

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE SENATE

2 SENATE BILL NO. 322

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND 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. LEGISLATIVE INTENT. (a) It is the intent of the legisla-
10 ture that AS 23.30 be interpreted so as to assure the quick, efficient, and
11 predictable delivery of indemnity and medical benefits to injured workers
12 at a reasonable cost to the employers who are subject to the provisions of
13 AS 23.30.

14 (b) The legislature declares that the workers' compensation laws must
15 not be construed by the courts in favor of any party. It is the specific
16 intent of the legislature that workers' compensation cases be decided on
17 their merits, except when otherwise provided by statute. It is also the
18 intent of the legislature that the board possess the greatest possible
19 authority in the exercise of its fact finding responsibilities and that the
20 board's decisions be conclusive if supported by any evidence.

21 (c) It is the intent of the legislature in amending AS 23.30.175
22 regarding benefits payable to recipients not residing in the state to

23 (1) recognize the levels of workers' compensation benefits
24 brought about by the high cost of living that exists in the state as com-
25 pared to other localities;

26 (2) reduce disincentives to return to work; and

27 (3) remove obstacles to the utilization of vocational rehabili-
28 tation that may be brought about by the payment of workers' compensation
29 benefits at the high levels provided by the Alaska workers' compensation

1 law to individuals residing in localities with living costs lower than
2 those in Alaska.

3 * Sec. 2. AS 23.30.005(h) is amended to read:

4 (h) The department may adopt identical rules for all panels, and
5 procedures for the periodic selection, retention, and removal of
6 rehabilitation specialists or physicians under AS 23.30.041 and 23.-
7 30.095, and may adopt regulations to carry out the provisions of this
8 chapter. Process and procedure under this chapter shall be as summary
9 and simple as possible. The department, the board or a member of it
10 may for the purposes of this chapter subpoena witnesses, administer or
11 cause to be administered oaths, and may examine or cause to have
12 examined the parts of the books and records of the parties to a pro-
13 ceeding that relate [WHICH RELATED] to questions in dispute. The
14 superior court, on application of the department, the board or any
15 members of it, shall enforce the attendance and testimony of witnesses
16 and the production and examination of books, papers, and records.

17 * Sec. 3. AS 23.30.005 is amended by adding a new subsection to read:

18 (m) If a regulation adopted by the department and approved by a
19 majority of the full board is determined to be invalid by the state
20 supreme court, the department shall immediately adopt new regulations
21 that conform to the department's statutory authority as interpreted by
22 the court.

23 * Sec. 4. AS 23.30.020 is amended by adding a new subsection to read:

24 (b) An employee who knowingly makes a false statement as to the
25 employee's physical condition on an employment application or preem-
26 ployment questionnaire may not receive benefits under this chapter if

27 (1) the employer relied upon the false representation and
28 this reliance was a substantial factor in the hiring; and

29 (2) there was a causal connection between the false

1 representation and the injury to the employee.

2 * Sec. 5. AS 23.30.040(b) is amended to read:

3 (b) If an employee suffers a compensable injury that results in
4 temporary total disability, temporary partial disability, permanent
5 partial disability, or permanent total disability, the employer or
6 insurance carrier shall contribute to the second injury fund. The
7 contribution shall be made annually at the time of the report filing
8 required by AS 23.30.155(m) [BY ONE YEAR FROM THE DATE OF THE INJURY
9 OR ON TERMINATION OF THE EMPLOYEE'S CLAIM, WHICHEVER IS SOONER. IF
10 THE CLAIM IS NOT TERMINATED WITHIN ONE YEAR, SUBSEQUENT CONTRIBUTIONS
11 SHALL BE MADE YEARLY UNTIL THE TERMINATION OF THE EMPLOYEE'S CLAIM].
12 The amount of the contribution is the product of the compensation to
13 which the employee is entitled for temporary total disability, tempo-
14 rary partial disability, permanent partial disability, or permanent
15 total disability and the applicable contribution rate set out in
16 column A of this subsection. Payment need not be made to the second
17 injury fund if the total contribution under this subsection is less
18 than \$20. By December 15 of each year the commissioner shall deter-
19 mine and make available to the public the applicable contribution rate
20 for the following calendar year according to the reserve rate of the
21 second injury fund in column B of this subsection:

22	Column A	Column B	
23	Second Injury Fund	Reserve Rate	
24	Contribution Rate	At Least	But Less Than
25	(Percent)	(Percent)	(Percent)
26	6	0	50
27	5	50	75
28	4	75	100
29	3	100	125

1	2	125	150
2	1	150	175
3	0	175	

4 * Sec. 6. AS 23.30.041 is repealed and reenacted to read:

5 Sec. 23.30.041. REHABILITATION OF INJURED WORKERS. (a) The
6 board shall select and employ a reemployment services administrator.
7 The board may authorize the reemployment services administrator to
8 select and employ additional staff. The reemployment services admin-
9 istrator is in the partially exempt service under AS 39.25.120.

