

Original sponsor: Labor and Commerce  
Committee

1 IN THE SENATE BY THE JUDICIARY COMMITTEE  
2 HOUSE CS FOR CS FOR SENATE BILL NO. 322 (Judiciary)  
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 ensure 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) recognize 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) increase the incentives to return to work; and

28 (3) remove obstacles to the utilisation 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 (d) It is the intent of the legislature to encourage employers to  
5 improve safety practices in the workplace and to use improved safety prac-  
6 tices to reduce work related injuries.

7 (e) It is the intent of the legislature in amending AS 23.30.075(b)  
8 and 23.30.155 that the division of workers' compensation, division of  
9 insurance, and Department of Law strictly enforce the punishment authorized  
10 under AS 23.30.075(b) and the reporting requirements and penalties for  
11 noncompliance under AS 23.30.155. Strict enforcement is necessary because

12 (1) the state has failed to impose the punishment authorized  
13 under AS 23.30.075(b) against those employers who fail to obtain workers'  
14 compensation insurance or to qualify as a self-insurer; and

15 (2) there is a lack of specific data from the division of work-  
16 ers' compensation and division of insurance to adequately assess the effi-  
17 ciency and costs of the workers' compensation system.

18 \* Sec. 2. AS 21.39.155 is amended by adding a new subsection to read:

19 (c) An insurer may not impose a surcharge for assigned risk pool  
20 insurance unless the insured has received an experience modification  
21 debit. After the insured has received an experience modification  
22 debit, the insurer may impose a surcharge if the percentage of the  
23 surcharge does not exceed the percentage applied as an experience  
24 modification debit or 25 percent of the premium developed after appli-  
25 cation of the experience modification factor, whichever is less.

26 \* Sec. 3. AS 21.89 is amended by adding a new section to read:

27 Sec. 21.89.015. **WORKPLACE SAFETY PROGRAM.** An insurer who pro-  
28 vides workers' compensation insurance in this state shall establish  
29 and maintain a workplace safety rate reduction program available to

1 all insureds. The program must include

2 (1) a reduction in future workers' compensation premiums  
3 based on the insured's documented and successful implementation of a  
4 safety program; and

5 (2) consulting services available to the insured to estab-  
6 lish a workplace safety program; an insurer may charge a fee separate  
7 from the premium for services requested under this paragraph.

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

9 (h) The department shall [MAY] adopt [IDENTICAL] rules for all  
10 panels, and procedures for the periodic selection, retention, and re-  
11 moval of both rehabilitation specialists and physicians under AS 23.-  
12 30.041 and 23.30.095, and shall [MAY] adopt regulations to carry out  
13 the provisions of this chapter. Process and procedure under this  
14 chapter shall be as summary and simple as possible. The department,  
15 the board or a member of it may for the purposes of this chapter  
16 subpoena witnesses, administer or cause to be administered oaths, and  
17 may examine or cause to have examined the parts of the books and  
18 records of the parties to a proceeding that relate [WHICH RELATED] to  
19 questions in dispute. The superior court, on application of the  
20 department, the board or any members of it, shall enforce the atten-  
21 dance and testimony of witnesses and the production and examination of  
22 books, papers, and records.

23 \* Sec. 5. 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. 6. AS 23.30.025 is amended by adding a new subsection to read:

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

7 \* Sec. 7. AS 23.30.030 is amended by adding a new paragraph to read:

8 (8) An annual insurance premium that exceeds \$2,000 may be  
9 paid on an installment basis of not fewer than two payments, if re-  
10 quested by the insured. Premiums paid by installment must be struc-  
11 tured to reflect seasonal peaks in the basis of the premium. The  
12 insurer shall include this provision in the insurance policy in a  
13 manner that clearly informs the insured of the provision.

