

Original sponsor: Labor and Commerce  
Committee

BY THE LABOR AND  
COMMERCE COMMITTEE

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 322 (L&C)

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,  
11 fair, and predictable delivery of indemnity and medical benefits to injured  
12 workers at a reasonable cost to the employers who are subject to the pro-  
13 visions of 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 unless the court finds that a reasonable  
21 person could not have reached the conclusion made by the board.

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

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

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

28 (3) remove obstacles to the utilization of vocational rehabili-  
29 tation that may be brought about by the payment of workers' compensation

1 benefits at the high levels provided by the Alaska workers' compensation  
2 law to individuals residing in localities with living costs lower than  
3 those in Alaska.

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

5 (h) The department shall [MAY] adopt [IDENTICAL] rules for all  
6 panels, and procedures for the periodic selection, retention, and re-  
7 moval of rehabilitation specialists or physicians under AS 23.30.041  
8 and 23.30.095, and shall [MAY] adopt regulations to carry out the  
9 provisions of this chapter. Process and procedure under this chapter  
10 shall be as summary and simple as possible. The department, the board  
11 or a member of it may for the purposes of this chapter subpoena wit-  
12 nesses, administer or cause to be administered oaths, and may examine  
13 or cause to have examined the parts of the books and records of the  
14 parties to a proceeding that relate [WHICH RELATED] to questions in  
15 dispute. The superior court, on application of the department, the  
16 board or any members of it, shall enforce the attendance and testimony  
17 of witnesses and the production and examination of books, papers, and  
18 records.

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

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

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

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

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

1 (2) there was a causal connection between the false rep-  
2 resentation and the injury to the employee.

3 \* Sec. 5. AS 23.30.025 is amended by adding a new subsection to read:

4 (c) An insurer extending coverage required under this chapter by  
5 specifying Alaska in the other states section or similar provision of  
6 the insurance policy shall provide notice to the department under  
7 AS 23.30.085.

8 \* Sec. 6. AS 23.30.030 is amended by adding a new paragraph to read:

9 (8) An annual premium paid for the insurance, that exceeds  
10 \$2,000, may be paid semiannually, if requested by the insured. The  
11 insurer shall include this provision in the insurance policy in a  
12 manner that clearly informs the insured of the provision.

13 \* Sec. 7. AS 23.30.040(b) is amended to read:

14 (b) If an employee suffers a compensable injury that results in  
15 temporary total disability, temporary partial disability, permanent  
16 partial disability, or permanent total disability, the employer or  
17 insurance carrier shall contribute to the second injury fund. The  
18 contribution shall be made annually at the time of the report filing  
19 required by AS 23.30.155(m) [BY ONE YEAR FROM THE DATE OF THE INJURY  
20 OR ON TERMINATION OF THE EMPLOYEE'S CLAIM, WHICHEVER IS SOONER. IF  
21 THE CLAIM IS NOT TERMINATED WITHIN ONE YEAR, SUBSEQUENT CONTRIBUTIONS  
22 SHALL BE MADE YEARLY UNTIL THE TERMINATION OF THE EMPLOYEE'S CLAIM].  
23 The amount of the contribution is the product of the compensation to  
24 which the employee is entitled for temporary total disability, tempo-  
25 rary partial disability, permanent partial disability, or permanent  
26 total disability and the applicable contribution rate set out in  
27 column A of this subsection. Payment need not be made to the second  
28 injury fund if the total contribution under this subsection is less  
29 than \$20. By December 15 of each year the commissioner shall

1 determine and make available to the public the applicable contribution  
2 rate for the following calendar year according to the reserve rate of  
3 the second injury fund in column B of this subsection:

4	Column A	Column B	
5	Second Injury Fund	Reserve Rate	
6	Contribution Rate	At Least	But Less Than
7	(Percent)	(Percent)	(Percent)
8	6	0	50
9	5	50	75
10	4	75	100
11	3	100	125
12	2	125	150
13	1	150	175
14	0	175	

15 \* Sec. 8. AS 23.30.040(h) is amended to read:

16 (h) Administration expenses of the state under this section and  
17 AS 23.30.205 must [SHALL] be paid from the second injury [GENERAL]  
18 fund.