10 (b) The reemployment services administrator shall perform the
11 following functions:

12 (1) enforce regulations adopted by the board to implement
13 this section;

14 (2) recommend regulations for adoption by the board that
15 establish performance and reporting criteria for rehabilitation spe-
16 cialists;

17 (3) enforce the quality and effectiveness of reemployment
18 benefits provided for under this section;

19 (4) review on an annual basis the performance of rehabili-
20 tation specialists to determine continued eligibility for delivery of
21 rehabilitation services;

22 (5) submit to the department, on or before January 1 of
23 each year, a report of reemployment benefits provided under this
24 section for the previous fiscal year; the report must include a gen-
25 eral section and sections related to each rehabilitation specialist
26 used under this section; the report must also include for each section
27 a statistical summary of all rehabilitation cases, including

28 (A) the estimated and actual cost of each active
29 rehabilitation plan;

1 (B) the estimated and actual time of each rehabilita-
2 tion plan;

3 (C) a status report on all individuals completing or
4 terminating a reemployment services program including a return to
5 work date;

6 (D) the cost of reemployment services;

7 (6) maintain a list of rehabilitation specialists who meet
8 the qualifications established under this section;

9 (7) promote awareness among physicians, adjustors, injured
10 workers, employers, employees, attorneys, training providers, and
11 rehabilitation specialists of the reemployment program established in
12 this subsection.

13 (c) If an employee suffers a compensable injury that may perma-
14 nently preclude an employee's return to the employee's occupation at
15 the time of injury, the employee or employer may request an eligibil-
16 ity evaluation for reemployment benefits. The reemployment services
17 administrator shall, on a rotating basis, select a rehabilitation
18 specialist from the list maintained under (b)(6) of this section to
19 perform the eligibility evaluation.

20 (d) Except as provided in (e) of this section, an employee shall
21 be eligible for benefits under this section upon the employee's writ-
22 ten request and by having a physician predict that the employee will
23 have permanent physical capacities that are less than the physical
24 demands of the employee's job as described in the United States
25 Department of Labor's "Selected Characteristics of Occupations Defined
26 in the Dictionary of Occupational Titles" for

27 (1) the employee's job at the time of injury; and

28 (2) other jobs that exist in the labor market that the
29 employee has held within 10 years before the injury or that the

1 employee has held following the injury for a period long enough to
2 obtain the skills to compete in the labor market, according to specif-
3 ic vocational preparation codes as described in the dictionary of
4 occupational titles.

5 (e) An employee is not eligible for reemployment benefits if

6 (1) the employer offers employment within the employee's
7 predicted post-injury physical capacities at a wage equivalent to at
8 least 60 percent of the worker's gross hourly wages at the time of
9 injury and the employment prepares the employee to be employable in
10 other jobs that exist in the labor market; or

11 (2) the employee has been previously rehabilitated in a
12 former workers' compensation claim and returned to work in the same or
13 similar occupation in terms of physical demands.

14 (f) When an employee is found eligible for reemployment benefits
15 and desires to use these benefits, the employee shall select a re-
16 habilitation specialist who shall provide a complete reemployment
17 services plan. If the employer disagrees with the employee's choice
18 of rehabilitation specialist to develop the plan and the disagreement
19 cannot be resolved, then the reemployment services administrator shall
20 assign a rehabilitation specialist. The employer and employee each
21 have one right of refusal of a rehabilitation specialist. The reem-
22 ployment plan must include the following:

23 (1) an occupational goal in the labor market;
24 (2) a plan to acquire the occupational skills to be employ-
25 able;

26 (3) the cost estimate of the reemployment plan, including
27 provider fees; the amount of tuition, books, tools, and supplies;
28 transportation; temporary lodging; or job modification devices;

29 (4) the estimated length of time that the plan will take;

1 (5) the date the plan will commence; and
2 (6) the time of medical stability as predicted by the
3 physician.

4 (g) Reemployment benefits shall be selected from the following
5 in a manner that ensures remunerative employability in the shortest
6 possible time:

- 7 (1) on the job training;
- 8 (2) vocational training;
- 9 (3) academic training;
- 10 (4) self-employment; or
- 11 (5) a combination of (1) - (4) of this subsection.

12 (h) The employee, rehabilitation specialist, and the employer
13 shall sign the reemployment services plan.

14 (i) After the injured worker has elected to participate in reem-
15 ployment benefits, noncooperation by the worker shall result in the
16 termination of reemployment benefits on the date of noncooperation.

17 Noncooperation means failure to

- 18 (1) keep appointments;
- 19 (2) maintain average grades;
- 20 (3) attend designated programs;
- 21 (4) maintain contact with the rehabilitation specialist;
- 22 (5) cooperate with the rehabilitation specialist in devel-
23 oping a reemployment plan and participating in activities relating to
24 reemployability on a full-time basis;
- 25 (6) comply with the employaa's responsibilities outlined in
26 the reemployment plan; or
- 27 (7) participate in any planned reemployment activity as
28 determined by the reemployment services administrator.