14 \* Sec. 8. AS 23.30.040(b) is amended to read:

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

1 than \$20. By December 15 of each year the commissioner shall deter-  
 2 mine and make available to the public the applicable contribution rate  
 3 for the following calendar year according to the reserve rate of the  
 4 second injury fund in column B of this subsection:

5	Column A	Column B	
6	Second Injury Fund	Reserve Rate	
7	Contribution Rate	At Least	But Less Than
8	(Percent)	(Percent)	(Percent)
9	6	0	50
10	5	50	75
11	4	75	100
12	3	100	125
13	2	125	150
14	1	150	175
15	0	175	

16 \* Sec. 9. AS 23.30.040(h) is amended to read:

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

20 \* Sec. 10. AS 23.30.041 is repealed and reenacted to read:

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

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

- 27 (1) enforce regulations adopted by the board to implement
- 28 this section;
- 29 (2) recommend regulations for adoption by the board that

1 establish performance and reporting criteria for rehabilitation spe-  
2 cialists;

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

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

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

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

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

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

21 (D) the cost of reemployment benefits;

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

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

28 (c) If an employee suffers a compensable injury that may perma-  
29 nently preclude an employee's return to the employee's occupation at

1 the time of injury, the employee or employer may request an eligibil-  
2 ity evaluation for reemployment benefits. The employee shall request  
3 an eligibility evaluation within 90 days after the employee gives the  
4 employer notice of injury unless the administrator determines the  
5 employee has an unusual and extenuating circumstance that prevents the  
6 employee from making a timely request. The administrator shall, on a  
7 rotating and geographic basis, select a rehabilitation specialist from  
8 the list maintained under (b)(6) of this section to perform the eli-  
9 gibility evaluation.

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

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

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

1           (2) other jobs that exist in the labor market that the  
2 employee has held or received training for within 10 years before the  
3 injury or that the employee has held following the injury for a period  
4 long enough to obtain the skills to compete in the labor market,  
5 according to specific vocational preparation codes as described in the  
6 United States Department of Labor's "Selected Characteristics of Occu-  
7 pations Defined in the Dictionary of Occupational Titles."

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

9           (1) the employer offers employment within the employee's  
10 predicted post-injury physical capacities at a wage equivalent to at  
11 least the state minimum wage under AS 23.10.065 or 75 percent of the  
12 worker's gross hourly wages at the time of injury, whichever is great-  
13 er, and the employment prepares the employee to be employable in other  
14 jobs that exist in the labor market;

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

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

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

1 specialist.

2 (h) Within 90 days after the rehabilitation specialist's selec-  
3 tion under (g) of this section, the reemployment plan must be formu-  
4 lated and approved. The reemployment plan must include at least the  
5 following:

6 (1) a determination of the occupational goal in the labor  
7 market;

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

11 (3) a plan to acquire the occupational skills to be employ-  
12 able;

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

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

17 (6) the date the plan will commence;

18 (7) the estimated time of medical stability as predicted by  
19 the physician;

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

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

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

28 (1) on the job training;

29 (2) vocational training;

- 1                   (3) academic training;  
2                   (4) self-employment; or  
3                   (5) a combination of (1) - (4) of this subsection.

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

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

1 reemployment plan.

2 (l) The cost of the reemployment plan incurred under this sec-  
3 tion shall be the responsibility of the employer, shall be paid on an  
4 expense incurred basis, and may not exceed \$10,000.

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

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

15 (1) keep appointments;

16 (2) maintain passing grades;

17 (3) attend designated programs;

18 (4) maintain contact with the rehabilitation specialist;

19 (5) cooperate with the rehabilitation specialist in devel-

20 oping a reemployment plan and participating in activities relating to  
21 reemployability on a full-time basis;

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

24 (7) participate in any planned reemployment activity as  
25 determined by the administrator.

26 (o) Upon the request of either party, the administrator shall  
27 decide whether the employee has not cooperated as provided under (n)  
28 of this section. A hearing before the administrator shall be held  
29 within 30 days after it is requested. The administrator shall issue a

1 decision within 14 days after the hearing. Within 10 days after the  
2 administrator files the decision, either party may seek review of the  
3 decision by requesting a hearing under AS 23.30.110; the board shall  
4 uphold the decision of the administrator unless evidence is submitted  
5 supporting an allegation of abuse of discretion on the part of the  
6 administrator; the board shall render a decision within 30 days after  
7 completion of the hearing.

8 (p) In this section

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

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

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

16 (A) area of residence;

17 (B) area of last employment;

18 (C) the state;

19 (D) other states;

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

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

1           (6) "rehabilitation specialist" means a person who is a  
2 certified insurance rehabilitation specialist, a certified rehabilita-  
3 tion counselor, or a person who has equivalent or better qualifica-  
4 tions as determined under regulations adopted by the department;

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

12 \* Sec. 11. AS 23.30.055 is amended to read:

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

1       employee.