19 \* Sec. 9. AS 23.30.041 is repealed and reenacted to read:

20 Sec. 23.30.041. REHABILITATION OF INJURED WORKERS. (a) The  
21 board shall select and employ a reemployment benefits administrator.  
22 The board may authorize the administrator to select and employ addi-  
23 tional staff. The administrator is in the partially exempt service  
24 under AS 39.25.120.

25 (b) The administrator shall perform the following functions:

26 (1) enforce regulations adopted by the board to implement  
27 this section;

28 (2) recommend regulations for adoption by the board that  
29 establish performance and reporting criteria for rehabilitation

1 specialists;

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

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

7 (5) submit to the department, on or before January 1 of  
8 each year, a report of reemployment benefits provided under this  
9 section for the previous fiscal year; the report must include a  
10 general section, sections related to each rehabilitation specialist  
11 employed under this section, and a statistical summary of all reha-  
12 bilitation cases, including

13 (A) the estimated and actual cost of each active  
14 rehabilitation plan;

15 (B) the estimated and actual time of each rehabilita-  
16 tion plan;

17 (C) a status report on all individuals completing or  
18 terminating a reemployment benefits program including a return to  
19 work date;

20 (D) the cost of reemployment benefits;

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

23 (7) promote awareness among physicians, adjusters, injured  
24 workers, employers, employees, attorneys, training providers, and  
25 rehabilitation specialists of the reemployment program established in  
26 this subsection.

27 (c) If an employee suffers a compensable injury that may perma-  
28 nently preclude an employee's return to the employee's occupation at  
29 the time of injury, the employee or employer may request an

1 eligibility evaluation for reemployment benefits. The employee shall  
2 request an eligibility evaluation within 90 days after the employee  
3 gives the employer notice of injury unless the administrator deter-  
4 mines the employee has unusual and extenuating physical limitations  
5 that prevent the employee from making a timely request. The adminis-  
6 trator shall, on a rotating and geographic basis, select a rehabilita-  
7 tion specialist from the list maintained under (b)(6) of this section  
8 to perform the eligibility evaluation.

9 (d) Within 30 days after the referral by the administrator, the  
10 rehabilitation specialist shall perform the eligibility evaluation and  
11 issue a report of findings. The administrator may grant up to an  
12 additional 30 days for performance of the eligibility evaluation upon  
13 notification of unusual and extenuating circumstances and the re-  
14 habilitation specialist's request. Within 14 days after receipt of  
15 the report from the rehabilitation specialist, the administrator shall  
16 notify the parties of the employee's eligibility for reemployment  
17 preparation benefits. Within 10 days after the decision, either party  
18 may seek review of the decision by requesting a hearing under AS 23.-  
19 30.110. The hearing shall be held within 30 days after it is re-  
20 quested. The board shall uphold the decision of the administrator  
21 except for abuse of discretion on the administrator's part.

22 (e) An employee shall be eligible for benefits under this sec-  
23 tion upon the employee's written request and by having a physician  
24 predict that the employee will have permanent physical capacities that  
25 are less than the physical demands of the employee's job as described  
26 in the United States Department of Labor's "Selected Characteristics  
27 of Occupations Defined in the Dictionary of Occupational Titles" for

28 (1) the employee's job at the time of injury; or

29 (2) other jobs that exist in the labor market that the

1 employee has held or received training for within 10 years before the  
2 injury or that the employee has held following the injury for a period  
3 long enough to obtain the skills to compete in the labor market,  
4 according to specific vocational preparation codes as described in the  
5 dictionary of occupational titles.

6 (f) An employee is not eligible for reemployment benefits if

7 (1) the employer offers employment within the employee's  
8 predicted post-injury physical capacities at a wage equivalent to at  
9 least the state minimum wage under AS 23.10.065 or 60 percent of the  
10 worker's gross hourly wages at the time of injury, whichever is great-  
11 er, of injury and the employment prepares the employee to be employ-  
12 able in other jobs that exist in the labor market;

13 (2) the employee has been previously rehabilitated in a  
14 former workers' compensation claim and returned to work in the same or  
15 similar occupation in terms of physical demands required of the em-  
16 ployee at the time of the previous injury; or

17 (3) at the time of medical stability no permanent impair-  
18 ment is identified or expected.