29 (j) Reemployment benefits are subject to the following time

1 limits:

2 (1) benefits related to the reemployment plan may not
3 extend past two years from date of plan acceptance, at which time the
4 benefits expire, except at the discretion of the employer;

5 (2) election of the eligibility evaluation by the employee
6 for reemployment benefits must occur within 60 days of the employer's
7 notice of injury unless the reemployment services administrator deter-
8 mines that unusual and extenuating physical limitations of the em-
9 ployee preclude the employee from making a timely request;

10 (3) the determination of the employee's eligibility for
11 reemployment benefits shall occur no later than 30 days following the
12 date of evaluation referral, except under circumstances that are
13 determined to be unusual and extenuating by the reemployment services
14 administrator, who may grant up to an additional 30 days;

15 (4) within 10 days after the employee has been determined
16 eligible for reemployment benefits, the employee and employer shall
17 select a rehabilitation specialist to deliver reemployment services;

18 (5) a reemployment plan must be formulated and approved by
19 the parties within 90 days of the determination of eligibility;

20 (6) the reemployment plan shall be initiated when the
21 employee is considered physically able to engage in the plan by the
22 employee's physician;

23 (7) if the employer and employee fail to agree on a reem-
24 ployment plan, either party may submit a reemployment plan for ap-
25 proval to the reemployment services administrator; the reemployment
26 services administrator shall approve or deny a plan within 14 days
27 after the plan is submitted; within 10 days of the decision, either
28 party may seek review of the decision by requesting a hearing under
29 AB 23.30.110; the board shall uphold the decision of the administrator

1 unless evidence is submitted supporting an allegation of abuse of
2 discretion on the part of the administrator; the board shall render a
3 decision within 30 days after completion of the hearing.

4 (k) The cost of the reemployment plan incurred under this sec-
5 tion shall be the responsibility of the employer, but may not exceed
6 \$10,000. If an employee reaches medical stability before completion
7 of the plan, temporary total disability benefits shall cease and
8 permanent impairment benefits shall then be paid at the employee's
9 temporary total disability rate. If the employee's permanent impair-
10 ment benefits are exhausted before the completion or termination of
11 the reemployment plan, the employer shall provide wages equal to 60
12 percent of the employee's spendable weekly wages but not to exceed
13 \$525, until the completion or termination of the plan. A permanent
14 impairment benefit remaining unpaid upon the completion or termination
15 of the plan shall be paid to the employee in a single lump sum. The
16 fees of the rehabilitation specialist or rehabilitation professional
17 shall be paid by the employer and may not be included in determining
18 the cost of the reemployment plan.

19 (l) Only a rehabilitation specialist may accept case assignments
20 as a case manager and sign eligibility determinations and reemployment
21 plans. A person who is not a rehabilitation specialist may perform
22 rehabilitation casework if the work is performed under the direct
23 supervision of a rehabilitation specialist employed in the same firm
24 and location.

25 (m) In this section

26 (1) "employability" means possessing the ability but not
27 necessarily the opportunity to engage in employment that is consistent
28 with the employee's physical status imposed by the compensable injury
29 or disease;

1 (2) "labor market" means a geographical area that offers
2 employment opportunities in the following priority:

3 (A) area of residence;

4 (B) area of last employment;

5 (C) the state;

6 (D) other states;

7 (3) "physical capacities" means objective and measurable
8 physical traits such as ability to lift and carry, walk, stand or sit,
9 push, pull, climb, balance, stoop, kneel, crouch, crawl, reach,
10 handle, finger, feel, talk, hear or see;

11 (4) "physical demands" means the physical requirements of
12 the job such as strength, including positions such as standing, walk-
13 ing, sitting, and movement of objects such as lifting, carrying,
14 pushing, pulling, climbing, balancing, stooping, kneeling, crouching,
15 crawling, reaching, handling, fingering, feeling, talking, hearing, or
16 seeing;

17 (5) "reemployment benefits" means eligibility determina-
18 tion, plan development, and plan cost not exceeding \$10,000, exclusive
19 of provider fees;

20 (6) "rehabilitation specialist" means a person who is a
21 certified insurance rehabilitation specialist or a person who has
22 equivalent or better qualifications as determined under regulations
23 adopted by the department;

24 (7) "remunerative employability" means having the skills
25 that allow a worker to be compensated with wages or other earnings
26 equivalent to at least 60 percent of the worker's gross hourly wages
27 at the time of injury; if the employment is outside the state, the
28 stated 60 percent shall be adjusted to account for the difference
29 between the applicable state average weekly wage and the Alaska

1 average weekly wage.

2 * Sec. 7. AS 23.30.055 is amended to read:

3 Sec. 23.30.055. EXCLUSIVENESS OF LIABILITY. The liability of an
4 employer prescribed in AS 23.30.045 is exclusive and in place of all
5 other liability of the employer and any fellow employee to the em-
6 ployee, the employee's legal representative, husband or wife, parents,
7 dependants, next of kin, and anyone otherwise entitled to recover
8 damages from the employer or fellow employee at law or in admiralty on
9 account of the injury or death. The liability of the employer is
10 exclusive even if the employee's claim is barred under AS 23.30.-
11 020(b). However, if an employer fails to secure payment of compen-
12 sation as required by this chapter, an injured employee or the em-
13 ployee's legal representative in case death results from the injury
14 may elect to claim compensation under this chapter, or to maintain an
15 action against the employer at law or in admiralty for damages on
16 account of the injury or death. In that action the defendant may not
17 plead as a defense that the injury was caused by the negligence of a
18 fellow servant, or that the employee assumed the risk of the employ-
19 ment, or that the injury was due to the contributory negligence of the
20 employee.