2       \* Sec. 12. AS 23.30.075(b) is amended to read:

3           (b) If an [AN] employer [WHO] fails to insure and keep insured  
4       employees subject to this chapter or fails to obtain a certificate of  
5       self-insurance from the board, upon conviction the court shall impose  
6       a fine of \$10,000 and may impose a sentence of [ , IS PUNISHABLE BY A  
7       FINE OF NOT MORE THAN \$1,000, OR BY] imprisonment for not more than  
8       one year [ , OR BY BOTH]. If an employer is a corporation, all persons  
9       who, at the time of the injury or death, had authority to insure the  
10      [SAID] corporation or apply for a certificate of self-insurance, and  
11      the person actively in charge of the business of the [SUCH] corpo-  
12      ration shall be subject to the penalties prescribed in this subsection  
13      [HEREIN] and shall be personally, jointly, and severally liable to-  
14      gether with the corporation for the payment of all compensation or  
15      other benefits for which the corporation is liable under this chapter  
16      if the [SAID] corporation at that [SUCH] time is not insured or quali-  
17      fied as a self-insurer.

18      \* Sec. 13. AS 23.30.095(a) is amended to read:

19           (a) The employer shall furnish medical, surgical, and other  
20      attendants or treatment, nurse and hospital service, medicine, crutch-  
21      es, and apparatus for the period which the nature of the injury or the  
22      process of recovery requires, not exceeding two years from and after  
23      the date of injury to the employee. However, if the condition requir-  
24      ing the treatment, apparatus, or medicine is a latent one, the two-  
25      year period runs from the time the employee has knowledge of the  
26      nature of the employee's disability and its relationship to the em-  
27      ployment and after disablement. It shall be additionally provided  
28      that, if continued treatment or care or both beyond the two-year  
29      period is indicated, the injured employee has the right of review by

1 the board. The board may authorize continued treatment or care or  
2 both as the process of recovery may require. When medical care is  
3 required, the injured employee may designate a licensed physician to  
4 provide all medical and related benefits. The employee may not make  
5 more than one change in the employee's choice of attending physician  
6 without the written consent of the employer. Referral to a specialist  
7 by the employee's attending physician is not considered a change in  
8 physicians [INSIDE THE STATE TO RENDER THE CARE EXCEPT IN CASES WHERE,  
9 IN THE JUDGMENT OF THE BOARD, CARE OR TREATMENT OR BOTH CAN BEST BE  
10 ADMINISTERED BY THE SELECTION OF ANOTHER PHYSICIAN]. Upon procuring  
11 the services of a physician, the injured employee shall give proper  
12 notification of the selection to the employer within a reasonable time  
13 after first being treated. Notice of a change in the attending physi-  
14 cian shall be given before the change [IF FOR ANY REASON DURING THE  
15 PERIOD WHEN MEDICAL CARE IS REQUIRED THE EMPLOYEE WISHES TO CHANGE TO  
16 ANOTHER PHYSICIAN, THE EMPLOYEE MAY DO SO IN ACCORDANCE WITH REGU-  
17 LATIONS ADOPTED BY THE BOARD].

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

19 (c) A claim for medical or surgical treatment, or treatment  
20 requiring continuing and multiple treatments of a similar nature is  
21 not valid and enforceable against the employer unless, within 14 days  
22 following treatment, the physician or health care provider giving the  
23 treatment or the employee receiving it furnishes to the employer and  
24 the board notice of the injury and treatment, preferably on a form  
25 prescribed by the board. The board shall, however, excuse the failure  
26 to furnish notice within 14 days when it finds it to be in the inter-  
27 est of justice to do so, and it may, upon application by a party in  
28 interest, make an award for the reasonable value of the medical or  
29 surgical treatment so obtained by the employee. When a claim is made

1 for a course of treatment requiring continuing and multiple treatments  
2 of a similar nature, in addition to the notice, the physician or  
3 health care provider shall furnish a written treatment plan if the  
4 course of treatment will require more frequent outpatient visits than  
5 the standard treatment frequency for the nature and degree of the  
6 injury and the type of treatments. The treatment plan shall be furn-  
7 ished to the employee and the employer within 14 days after treatment  
8 begins. The treatment plan must include objectives, modalities,  
9 frequency of treatments, and reasons for the frequency of treatments.  
10 If the treatment plan is not furnished as required under this subsec-  
11 tion, neither the employer nor the employee may be required to pay for  
12 treatments that exceed the frequency standard. The board shall adopt  
13 regulations establishing standards for frequency of treatment.