19 (g) Within 10 days after the employee receives the adminis-  
20 trator's notification of eligibility for benefits, an employee who  
21 desires to use these benefits shall give written notice to the em-  
22 ployer of the employee's selection of a rehabilitation specialist who  
23 shall provide a complete reemployment benefits plan. If the employer  
24 disagrees with the employee's choice of rehabilitation specialist to  
25 develop the plan and the disagreement cannot be resolved, then the  
26 administrator shall assign a rehabilitation specialist. The employer  
27 and employee each have one right of refusal of a rehabilitation  
28 specialist.

29 (h) Within 90 days after the rehabilitation specialist's

1 selection under (g) of this section, the reemployment plan must be  
2 formulated and approved. The reemployment plan must include at least  
3 the following:

4 (1) a determination of the occupational goal in the labor  
5 market;

6 (2) an inventory of the employee's technical skills, phys-  
7 ical and intellectual capacities, academic achievement, emotional  
8 condition and family support;

9 (3) a plan to acquire the occupational skills to be employ-  
10 able;

11 (4) the cost estimate of the reemployment plan, including  
12 provider fees; the amount of tuition, books, tools, and supplies;  
13 transportation; temporary lodging; or job modification devices;

14 (5) the estimated length of time that the plan will take;

15 (6) the date the plan will commence;

16 (7) the estimated time of medical stability as predicted by  
17 the physician;

18 (8) a detailed description and plan schedule; and

19 (9) a finding by the rehabilitation specialist that the  
20 inventory under (2) of this subsection indicates that the employee can  
21 be reasonably expected to satisfactorily complete the plan and perform  
22 in a new occupation within the time and cost limitations of the plan.

23 (i) Reemployment benefits shall be selected from the following  
24 in a manner that ensures remunerative employability in the shortest  
25 possible time:

26 (1) on the job training;

27 (2) vocational training;

28 (3) academic training;

29 (4) self-employment; or

1 (5) a combination of (1) - (4) of this subsection.

2 (j) The employee, rehabilitation specialist, and the employer  
3 shall sign the reemployment benefits plan. If the employer and em-  
4 ployee fail to agree on a reemployment plan, either party may submit a  
5 reemployment plan for approval to the administrator; the adminis-  
6 trator shall approve or deny a plan within 14 days after the plan is  
7 submitted; within 10 days of the decision, either party may seek  
8 review of the decision by requesting a hearing under AS 23.30.110; the  
9 board shall uphold the decision of the administrator unless evidence  
10 is submitted supporting an allegation of abuse of discretion on the  
11 part of the administrator; the board shall render a decision within 30  
12 days after completion of the hearing.

13 (k) Benefits related to the reemployment plan may not extend  
14 past two years from date of plan acceptance, at which time the bene-  
15 fits expire. If an employee reaches medical stability before com-  
16 pletion of the plan, temporary total disability benefits shall cease  
17 and permanent impairment benefits shall then be paid at the employee's  
18 temporary total disability rate. If the employee's permanent impair-  
19 ment benefits are exhausted before the completion or termination of  
20 the reemployment plan, the employer shall provide wages equal to 60  
21 percent of the employee's spendable weekly wages but not to exceed  
22 \$525, until the completion or termination of the plan. A permanent  
23 impairment benefit remaining unpaid upon the completion or termination  
24 of the plan shall be paid to the employee in a single lump sum. The  
25 fees of the rehabilitation specialist or rehabilitation professional  
26 shall be paid by the employer and may not be included in determining  
27 the cost of the reemployment plan.

28 (l) The cost of the reemployment plan incurred under this sec-  
29 tion shall be the responsibility of the employer, shall be paid on an

1 expense incurred basis, and may not exceed \$10,000.

2 (m) Only a rehabilitation specialist may accept case assignments  
3 as a case manager and sign eligibility determinations and reemployment  
4 plans. A person who is not a rehabilitation specialist may perform  
5 rehabilitation casework if the work is performed under the direct  
6 supervision of a rehabilitation specialist employed in the same firm  
7 and location.

8 (n) After the employee has elected to participate in reemploy-  
9 ment benefits, if the employer believes the employee has not coop-  
10 erated the employer may terminate reemployment benefits on the date of  
11 noncooperation. Noncooperation means unreasonable failure to

12 (1) keep appointments;

13 (2) maintain passing grades;

14 (3) attend designated programs;

15 (4) maintain contact with the rehabilitation specialist;

16 (5) cooperate with the rehabilitation specialist in devel-  
17 oping a reemployment plan and participating in activities relating to  
18 reemployability on a full-time basis;

19 (6) comply with the employee's responsibilities outlined in  
20 the reemployment plan; or

21 (7) participate in any planned reemployment activity as  
22 determined by the administrator.