21 * Sec. 8. AS 23.30.095(a) is amended to read:

22 (a) The employer shall furnish medical, surgical, and other
23 attendance or treatment, nurse and hospital service, medicine,
24 crutches, and apparatus for the period which the nature of the injury
25 or the process of recovery requires, not exceeding two years from and
26 after the date of injury to the employee. However, if the condition
27 requiring the treatment, apparatus, or medicine is a latent one, the
28 two-year period runs from the time the employee has knowledge of the
29 nature of the employee's disability and its relationship to the

1 employment and after disablement. It shall be additionally provided
2 that, if continued treatment or care or both beyond the two-year
3 period is indicated, the injured employee has the right of review by
4 the board. The board may authorize continued treatment or care or
5 both as the process of recovery may require. When medical care is
6 required, the injured employee may designate a licensed physician
7 inside the state where the employee resides to render the care. The
8 employee may not make more than one change in the employee's choice of
9 attending physician without the written consent of the employer.
10 Referral to a specialist by the employee's attending physician is not
11 considered a change in physicians [EXCEPT IN CASES WHERE, IN THE
12 JUDGMENT OF THE BOARD, CARE OR TREATMENT OR BOTH CAN BEST BE ADMINIS-
13 TERED BY THE SELECTION OF ANOTHER PHYSICIAN]. Upon procuring the
14 services of a physician, the injured employee shall give proper noti-
15 fication of the selection to the employer within a reasonable time
16 after first being treated. Notice of a change in the attending physi-
17 cian shall be given before the change [IF FOR ANY REASON DURING THE
18 PERIOD WHEN MEDICAL CARE IS REQUIRED THE EMPLOYEE WISHES TO CHANGE TO
19 ANOTHER PHYSICIAN, THE EMPLOYEE MAY DO SO IN ACCORDANCE WITH REGU-
20 LATIONS ADOPTED BY THE BOARD].

21 * Sec. 9. AS 23.30.095(c) is amended to read:

22 (c) A claim for medical or surgical treatment is not valid and
23 enforceable against the employer unless, within 14 days following
24 treatment, the physician giving the treatment or the employee re-
25 ceiving it furnishes to the employer and the board notice of the
26 injury and treatment, preferably on a form prescribed by the board.
27 The board shall, however, excuse the failure to furnish notice within
28 14 days when it finds it to be in the interest of justice to do so,
29 and it may, upon application by a party in interest, make an award for

1 the reasonable value of the medical or surgical treatment so obtained
2 by the employee. A claim for a course of treatment requiring con-
3 tinuing and multiple treatments of a similar nature is not valid
4 unless the treatments are carried out under a written treatment plan
5 prescribed before the commencement of treatment, completed and signed
6 by the attending physician, and mailed to the employer within one week
7 of the beginning of treatment. The treatment plan must include objec-
8 tives, modalities, and frequency of treatment. The initial treatment
9 plan may not include more than 20 visits in the first 60 days. If
10 more than 20 visits are required within the first 60 days, or more
11 than four visits a month after the first 60 days, the physician shall
12 document the need for services in excess of the guidelines in the
13 written treatment plan.

14 * Sec. 10. AS 23.30.095(e) is amended to read:

15 (e) The employee shall, after an injury, at reasonable times
16 during the continuance of the disability, if requested by the employer
17 or when ordered by the board, submit to an examination by a physician
18 or surgeon of the employer's choice [AUTHORIZED TO PRACTICE MEDICINE
19 UNDER THE LAWS OF THE STATE IN WHICH THE EMPLOYEE MAY BE FOUND],
20 furnished and paid for by the employer. An examination requested by
21 the employer not less than 14 days after injury, and every 30 days
22 thereafter, shall be presumed to be reasonable, and the employee shall
23 submit to the examination without further request or order by the
24 board. Facts relative to the injury or claim communicated to or
25 otherwise learned by a physician or surgeon who may have attended or
26 examined the employee, or who may have been present at an examination
27 are not privileged, either in the hearings provided for in this chap-
28 ter or an action to recover damages against an employer who is subject
29 to the compensation provisions of this chapter. If an employee

1 refuses to submit to an [ANY] examination provided for in this sec-
2 tion, the employee's rights to compensation shall be suspended until
3 the obstruction or refusal ceases, and the employee's compensation
4 during the period of suspension may, in the discretion of the board or
5 the court determining an action brought for the recovery of damages
6 under this chapter, be forfeited. The board in any case of death may
7 require an autopsy at the expense of the party requesting the autopsy.
8 An autopsy may not be held without notice first being given to the
9 widow or widower or next of kin if they reside in the state or their
10 whereabouts can be reasonably ascertained, of the time and place of
11 the autopsy and reasonable time and opportunity given the widow or
12 widower or next of kin to have a representative present to witness the
13 autopsy. If adequate notice is not given, the findings from the
14 autopsy may be suppressed on motion made to the board or to the supe-
15 rior court, as the case may be.