14 \* Sec. 15. 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 jurisdiction in which the physician resides  
20 [STATE IN WHICH THE EMPLOYEE MAY BE FOUND], furnished and paid for by  
21 the employer. The employer may not make more than one change in the  
22 employer's choice of a physician or surgeon without the written con-  
23 sent of the employee. Referral to a specialist by the employer's  
24 physician is not considered a change in physicians. An examination  
25 requested by the employer not less than 14 days after injury, and  
26 every 60 days thereafter, shall be presumed to be reasonable, and the  
27 employee shall submit to the examination without further request or  
28 order by the board. Unless medically appropriate, the physician shall  
29 use existing diagnostic data to complete the examination. Facts

1 relative to the injury or claim communicated to or otherwise learned  
2 by a physician or surgeon who may have attended or examined the em-  
3 ployee, or who may have been present at an examination are not priv-  
4 ileged, either in the hearings provided for in this chapter or an  
5 action to recover damages against an employer who is subject to the  
6 compensation provisions of this chapter. If an employee refuses to  
7 submit to an [ANY] examination provided for in this section, the  
8 employee's rights to compensation shall be suspended until the ob-  
9 struction or refusal ceases, and the employee's compensation during  
10 the period of suspension may, in the discretion of the board or the  
11 court determining an action brought for the recovery of damages under  
12 this chapter, be forfeited. The board in any case of death may re-  
13 quire an autopsy at the expense of the party requesting the autopsy.  
14 An autopsy may not be held without notice first being given to the  
15 widow or widower or next of kin if they reside in the state or their  
16 whereabouts can be reasonably ascertained, of the time and place of  
17 the autopsy and reasonable time and opportunity given the widow or  
18 widower or next of kin to have a representative present to witness the  
19 autopsy. If adequate notice is not given, the findings from the  
20 autopsy may be suppressed on motion made to the board or to the supe-  
21 rior court, as the case may be.

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

23 (f) All fees and other charges for medical treatment or service  
24 [ARE LIMITED TO THE CHARGES THAT PREVAIL IN THE SAME COMMUNITY FOR  
25 SIMILAR TREATMENT OF INJURED PERSONS OF LIKE STANDARD OF LIVING AND]  
26 shall be subject to regulation by the board but may not exceed usual,  
27 customary, and reasonable fees for the treatment or service in the  
28 community in which it is rendered, as determined by the board. An  
29 employee may not be required to pay a fee or charge for medical

1 treatment or service.

2 \* Sec. 17. AS 23.30.095(j) is repealed and reenacted to read:

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

8 \* Sec. 18. AS 23.30.095 is amended by adding a new subsection to read:

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

23 \* Sec. 19. AS 23.30.105(a) is amended to read:

24 (a) The right to compensation for disability under this chapter  
25 is barred unless a claim for it is filed within two years after the  
26 employee has knowledge of the nature of the employee's disability and  
27 its relation to the employment and after disablement. However, the  
28 maximum time for filing the claim in any event other than arising out  
29 of an occupational disease shall be four years from the date of

1 injury, and the right to compensation for death is barred unless a  
2 claim therefor is filed within one year after the death, except that  
3 if payment of compensation has been made without an award on account  
4 of the injury or death, a claim may be filed within two years after  
5 the date of the last payment of benefits under AS 23.30.180, 23.30.-  
6 185, 23.30.190, 23.30.200, or 23.30.215. It is additionally provided  
7 that, in the case of latent defects pertinent to and causing com-  
8 pensable disability, the injured employee has full right to claim as  
9 shall be determined by the board, time limitations notwithstanding.

10 \* Sec. 20. AS 23.30.110(c) is repealed and reenacted to read:

11 (c) Before a hearing is scheduled, the party seeking a hearing  
12 shall file a request for a hearing together with an affidavit stating  
13 that the party has completed necessary discovery, obtained necessary  
14 evidence, and is prepared for the hearing. An opposing party shall  
15 have 10 days after the hearing request is filed to file a response.  
16 If a party opposes the hearing request, the board or a board designee  
17 shall within 30 days of the filing of the opposition conduct a pre-  
18 hearing conference and set a hearing date. If opposition is not  
19 filed, a hearing shall be scheduled no later than 60 days after the  
20 receipt of the hearing request. The board shall give each party at  
21 least 10 days' notice of the hearing, either personally or by cer-  
22 tified mail. After a hearing has been scheduled, the parties may not  
23 stipulate to change the hearing date or to cancel, postpone, or con-  
24 tinue the hearing, except for good cause as determined by the board.  
25 After completion of the hearing the board shall close the hearing  
26 record. If a settlement agreement is reached by the parties less than  
27 14 days before the hearing, the parties shall appear at the time of  
28 the scheduled hearing to state the terms of the settlement agreement.  
29 Within 30 days after the hearing record closes, the board shall file