23 (o) Upon the request of either party, the administrator shall  
24 decide whether the employee has not cooperated as provided under (n)  
25 of this section. A hearing before the administrator shall be held  
26 within 30 days after it is requested. The administrator shall issue a  
27 decision within 14 days after the hearing. Within 10 days after the  
28 administrator files the decision, either party may seek review of the  
29 decision by requesting a hearing under AS 23.30.110; the board shall

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

5 (p) In this section

6 (1) "administrator" means the reemployment benefits admin-  
7 istrator under AS 23.30.041(a);

8 (2) "employability" means possessing the ability but not  
9 necessarily the opportunity to engage in employment that is consistent  
10 with the employee's physical status imposed by the compensable injury;

11 (3) "labor market" means a geographical area that offers  
12 employment opportunities in the following priority:

13 (A) area of residence;

14 (B) area of last employment;

15 (C) the state;

16 (D) other states;

17 (4) "physical capacities" means objective and measurable  
18 physical traits such as ability to lift and carry, walk, stand or sit,  
19 push, pull, climb, balance, stoop, kneel, crouch, crawl, reach, han-  
20 dle, finger, feel, talk, hear or see;

21 (5) "physical demands" means the physical requirements of  
22 the job such as strength, including positions such as standing, walk-  
23 ing, sitting, and movement of objects such as lifting, carrying,  
24 pushing, pulling, climbing, balancing, stooping, kneeling, crouching,  
25 crawling, reaching, handling, fingering, feeling, talking, hearing, or  
26 seeing;

27 (6) "rehabilitation specialist" means a person who is a  
28 certified insurance rehabilitation specialist, a certified rehabilita-  
29 tion counselor, or a person who has equivalent or better

1 qualifications as determined under regulations adopted by the depart-  
2 ment;

3 (7) "remunerative employability" means having the skills  
4 that allow a worker to be compensated with wages or other earnings  
5 equivalent to at least 60 percent of the worker's gross hourly wages  
6 at the time of injury; if the employment is outside the state, the  
7 stated 60 percent shall be adjusted to account for the difference  
8 between the applicable state average weekly wage and the Alaska aver-  
9 age weekly wage.

10 \* Sec. 10. AS 23.30.055 is amended to read:

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

29 \* Sec. 11. AS 23.30.095(a) is amended to read:

1           (a) The employer shall furnish medical, surgical, and other  
2 attendants or treatment, nurse and hospital service, medicine, crutch-  
3 es, and apparatus for the period which the nature of the injury or the  
4 process of recovery requires, not exceeding two years from and after  
5 the date of injury to the employee. However, if the condition requir-  
6 ing the treatment, apparatus, or medicine is a latent one, the two-  
7 year period runs from the time the employee has knowledge of the  
8 nature of the employee's disability and its relationship to the em-  
9 ployment and after disablement. It shall be additionally provided  
10 that, if continued treatment or care or both beyond the two-year  
11 period is indicated, the injured employee has the right of review by  
12 the board. The board may authorize continued treatment or care or  
13 both as the process of recovery may require. When medical care is  
14 required, the injured employee may designate a licensed physician  
15 inside the state where the employee resides to render the care. The  
16 employee may not make more than one change in the employee's choice of  
17 attending physician without the written consent of the employer.  
18 Referral to a specialist by the employee's attending physician is not  
19 considered a change in physicians [EXCEPT IN CASES WHERE, IN THE  
20 JUDGMENT OF THE BOARD, CARE OR TREATMENT OR BOTH CAN BEST BE ADMINIS-  
21 TERED BY THE SELECTION OF ANOTHER PHYSICIAN]. Upon procuring the  
22 services of a physician, the injured employee shall give proper noti-  
23 fication of the selection to the employer within a reasonable time  
24 after first being treated. Notice of a change in the attending physi-  
25 cian shall be given before the change [IF FOR ANY REASON DURING THE  
26 PERIOD WHEN MEDICAL CARE IS REQUIRED THE EMPLOYEE WISHES TO CHANGE TO  
27 ANOTHER PHYSICIAN, THE EMPLOYEE MAY DO SO IN ACCORDANCE WITH REGU-  
28 LATIONS ADOPTED BY THE BOARD].