16 * Sec. 11. AS 23.30.095(f) is amended to read:

17 (f) All fees and other charges for medical treatment or service
18 [ARE LIMITED TO THE CHARGES THAT PREVAIL IN THE SAME COMMUNITY FOR
19 SIMILAR TREATMENT OF INJURED PERSONS OF LIKE STANDARD OF LIVING AND]
20 shall be subject to regulation by the board but may not exceed usual,
21 customary, and reasonable fees for the treatment or service in the
22 community in which it is rendered, as determined by the board.

23 * Sec. 12. AS 23.30.095(j) is repealed and reenacted to read:

24 (j) The board may appoint a medical services review committee,
25 or contract with an existing organization in the state or another
26 state, to assist and advise the board in matters involving the appro-
27 priateness, necessity, and cost of medical and related services pro-
28 vided under this chapter.

29 * Sec. 13. AS 23.30.095 is amended by adding a new subsection to read:

1 (k) In the event of a medical dispute regarding determinations
2 of causation, medical stability, degree of impairment, functional
3 capacity, the amount and efficacy of the continuance of or necessity
4 of treatment, or compensability between the employee's attending
5 physician and the employer's independent medical evaluation, a second
6 independent medical evaluation shall be conducted by a physician or
7 physicians selected by the board from a list established and main-
8 tained by the board. The cost of the examination and medical report
9 shall be paid by the employer. The report of the independent medical
10 examiner shall be furnished to the board and to the parties within 14
11 days after the examination is concluded. The opinion of the indepen-
12 dent medical examiner shall, in the absence of clear and convincing
13 objective evidence to the contrary, be presumed to be correct. A
14 person may not seek damages from an independent medical examiner
15 caused by the rendering of an opinion or providing testimony under
16 this subsection, except in the event of fraud.

17 * Sec. 14. AS 23.30.105(a) is amended to read:

18 (a) The right to compensation for disability under this chapter
19 is barred unless a claim for it is filed within two years after the
20 employee has knowledge of the nature of the employee's disability and
21 its relation to the employment and after disablement. However, the
22 maximum time for filing the claim in any event other than arising out
23 of an occupational disease shall be four years from the date of in-
24 jury, and the right to compensation for death is barred unless a claim
25 therefor is filed within one year after the death, except that if
26 payment of compensation has been made without an award on account of
27 the injury or death, a claim may be filed within two years after the
28 date of the last payment of benefits under AS 23.30.180, 23.30.185,
29 23.30.190, 23.30.200, or 23.30.215. It is additionally provided that,

1 in the case of latent defects pertinent to and causing compensable
2 disability, the injured employee has full right to claim as shall be
3 determined by the board, time limitations notwithstanding.

4 * Sec. 15. AS 23.30.120 is amended by adding a new subsection to read:

5 (c) The presumption of compensability established in (a) of this
6 section does not apply to a mental injury resulting from work-related
7 stress.

8 * Sec. 16. AS 23.30.125 is amended by adding a new subsection to read:

9 (f) Subject to an employer's or employee's burden of proof, a
10 finding of fact made by the board as a part of a compensation order is
11 conclusiva if supported by any evidence.

12 * Sec. 17. AS 23.30.130(a) is amended to read:

13 (a) Upon its own initiative, or upon the application of any
14 party in interest on the ground of a change in conditions, including,
15 for the purposes of AS 23.30.175, a change in residence, or because of
16 a mistake in its determination of a fact, the board may, before one
17 year after the date of the last payment of compensation benefits under
18 AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, whether
19 or not a compensation order has been issued, or before one year after
20 the rejection of a claim, review a compensation case under [IN ACCOR-
21 DANCE WITH] the procedure prescribed in respect of claims in AS 23.-
22 30.110. Under [IN ACCORDANCE WITH] AS 23.30.110 the board may issue a
23 new compensation order which terminates, continues, reinstates, in-
24 creases, or decreases the compensation, or award compensation.

25 * Sec. 18. AS 23.30.155(c) is amended to read:

26 (c) The employer shall notify the board and the employee on a
27 form prescribed by the board that the payment of compensation has
28 begun or has been increased, decreased, suspended, terminated, re-
29 sumed, or changed in type. An initial report shall be filed with the

1 board and sent to the employee within 28 days after the date of issu-
2 ing the first payment of compensation. If at any time 21 days or more
3 pass and no compensation payment is issued, a report notifying the
4 board and the employee of the termination or suspension of compen-
5 sation shall be filed with the board and sent to the employee within
6 28 days after the date the last compensation payment was issued. A
7 report shall also be filed with the board and sent to the employee
8 within 28 days after the date of issuing a payment increasing, de-
9 creasing, resuming, or changing the type of compensation paid. If the
10 employer fails to notify the board and the employee within the 28 days
11 prescribed by this subsection for reporting, the employer shall pay a
12 civil penalty of \$100 for the first day plus \$10 for each day there-
13 after that the employer failed to give notice. Total penalties under
14 this subsection [SECTION] may not exceed \$1,000 for a failure to file
15 a required report. Penalties assessed under this subsection are
16 eligible for reduction under (m) of this section.

