee as follows:

- 1 (1) arm lost, 280 weeks compensation, not to exceed \$59,000
2 [\$43,680];
- 3 (2) leg lost, 248 weeks compensation, not to exceed \$54,400
4 [\$40,320];
- 5 (3) hand lost, 212 weeks compensation, not to exceed
6 \$45,400 [\$33,600];
- 7 (4) foot lost, 173 weeks compensation, not to exceed
8 \$39,700 [\$28,700];
- 9 (5) eye lost, 140 weeks compensation, not to exceed \$30,200
10 [\$22,400];
- 11 (6) thumb lost, 51 weeks compensation, not to exceed
12 \$14,000 [\$10,400];
- 13 (7) first finger lost, 28 weeks compensation, not to exceed
14 \$8,700 [\$6,440];
- 15 (8) great toe lost, 26 weeks compensation, not to exceed
16 \$7,200 [\$5,320];
- 17 (9) second finger lost, 18 weeks compensation, not to
18 exceed \$5,700 [\$4,200]; third finger lost, 18 weeks compensation, not
19 to exceed \$4,700 [\$3,500];
- 20 (10) toe other than great toe lost, eight weeks compensa-
21 tion, not to exceed \$3,000 [\$2,240];
- 22 (11) fourth finger lost, seven weeks compensation, not to
23 exceed \$2,800 [\$2,100];
- 24 (12) loss of hearing of one ear, 52 weeks compensation, not
25 exceeding \$9,800 [\$7,280]; loss of hearing of both ears, 200 weeks
26 compensation, not to exceed \$37,800 [\$28,000];
- 27 (13) compensation for loss of more than one phalange of a
28 digit shall be the same as for loss of the entire digit; compensation
29 for loss of the first phalange is one-half of the compensation for

1 loss of the entire digit;

2 (14) amputation between the elbow and the wrist is consid-
3 ered equivalent to the loss of an arm, and amputation between the knee
4 and ankle is considered equivalent to the loss of a leg;

5 (15) compensation for loss of binocular vision or for 80
6 percent or more of the vision of an eye is the same as for loss of the
7 eye;

8 (16) compensation for loss of two or more digits, or one or
9 more phalanges of two or more digits of a hand or foot may be propor-
10 tioned to the resulting loss of use of the injured hand or foot, but
11 may not exceed the compensation for loss of a hand or foot;

12 (17) compensation for permanent total loss of use of a
13 member is the same as for loss of the member;

14 (18) compensation for permanent partial loss or loss of use
15 of a member may be for proportionate loss or loss of use of the mem-
16 ber;

17 (19) in addition to other allowable compensation, the board
18 shall award proper and equitable compensation up to \$10,000 for

19 (A) serious disfigurement of face, head and, when such
20 disfigurement is likely to handicap the employee in securing or
21 holding employment, for serious disfigurement of neck or limbs
22 normally exposed, or

23 (B) partial or total loss of or loss of use of a part
24 or function of the body not otherwise provided for under this
25 section;

26 (20) in all other cases in this class of disability the
27 compensation is 80 [66 2/3] percent of the difference between the
28 spendable [HIS AVERAGE] weekly wages of the employee and the [HIS]
29 wage-earning capacity of the employee after the injury in the same

1 employment or otherwise, payable during the continuance of the partial
2 disability, but subject to modification [RECONSIDERATION OF THE DEGREE
3 OF THE IMPAIRMENT] by the board on its own motion or upon application
4 of a party in interest; whenever the board determines that it is in
5 the interest of justice, the liability of the employer for compensa-
6 tion, or any part of it as determined by the board, may be discharged
7 by the payment of a lump sum;

8 (21) in a case in which there is a loss of, or loss of use
9 of more than one member or parts of more than one member set out in
10 (1) - (18) of this section, not amounting to permanent total disabil-
11 ity, the award of compensation is for the loss of, or loss of use of,
12 each member or part of the member, which awards shall run consecu-
13 tively, except that where the injury affects only two or more digits
14 of the same hand or foot, (16) of this section applies.