29 \* Sec. 12. AS 23.30.095(c) is amended to read:

1 (c) A claim for medical or surgical treatment is not valid and  
2 enforceable against the employer unless, within 14 days following  
3 treatment, the physician giving the treatment or the employee re-  
4 ceiving it furnishes to the employer and the board notice of the  
5 injury and treatment, preferably on a form prescribed by the board.  
6 The board shall, however, excuse the failure to furnish notice within  
7 14 days when it finds it to be in the interest of justice to do so,  
8 and it may, upon application by a party in interest, make an award for  
9 the reasonable value of the medical or surgical treatment so obtained  
10 by the employee. A claim for a course of treatment requiring con-  
11 tinuing and multiple treatments of a similar nature is not valid  
12 unless the treatments are carried out under a written treatment plan  
13 prescribed before the commencement of the course of treatment, com-  
14 pleted and signed by the attending physician, and mailed to the em-  
15 ployer within one week of the beginning of treatment. The treatment  
16 plan must include objectives, modalities, and frequency of treatment.  
17 The initial treatment plan may not include more than 20 visits in the  
18 first 60 days. If more than 20 visits are required within the first  
19 60 days, or more than four visits a month after the first 60 days, the  
20 physician shall document the need for services in excess of the guide-  
21 lines in the written treatment plan.

22 \* Sec. 13. AS 23.30.095(e) is amended to read:

23 (e) The employee shall, after an injury, at reasonable times  
24 during the continuance of the disability, if requested by the employer  
25 or when ordered by the board, submit to an examination by a physician  
26 or surgeon of the employer's choice [AUTHORIZED TO PRACTICE MEDICINE  
27 UNDER THE LAWS OF THE STATE IN WHICH THE EMPLOYEE MAY BE FOUND],  
28 furnished and paid for by the employer. An examination requested by  
29 the employer not less than 14 days after injury. and every 60 days

1 thereafter, shall be presumed to be reasonable, and the employee shall  
2 submit to the examination without further request or order by the  
3 board. Unless medically appropriate, the physician shall use existing  
4 diagnostic data to complete the examination. Facts relative to the  
5 injury or claim communicated to or otherwise learned by a physician or  
6 surgeon who may have attended or examined the employee, or who may  
7 have been present at an examination are not privileged, either in the  
8 hearings provided for in this chapter or an action to recover damages  
9 against an employer who is subject to the compensation provisions of  
10 this chapter. If an employee refuses to submit to an [ANY] examina-  
11 tion provided for in this section, the employee's rights to compensa-  
12 tion shall be suspended until the obstruction or refusal ceases, and  
13 the employee's compensation during the period of suspension may, in  
14 the discretion of the board or the court determining an action brought  
15 for the recovery of damages under this chapter, be forfeited. The  
16 board in any case of death may require an autopsy at the expense of  
17 the party requesting the autopsy. An autopsy may not be held without  
18 notice first being given to the widow or widower or next of kin if  
19 they reside in the state or their whereabouts can be reasonably ascer-  
20 tained, of the time and place of the autopsy and reasonable time and  
21 opportunity given the widow or widower or next of kin to have a repre-  
22 sentative present to witness the autopsy. If adequate notice is not  
23 given, the findings from the autopsy may be suppressed on motion made  
24 to the board or to the superior court, as the case may be.

25 \* Sec. 14. AS 23.30.095(f) is amended to read:

26 (f) All fees and other charges for medical treatment or service  
27 [ARE LIMITED TO THE CHARGES THAT PREVAIL IN THE SAME COMMUNITY FOR  
28 SIMILAR TREATMENT OF INJURED PERSONS OF LIKE STANDARD OF LIVING AND]  
29 shall be subject to regulation by the board but may not exceed usual.

1 customary, and reasonable fees for the treatment or service in the  
2 community in which it is rendered, as determined by the board. An  
3 employee may not be required to pay a fee or charge for medical treat-  
4 ment or service.