17 * Sec. 19. AS 23.30.155(d) is amended to read:

18 (d) If the employer controverts the right to compensation the
19 employer shall file with the board and send to the employee a notice
20 of controversion on or before the 21st day after the employer has
21 knowledge of the alleged injury or death. If the employer controverts
22 the right to compensation after payments have begun, the employer
23 shall file with the board and send to the employee a notice of con-
24 troversion within seven days after an installment of compensation
25 payable without an award is due. When payment of temporary disability
26 benefits is controverted solely on the grounds that another employer
27 or another insurer of the same employer may be responsible for all or
28 a portion of the benefits, the most recent employer or insurer who is
29 party to the claim and who may be liable shall make the payments

1 during the pendency of the dispute. When a final determination of
2 liability is made, any reimbursement required, including interest at
3 the statutory rate, and all costs and attorneys' fees incurred by the
4 prevailing employer, shall be made within 14 days of the determina-
5 tion.

6 * Sec. 20. AS 23.30.155(m) is repealed and reenacted to read:

7 (m) By March 1 of each year the employer shall file a verified
8 annual report on a form prescribed by the board stating the total
9 amount of all compensation by type, medical, and related benefits,
10 vocational rehabilitation expenses, legal fees, and penalties paid on
11 all claims during the preceding calendar year. If the annual report
12 is timely and complete when received by the board and provides accu-
13 rate information about each category of payments, the commissioner
14 shall review the timeliness of the employer's reports filed under (c)
15 of this section. If the employer filed at least 99 percent of the
16 reports on time, the penalties assessed under (c) of this section
17 shall be waived. If the employer filed at least 97 percent of the
18 reports on time, 75 percent of the penalties assessed under (c) of
19 this section shall be waived. If the employer filed 95 percent of the
20 reports on time, 50 percent of the penalties assessed under (c) of
21 this section shall be waived. If the employer's reports have not been
22 filed on time at least 95 percent of the time, none of the penalties
23 assessed under (c) of this section shall be waived. The penalties
24 that are not waived are due and payable when the employer receives
25 notification from the commissioner regarding the timeliness of the
26 reports.

27 * Sec. 21. AS 23.30.175 is repealed and reenacted to read:

28 Sec. 23.30.175. RATES OF COMPENSATION. (a) The weekly rate of
29 compensation for disability or death for a recipient residing in the

1 state may not exceed \$700 and initially may not be less than \$110.
2 However, if the board determines that the employee's spendable weekly
3 wages are less than \$110 a week as computed under AS 23.30.220, or
4 less than \$154 a week in the case of an employee who has furnished
5 documentary proof of the employee's wages, it shall issue an order
6 adjusting the weekly rate of compensation to a rate equal to the
7 employee's spendable weekly wages. If the employee's spendable weekly
8 wages are greater than \$154, but 80 percent of the employee's spend-
9 able weekly wages is less than \$154, the employee's weekly rate of
10 compensation shall be \$154. Prior payments made in excess of the
11 adjusted rate shall be deducted from the unpaid compensation in the
12 manner the board determines. In any case, the employer shall pay
13 timely compensation.

14 (b) The following rules apply to benefits payable to recipients
15 not residing in the state at the time compensation benefits are pay-
16 able:

17 (1) the weekly rate of compensation shall be calculated by
18 multiplying the recipient's weekly compensation rate calculated under
19 AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, by the
20 ratio of the cost of living of the locality in which the recipient
21 resides to the cost of living of the state;

22 (2) the calculation required by (1) of this subsection does
23 not apply if the recipient is absent from the state for medical or re-
24 habilitation services not reasonably available in the state;

25 (3) if the average weekly wage of the recipient and the
26 resulting compensation rate is determined under AS 23.30.220(a)(2),
27 the calculation required by this subsection applies only to the por-
28 tion of the recipient's weekly compensation rate attributable to wages
29 earned in the state;

1 (4) application of this subsection may not reduce the
2 weekly compensation rate to less than \$154 a week, except as provided
3 in (a) of this section.

4 (c) The board shall provide by regulation for the determination
5 of living costs for the state and other localities in which recipients
6 reside and for the annual redetermination of these costs.

7 * Sec. 22. AS 23.30.180 is amended to read:

8 Sec. 23.30.180. PERMANENT TOTAL DISABILITY. In case of total
9 disability adjudged to be permanent 80 percent of the injured em-
10 ployee's spendable weekly wages shall be paid to the employee during
11 the continuance of the total disability. Loss of both hands, or both
12 arms, or both feet, or both legs, or both eyes, or of any two of them,
13 in the absence of conclusive proof to the contrary, constitutes perma-
14 nent total disability. In all other cases permanent total disability
15 is determined in accordance with the facts. In making this determina-
16 tion the market for the employee's services shall be

17 (1) area of residence;

18 (2) area of last employment; and

19 (3) the state.

20 * Sec. 23. AS 23.30.180 is amended by adding a new subsection to read:

21 (b) Failure to achieve remunerative employability as defined in
22 AS 23.30.041(m)(7) does not, by itself, constitute permanent total
23 disability.