15 * Sec. 7. AS 23.30.200 is amended to read:

16 Sec. 23.30.200. TEMPORARY PARTIAL DISABILITY. In case of tempo-
17 rary partial disability resulting in decrease of earning capacity the
18 compensation shall be 80 [66 2/3] percent of the difference between
19 the injured employee's spendable [AVERAGE] weekly wages before the
20 injury and the [HIS] wage earning capacity of the employee after the
21 injury in the same or another employment, to be paid during the con-
22 tinuance of the disability, but not to be paid for more than five
23 years.

24 * Sec. 8. AS 23.30.210 is amended to read:

25 Sec. 23.30.210. DETERMINATION OF WAGE-EARNING CAPACITY. In a
26 case of partial disability under AS 23.30.190(20) or 23.30.200 the
27 wage-earning capacity of an injured employee is determined by the
28 [HIS] actual spendable weekly wage of the employee [EARNINGS] if the
29 actual spendable weekly wage [EARNINGS] fairly and reasonably repre-

1 sents the [REPRESENT HIS] wage-earning capacity of the employee. If
2 the employee has no actual spendable weekly wage [EARNINGS] or the
3 [HIS] actual spendable weekly wage does [EARNINGS DO] not fairly and
4 reasonably represent the [HIS] wage-earning capacity of the employee.
5 the board may, in the interest of justice, fix the wage-earning capac-
6 ity which is reasonable, having due regard to the nature of the [HIS]
7 injury, the degree of physical impairment, the [HIS] usual employment,
8 and any other factors or circumstances in the case which may affect
9 the [HIS] capacity of the employee to earn wages in a [HIS] disabled
10 condition, including the effect of disability as it may naturally
11 extend into the future.

12 * Sec. 9. AS 23.30.215(a) is amended to read:

13 (a) If the injury causes death, the compensation is known as a
14 death benefit and is payable in the following amounts to or for the
15 benefit of the following persons:

16 (1) reasonable and necessary funeral expenses not exceeding
17 \$2,500 [\$1,000];

18 (2) if there is a widow or widower or a child or children
19 of the deceased, the following percentages of the spendable [AVERAGE]
20 weekly wages of the deceased:

21 (A) 80 [66 2/3] percent for the widow or widower with
22 no children;

23 (B) 40 [33 1/3] percent for the widow or widower with
24 one child and 40 [33 1/3] percent for the child;

25 (C) 25 [20] percent for the widow or widower with two
26 or more children and 55 [46 2/3] percent divided equally among
27 the children;

28 (D) Repealed;

29 (E) 80 [66 2/3] percent for an only child when there

1 is no widow or widower;
2 (F) Repealed;
3 (G) 80 [66 2/3] percent, divided equally, if there are
4 two or more children and no widow or widower;

5 (3) if the widow or widower remarries, the widow or widower
6 [SHE OR HE] is entitled to be paid in one sum an amount equal to the
7 compensation to which the widow or widower would otherwise be entitled
8 in the two years commencing on the date of remarriage as full and
9 final settlement of all sums due the widow or widower;

10 (4) if there is no widow or widower or child or children,
11 then for the support of father, mother, grandchildren, brothers and
12 sisters, if dependent upon the deceased at the time of injury, 42 [35]
13 percent of the spendable [AVERAGE] weekly wage of the deceased to such
14 beneficiaries, share and share alike, not to exceed \$20,000 in the
15 aggregate.

16 * Sec. 10. AS 23.30.215(b) is amended to read:

17 (b) In computing death benefits, the spendable [AVERAGE] weekly
18 wage of the deceased shall be computed under AS 23.30.220 and shall be
19 paid in accordance with AS 23.30.155 and subject to the weekly maximum
20 limitation in the aggregate as provided in AS 23.30.175, but the total
21 weekly compensation may not be less than \$75 [\$45] for a widow or
22 widower nor less than \$25 [\$15] weekly to a child or \$50 [\$30] for
23 children.