5 \* Sec. 15. AS 23.30.095(j) is repealed and reenacted to read:

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

11 \* Sec. 16. AS 23.30.095 is amended by adding a new subsection to read:

12 (k) In the event of a medical dispute regarding determinations  
13 of causation, medical stability, ability to enter a reemployment plan,  
14 degree of impairment, functional capacity, the amount and efficacy of  
15 the continuance of or necessity of treatment, or compensability be-  
16 tween the employee's attending physician and the employer's indepen-  
17 dent medical evaluation, a second independent medical evaluation shall  
18 be conducted by a physician or physicians selected by the board from a  
19 list established and maintained by the board. The cost of the exami-  
20 nation and medical report shall be paid by the employer. The report  
21 of the independent medical examiner shall be furnished to the board  
22 and to the parties within 14 days after the examination is concluded.  
23 The opinion of the independent medical examiner shall, in the absence  
24 of clear and convincing objective evidence to the contrary, be pre-  
25 sumed to be correct. A person may not seek damages from an indepen-  
26 dent medical examiner caused by the rendering of an opinion or provid-  
27 ing testimony under this subsection, except in the event of fraud or  
28 gross incompetence.

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

1           (a) The right to compensation for disability under this chapter  
2 is barred unless a claim for it is filed within two years after the  
3 employee has knowledge of the nature of the employee's disability and  
4 its relation to the employment and after disablement. However, the  
5 maximum time for filing the claim in any event other than arising out  
6 of an occupational disease shall be four years from the date of in-  
7 jury, and the right to compensation for death is barred unless a claim  
8 therefor is filed within one year after the death, except that if  
9 payment of compensation has been made without an award on account of  
10 the injury or death, a claim may be filed within two years after the  
11 date of the last payment of benefits under AS 23.30.180, 23.30.185,  
12 23.30.190, 23.30.200, or 23.30.215. It is additionally provided that,  
13 in the case of latent defects pertinent to and causing compensable  
14 disability, the injured employee has full right to claim as shall be  
15 determined by the board, time limitations notwithstanding.

16 \* Sec. 18. AS 23.30.120 is amended by adding a new subsection to read:

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

20 \* Sec. 19. AS 23.30.125 is amended by adding a new subsection to read:

21           (f) Subject to an employer's or employee's burden of proof, a  
22 finding of fact made by the board as a part of a compensation order is  
23 conclusive unless the court specifically finds that a reasonable  
24 person could not have reached the conclusion made by the board.

25 \* Sec. 20. AS 23.30.130(a) is amended to read:

26           (a) Upon its own initiative, or upon the application of any  
27 party in interest on the ground of a change in conditions, including,  
28 for the purposes of AS 23.30.175, a change in residence, or because of  
29 a mistake in its determination of a fact, the board may, before one

1 year after the date of the last payment of compensation benefits under  
2 AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, whether  
3 or not a compensation order has been issued, or before one year after  
4 the rejection of a claim, review a compensation case under [IN ACCOR-  
5 DANCE WITH] the procedure prescribed in respect of claims in AS 23.-  
6 30.110. Under [IN ACCORDANCE WITH] AS 23.30.110 the board may issue a  
7 new compensation order which terminates, continues, reinstates, in-  
8 creases, or decreases the compensation, or award compensation.

9 \* Sec. 21. AS 23.30.155(c) is amended to read:

10 (c) The insurer or adjuster [EMPLOYER] shall notify the board  
11 and the employee on a form prescribed by the board that the payment of  
12 compensation has begun or has been increased, decreased, suspended,  
13 terminated, resumed, or changed in type. An initial report shall be  
14 filed with the board and sent to the employee within 28 days after the  
15 date of issuing the first payment of compensation. If at any time 21  
16 days or more pass and no compensation payment is issued, a report  
17 notifying the board and the employee of the termination or suspension  
18 of compensation shall be filed with the board and sent to the employee  
19 within 28 days after the date the last compensation payment was is-  
20 sued. A report shall also be filed with the board and sent to the  
21 employee within 28 days after the date of issuing a payment increas-  
22 ing, decreasing, resuming, or changing the type of compensation paid.  
23 If the [EMPLOYER FAILS TO NOTIFY THE] board and the employee are not  
24 notified within the 28 days prescribed by this subsection for report-  
25 ing, the insurer or adjuster [EMPLOYER] shall pay a civil penalty of  
26 \$100 for the first day plus \$10 for each day thereafter that the  
27 [EMPLOYER FAILED TO GIVE] notice was not given. Total penalties under  
28 this subsection [SECTION] may not exceed \$1,000 for a failure to file  
29 a required report. Penalties assessed under this subsection are

1 eligible for reduction under (m) of this section. A penalty assessed  
2 under this subsection after penalties have been reduced under (m) of  
3 this section shall be increased by 20 percent and shall bear interest  
4 at the rate established under AS 45.45.010.