24 * Sec. 24. AS 23.30.185 is amended to read:

25 Sec. 23.30.185. COMPENSATION FOR TEMPORARY TOTAL DISABILITY. In
26 case of disability total in character but temporary in quality, 80
27 percent of the injured employee's spendable weekly wages shall be paid
28 to the employee during the continuance of the disability. Temporary
29 total disability benefits may not be paid for any period of disability

1 occurring after the date of medical stability. Temporary total dis-
2 ability benefits may not be paid for more than two years regardless of
3 continuance of the disability.

4 * Sec. 25. AS 23.30.190 is repealed and reenacted to read:

5 Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT.

6 (a) In case of impairment partial in character but permanent in
7 quality, and not resulting in permanent total disability, the compen-
8 sation is \$240,000 multiplied by the employee's percentage of net
9 permanent impairment of the whole person, and payable in a single lump
10 sum, except as otherwise provided in AS 23.30.041, but the compensa-
11 tion may not be discounted for any present value considerations. Net
12 permanent impairment is to be determined by multiplying the employee's
13 actual degree of permanent impairment by the appropriate adjustment
14 factor, as follows:

15	Degree of Actual Impairment	Adjustment Factor
16	0 - 5 percent	0
17	6 - 10 percent	0.2
18	11 - 15 percent	0.4
19	16 - 20 percent	0.6
20	21 - 25 percent	0.7
21	26 - 30 percent	0.8
22	31 percent and greater	1.0

23 (b) All determinations of the existence and degree of permanent
24 impairment shall be made strictly and solely under the whole person
25 determination as set out in the American Medical Association Guides to
26 the Evaluation of Permanent Impairment, except that an impairment
27 rating may not be rounded to the next five percent. The board may
28 adopt and use a supplemental schedule only for injuries that cannot be
29 rated by the use of American Medical Association guidelines.

1 (c) An employee with an actual permanent impairment as deter-
2 mined under (b) of this section may not receive less than \$250 for the
3 impairment.

4 (d) The impairment rating determined under (a) of this section
5 shall be reduced by a permanent impairment that existed before the
6 compensable injury. If the combination of a prior impairment rating
7 and a rating under (a) of this section would result in the employee
8 being considered permanently totally disabled, the prior rating does
9 not negate a finding of permanent total disability.

10 * Sec. 26. AS 23.30.200 is amended to read:

11 Sec. 23.30.200. TEMPORARY PARTIAL DISABILITY. In case of tempo-
12 rary partial disability resulting in decrease of earning capacity the
13 compensation shall be 80 percent of the difference between the injured
14 employee's spendable weekly wages before the injury and the wage-
15 earning capacity of the employee after the injury in the same or
16 another employment, to be paid during the continuance of the disabili-
17 ty, but not to be paid for more than two [FIVE] years. Temporary
18 partial disability benefits may not be paid for a period of disability
19 occurring after the date of medical stability, unless otherwise pro-
20 vided under AS 23.30.041.

21 * Sec. 27. AS 23.30.200 is amended by adding a new subsection to read:

22 (b) The wage-earning capacity of an injured employee is deter-
23 mined by the actual spendable weekly wage of the employee if the
24 actual spendable weekly wage fairly and reasonably represents the
25 wage-earning capacity of the employee. The board may, in the interest
26 of justice, fix the wage-earning capacity that is reasonable, having
27 due regard to the nature of the injury, the degree of physical impair-
28 ment, the usual employment, and other factors or circumstances in the
29 case that may affect the capacity of the employee to earn wages in a

1 disabled condition, including the effect of disability as it may
2 naturally extend into the future.

3 * Sec. 28. AS 23.30.220(a) is amended to read:

4 (a) The spendable weekly wage of an injured employee at the time
5 of an injury is the basis for computing compensation. It is the
6 employee's gross weekly earnings minus payroll tax deductions. The
7 gross weekly earnings shall be calculated as follows:

8 (1) The gross weekly earnings are computed by dividing by
9 100 the gross earnings of the employee in the two calendar years
10 immediately preceding the injury.

11 (2) If the employee had no earnings during the two calendar
12 years preceding the injury or was voluntarily absent from the labor
13 market for 18 months or more of the two calendar years preceding the
14 injury [THE BOARD DETERMINES THAT THE GROSS WEEKLY EARNINGS AT THE
15 TIME OF THE INJURY CANNOT BE FAIRLY CALCULATED UNDER (1) OF THIS
16 SUBSECTION], the board shall [MAY] determine the employee's gross
17 weekly earnings for calculating compensation by considering the nature
18 of the employee's work and work history, but compensation may not
19 exceed the employee's earnings at the time of injury.

20 (3) If an employee when injured is a minor, an apprentice,
21 or a trainee in a formal training program, as determined by the board,
22 whose wages under normal conditions would increase during the period
23 of disability, the projected increase may be considered by the board
24 in computing the gross weekly earnings of the employee.

25 (4) If the employee is injured while performing duties as a
26 volunteer ambulance attendant, policeman, or fireman, the gross weekly
27 earnings for calculating compensation shall be the minimum gross
28 weekly earnings paid a full-time ambulance attendant, policeman, or
29 fireman employed in the political subdivision where the injury

1 occurred, or, if the political subdivision has no full-time ambulance
2 attendants, policemen, or firemen, at a reasonable figure previously
3 set by the political subdivision to make this determination but in no
4 case may the gross weekly earnings for calculating compensation be
5 less than the minimum wage computed on the basis of 40 hours work per
6 week.