24 * Sec. 11. AS 23.30.220 is repealed and reenacted to read:

25 Sec. 23.30.220. DETERMINATION OF SPENDABLE WEEKLY WAGE. (a)
26 The spendable weekly wage of an injured employee at the time of an
27 injury is the basis for computing compensation. It is the employee's
28 gross weekly earnings minus payroll tax deductions. The gross weekly
29 earnings shall be calculated as follows:

1 (1) The gross weekly earnings are computed by dividing by
2 100 the gross earnings of the employee in the two calendar years
3 immediately preceding the injury.

4 (2) If the board determines that the gross weekly earnings
5 at the time of the injury cannot be fairly calculated under (1) of
6 this subsection, the board may determine the employee's gross weekly
7 earnings for calculating compensation by considering the nature of the
8 employee's work and work history.

9 (3) If an employee when injured is a minor, an apprentice,
10 or a trainee, as determined by the board, whose wages under normal
11 conditions would increase during the period of disability, the pro-
12 jected increase may be considered by the board in computing the gross
13 weekly earnings of the employee.

14 (4) If the employee is injured while performing duties as a
15 volunteer ambulance attendant, policeman, or fireman, the gross weekly
16 earnings for calculating compensation shall be the minimum gross
17 weekly earnings paid a full-time ambulance attendant, policeman, or
18 fireman employed in the political subdivision where the injury occur-
19 red, or, if the political subdivision has no full-time ambulance
20 attendants, policemen, or firemen, at a reasonable figure previously
21 set by the political subdivision to make this determination but in no
22 case may the gross weekly earnings for calculating compensation be
23 less than the minimum wage computed on the basis of 40 hours work per
24 week.

25 (b) The commissioner shall annually prepare formulas that shall
26 be used to calculate an employee's spendable weekly wage on the basis
27 of gross weekly earnings, number of dependents, marital status, and
28 payroll tax deductions.

29 * Sec. 12. AS 23.30.265(31) is amended to read:

1 (31) "suitable gainful employment" means employment that is
2 reasonably attainable in light of an individual's age, education,
3 previous occupation, and injury, and that offers an opportunity to
4 restore the individual as soon as practical to a remunerative occupa-
5 tion and as nearly as possible to the individual's gross [HIS AVERAGE]
6 weekly earnings [WAGE] as determined at the time of injury.

7 * Sec. 13. AS 23.30.265 is amended by adding new paragraphs to read:

8 (32) "gross earnings" means periodic payments, by an em-
9 ployer to an employee for employment before any authorized or lawfully
10 required deduction or withholding of money by the employer, including
11 compensation that is deferred at the option of the employee, and
12 excluding irregular bonuses, reimbursement of expenses, expense allow-
13 ances, and any benefit or payment to the employee that is not taxable
14 to the employee during the pay period; the value of room and board to
15 the employee may be considered in determining gross earnings; however,
16 the value of room and board that would raise an employee's gross
17 weekly earning above the Alaska average weekly wage at the time of
18 injury may not be considered;

19 (33) "gross weekly earnings" means gross weekly earnings as
20 calculated under AS 23.30.220(a);

21 (34) "payroll taxes" means

22 (A) the amount that would be withheld under withhold-
23 ing tables in effect on the January 1 preceding the injury under
24 the Internal Revenue Code of 1954 as amended and regulations
25 issued under the code, as though the employee had claimed the
26 maximum number of dependents for actual dependency, blindness,
27 and old age to which the employee is entitled on the date on
28 which the employee is injured; and

29 (B) the amount that is or would be deducted or with-

1 held as of the January 1 preceding the injury under the Social
2 Security Act of 1935 as amended from the amount of earnings of
3 the employee at the time of the injury as if the earnings were
4 earned at the beginning of the calendar year in which the em-
5 ployee was injured and regardless of whether the amount was
6 actually withheld or the earnings were subject to withholding.

7 * Sec. 14. AS 23.30.265(20) is repealed.

8 * Sec. 15. This Act applies only to injuries sustained on or after
9 January 1, 1984.

10 * Sec. 16. This Act takes effect January 1, 1984.