5 \* Sec. 22. AS 23.30.155(d) is amended to read:

6 (d) If the employer controverts the right to compensation the  
7 employer shall file with the board and send to the employee a notice  
8 of controversion on or before the 21st day after the employer has  
9 knowledge of the alleged injury or death. If the employer controverts  
10 the right to compensation after payments have begun, the employer  
11 shall file with the board and send to the employee a notice of con-  
12 troversion within seven days after an installment of compensation  
13 payable without an award is due. When payment of temporary disability  
14 benefits is controverted solely on the grounds that another employer  
15 or another insurer of the same employer may be responsible for all or  
16 a portion of the benefits, the most recent employer or insurer who is  
17 party to the claim and who may be liable shall make the payments  
18 during the pendency of the dispute. When a final determination of  
19 liability is made, any reimbursement required, including interest at  
20 the statutory rate, and all costs and attorneys' fees incurred by the  
21 prevailing employer, shall be made within 14 days of the determina-  
22 tion.

23 \* Sec. 23. AS 23.30.155(m) is repealed and reenacted to read:

24 (m) On or before March 1 of each year the insurer or adjuster  
25 shall file a verified annual report on a form prescribed by the board  
26 stating the total amount of all compensation by type, medical, and  
27 related benefits, vocational rehabilitation expenses, legal fees, and  
28 penalties paid on all claims during the preceding calendar year. If  
29 the annual report is timely and complete when received by the board

1 and provides accurate information about each category of payments, the  
2 commissioner shall review the timeliness of the insurer's or adjuster's  
3 reports filed during the preceding year under (c) of this section.  
4 If during the preceding year the insurer or adjuster filed at  
5 least 99 percent of the reports on time, the penalties assessed under  
6 (c) of this section shall be waived. If during the preceding year the  
7 insurer or adjuster filed at least 97 percent of the reports on time,  
8 75 percent of the penalties assessed under (c) of this section shall  
9 be waived. If during the preceding year the insurer or adjuster filed  
10 95 percent of the reports on time, 50 percent of the penalties  
11 assessed under (c) of this section shall be waived. If during the  
12 preceding year the insurer's or adjuster's reports have not been filed  
13 on time at least 95 percent of the time, none of the penalties  
14 assessed under (c) of this section shall be waived. The penalties  
15 that are not waived are due and payable when the insurer or adjuster  
16 receives notification from the commissioner regarding the timeliness  
17 of the reports. If the annual report is not filed by March 1 of each  
18 year, the insurer or adjuster shall pay a civil penalty of \$100 for  
19 the first day the annual report is late, and \$10 for each additional  
20 day the report is late.

21 \* Sec. 24. AS 23.30.155 is amended by adding a new subsection to read:

22 (n) If the employer is self-insured, the requirements of (c) and  
23 (m) of this section apply to the employer.

24 \* Sec. 25. AS 23.30.175 is repealed and reenacted to read:

25 Sec. 23.30.175. RATES OF COMPENSATION. (a) The weekly rate of  
26 compensation for disability or death may not exceed \$700 and initially  
27 may not be less than \$110. However, if the board determines that the  
28 employee's spendable weekly wages are less than \$110 a week as com-  
29 puted under AS 23.30.220, or less than \$154 a week in the case of an

1 employee who has furnished documentary proof of the employee's wages,  
2 it shall issue an order adjusting the weekly rate of compensation to a  
3 rate equal to the employee's spendable weekly wages. If the employer  
4 can verify that the employee's spendable weekly wages are less than  
5 \$154, the employer may adjust the weekly rate of compensation to a  
6 rate equal to the employee's spendable weekly wages without an order  
7 of the board. If the employee's spendable weekly wages are greater  
8 than \$154, but 80 percent of the employee's spendable weekly wages is  
9 less than \$154, the employee's weekly rate of compensation shall be  
10 \$154. Prior payments made in excess of the adjusted rate shall be  
11 deducted from the unpaid compensation in the manner the board deter-  
12 mines. In any case, the employer shall pay timely compensation.

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

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

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

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

29 (4) application of this subsection may not reduce the

1 weekly compensation rate to less than \$154 a week, except as provided  
2 in (a) of this section.