7 * Sec. 29. AS 23.30.225 is amended by adding a new subsection to read:

8 (c) If employer contributions to a qualified pension or profit
9 sharing plan have been included in the determination of gross earnings
10 and the employee is receiving pension or profit sharing payments,
11 weekly compensation benefits payable under this chapter shall be
12 reduced by the amount paid or payable to the injured worker under the
13 plan for any week or weeks during which compensation benefits are also
14 payable. The amount of the reduction may not in any week exceed the
15 increase in weekly compensation benefits brought about by the inclu-
16 sion of employer contributions to a qualified pension or profit shar-
17 ing plan in the determination of gross earnings.

18 * Sec. 30. AS 23.30 is amended by adding a new section to read:

19 Sec. 23.30.247. DISCRIMINATION PROHIBITED. (a) An employer may
20 not discriminate in hiring, promotion, or retention policies or prac-
21 tices against an employee who has in good faith filed a claim for or
22 received benefits under this chapter. An employer who violates this
23 section is liable to the employee for damages to be assessed by the
24 court in a private civil action.

25 (b) This section may not be construed to prevent an employer
26 from basing hiring, promotion, or retention policies or practices on
27 considerations of the employee's safety practices or the employee's
28 physical and mental abilities; nor may this section be construed so as
29 to create employment rights not otherwise in existence.

1 (c) This section may not be construed to prohibit an employer
2 from requiring a prospective employee to fill out a preemployment
3 questionnaire or application regarding the person's prior health or
4 disability history as long as it is meant to either document written
5 notice for second injury fund reimbursement under AS 23.30.205(c) or
6 to determine whether the employee has the physical or mental capacity
7 to meet the documented physical or mental demands of the work.

8 * Sec. 31. AS 23.30.265(15) is amended to read:

9 (15) "gross earnings" means periodic payments, by an em-
10 ployer to an employee for employment before any authorized or lawfully
11 required deduction or withholding of money by the employer, including
12 compensation that is deferred at the option of the employee, and
13 excluding irregular bonuses, reimbursement of expenses, expense allow-
14 ances, and any benefit or payment to the employee that is not fully
15 taxable to the employee during the pay period, except that the total
16 amount of contributions made by an employer to a qualified pension or
17 profit sharing plan during the two plan years preceding the injury,
18 multiplied by the percentage of the employee's vested interest in the
19 plan at the time of injury, shall be included in the determination of
20 gross earnings; the value of room and board if taxable to the employee
21 may be considered in determining gross earnings; however, the value of
22 room and board that would raise an employee's gross weekly earning
23 above the state [ALASKA] average weekly wage at the time of injury may
24 not be considered;

25 * Sec. 32. AS 23.30.265(17) is amended to read:

26 (17) "injury" means accidental injury or death arising out
27 of and in the course of employment, and an occupational disease or
28 infection which arises naturally out of the employment or which natu-
29 rally or unavoidably results from an accidental injury; "injury" [,

1 AND] includes breakage or damage to eyeglasses, hearing aids, den-
2 tures, or any prosthetic devices which function as part of the body
3 and further includes an injury caused by the wilful act of a third
4 person directed against an employee because of the employment; "in-
5 jury" does not include mental injury caused by mental stress unless it
6 is established that (A) the work stress was extraordinary and unusual
7 in comparison to pressures and tensions experienced by individuals in
8 a comparable work environment, and (B) the work stress was the predom-
9 inant cause of the mental injury; the amount of work stress shall be
10 measured by actual events rather than misperceptions by the employee;
11 a mental injury is not considered to arise out of and in the course of
12 employment if it results from a disciplinary action, work evaluation,
13 job transfer, layoff, demotion, termination or similar action, taken
14 in good faith by the employer;

15 * Sec. 33. AS 23.30.265 is amended by adding a new paragraph to read:

16 (34) "medical stability" means the date after which further
17 objectively measurable improvement from the effects of the compensable
18 injury is not reasonably expected to result from additional medical
19 care or treatment, notwithstanding the possible need for additional
20 medical care or the possibility of improvement or deterioration re-
21 sulting from the passage of time; medical stability shall be presumed
22 in the absence of objectively measurable improvement for a period of
23 45 days; this presumption may be rebutted by clear and convincing
24 evidence.

25 * Sec. 34. AS 23.30.210 is repealed.

26 * Sec. 35. TRANSITIONAL PROVISIONS. Notwithstanding AS 23.30.040(b),
27 as amended by sec. 5 of this Act, and AS 23.30.155(m), as amended by sec.
28 20 of this Act, on or before March 1, 1989, each employer that is subject
29 to those sections shall file a report and make the appropriate contribution

1 for all claims existing as of December 31, 1988. The period covered in the
2 report shall be from the date of the termination report or the last an-
3 niversary report filed, if one has been filed, through December 31, 1988.

4 * Sec. 36. APPLICABILITY. This Act applies only to injuries sustained
5 on or after July 1, 1988.

6 * Sec. 37. This Act takes effect July 1, 1988.