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

7 \* Sec. 26. 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. If a permanent partial  
12 disability award has been made before a permanent total disability  
13 determination, permanent total disability benefits must be reduced by  
14 the amount of the permanent partial disability award, adjusted for  
15 inflation, in a manner determined by the board. Loss of both hands,  
16 or both arms, or both feet, or both legs, or both eyes, or of any two  
17 of them, in the absence of conclusive proof to the contrary, consti-  
18 tutes permanent total disability. In all other cases permanent total  
19 disability is determined in accordance with the facts. In making this  
20 determination the market for the employee's services shall be

21 (1) area of residence;

22 (2) area of last employment;

23 (3) the state of residence; and

24 (4) the state of Alaska.

25 \* Sec. 27. AS 23.30.180 is amended by adding a new subsection to read:

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

29 \* Sec. 28. AS 23.30.185 is amended to read:

1           Sec. 23.30.185. COMPENSATION FOR TEMPORARY TOTAL DISABILITY. In  
 2 case of disability total in character but temporary in quality, 80  
 3 percent of the injured employee's spendable weekly wages shall be paid  
 4 to the employee during the continuance of the disability. Temporary  
 5 total disability benefits may not be paid for any period of disability  
 6 occurring after the date of medical stability. Temporary total dis-  
 7 ability benefits may not be paid for more than two years regardless of  
 8 continuance of the disability.

9 \* Sec. 29. AS 23.30.190 is repealed and reenacted to read:

10           Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT.  
 11 (a) In case of impairment partial in character but permanent in  
 12 quality, and not resulting in permanent total disability, the compen-  
 13 sation is \$240,000 multiplied by the employee's percentage of net  
 14 permanent impairment of the whole person, and payable in a single lump  
 15 sum, except as otherwise provided in AS 23.30.041, but the compensa-  
 16 tion may not be discounted for any present value considerations. The  
 17 percentage of net permanent impairment shall be determined by multi-  
 18 plying the employee's actual degree of permanent impairment by the  
 19 appropriate adjustment factor, as follows:

20	Degree of Actual Impairment	Adjustment Factor
21	0 - 5	0
22	6	0.060
23	7	0.120
24	8	0.180
25	9	0.240
26	10	0.300
27	11	0.333
28	12	0.366
29	13	0.399

1	14	0.432
2	15	0.465
3	16	0.495
4	17	0.540
5	18	0.585
6	19	0.630
7	20	0.675
8	21	0.680
9	22	0.688
10	23	0.696
11	24	0.704
12	25	0.712
13	26	0.740
14	27	0.765
15	28	0.790
16	29	0.815
17	30	0.840
18	31	0.880
19	32	0.910
20	33	0.940
21	34	0.970
22	35-100	1.000

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 a supplementary recognized schedule for injuries that cannot be  
 29 rated by use of the American Medical Association Guides.

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. 30. 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.

20 \* Sec. 31. AS 23.30.200 is amended by adding a new subsection to read:

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

1 naturally extend into the future.

2 \* Sec. 32. AS 23.30.220(a) is amended to read:

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

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

10 (2) If the employee had no earnings during the two calendar  
11 years preceding the injury or was voluntarily absent from the labor  
12 market for 18 months or more of the two calendar years preceding the  
13 injury [THE BOARD DETERMINES THAT THE GROSS WEEKLY EARNINGS AT THE  
14 TIME OF THE INJURY CANNOT BE FAIRLY CALCULATED UNDER (1) OF THIS  
15 SUBSECTION], the board shall [MAY] determine the employee's gross  
16 weekly earnings for calculating compensation by considering the nature  
17 of the employee's work and work history, but compensation may not  
18 exceed the employee's projected gross weekly earnings at the time of  
19 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. 33. 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. 34. 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. 35. 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. 36. 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. 37. 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. 38. AS 23.30.210 is repealed.

26       \* Sec. 39. TRANSITIONAL PROVISIONS. Notwithstanding AS 23.30.040(b),  
27       as amended by sec. 7 of this Act, and AS 23.30.155(m), as amended by  
28       sec. 23 of this Act, on or before March 1, 1989, each employer that is  
29       subject to those sections shall file a report and make the appropriate

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

5 \* Sec. 40. APPLICABILITY. Except for secs. 7, 21, 23, and 24 of this  
6 Act, this Act applies only to injuries sustained on or after July 1, 1988.

7 \* Sec. 41. This Act takes effect July 1, 1988.