1 its decision. If the employer controverts a claim on a board-pre-  
2 scribed controversion notice and the employee does not request a  
3 hearing within two years following the filing of the controversion  
4 notice, the claim is denied.

5 \* Sec. 21. AS 23.30.120 is amended by adding a new subsection to read:

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

9 \* Sec. 22. AS 23.30.125 is amended by adding a new subsection to read:

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

14 \* Sec. 23. AS 23.30.130(a) is amended to read:

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

27 \* Sec. 24. AS 23.30.155(c) is amended to read:

28 (c) The insurer or adjuster [EMPLOYER] shall notify the board  
29 and the employee on a form prescribed by the board that the payment of

1 compensation has begun or has been increased, decreased, suspended,  
2 terminated, resumed, or changed in type. An initial report shall be  
3 filed with the board and sent to the employee within 28 days after the  
4 date of issuing the first payment of compensation. If at any time 21  
5 days or more pass and no compensation payment is issued, a report  
6 notifying the board and the employee of the termination or suspension  
7 of compensation shall be filed with the board and sent to the employee  
8 within 28 days after the date the last compensation payment was is-  
9 sued. A report shall also be filed with the board and sent to the  
10 employee within 28 days after the date of issuing a payment increas-  
11 ing, decreasing, resuming, or changing the type of compensation paid.  
12 If the [EMPLOYER FAILS TO NOTIFY THE] board and the employee are not  
13 notified within the 28 days prescribed by this subsection for report-  
14 ing, the insurer or adjuster [EMPLOYER] shall pay a civil penalty of  
15 \$100 for the first day plus \$10 for each day thereafter that the  
16 [EMPLOYER FAILED TO GIVE] notice was not given. Total penalties under  
17 this subsection [SECTION] may not exceed \$1,000 for a failure to file  
18 a required report. Penalties assessed under this subsection are  
19 eligible for reduction under (m) of this section. A penalty assessed  
20 under this subsection after penalties have been reduced under (m) of  
21 this section shall be increased by 25 percent and shall bear interest  
22 at the rate established under AS 45.45.010.

23 \* Sec. 25. AS 23.30.155(d) is amended to read:

24 (d) If the employer controverts the right to compensation the  
25 employer shall file with the board and send to the employee a notice  
26 of controversion on or before the 21st day after the employer has  
27 knowledge of the alleged injury or death. If the employer controverts  
28 the right to compensation after payments have begun, the employer  
29 shall file with the board and send to the employee a notice of

1       controversion within seven days after an installment of compensation  
2       payable without an award is due. When payment of temporary disability  
3       benefits is controverted solely on the grounds that another employer  
4       or another insurer of the same employer may be responsible for all or  
5       a portion of the benefits, the most recent employer or insurer who is  
6       party to the claim and who may be liable shall make the payments  
7       during the pendency of the dispute. When a final determination of  
8       liability is made, any reimbursement required, including interest at  
9       the statutory rate, and all costs and attorneys' fees incurred by the  
10       prevailing employer, shall be made within 14 days of the determina-  
11       tion.

12       \* Sec. 26. AS 23.30.155(e) is amended to read:

13               (e) If any installment of compensation payable without an award  
14       is not paid within seven days after it becomes due, as provided in (b)  
15       of this section, there shall be added to the unpaid installment an  
16       amount equal to 25 [20] percent of it or \$100, whichever amount is  
17       greater. This additional amount shall be paid at the same time as,  
18       and in addition to, the installment, unless notice is filed under (d)  
19       of this section or unless the nonpayment is excused by the board after  
20       a showing by the employer that owing to conditions over which the  
21       employer had no control the installment could not be paid within the  
22       period prescribed for the payment.

23       \* Sec. 27. AS 23.30.155(f) is amended to read:

24               (f) If compensation payable under the terms of an award is not  
25       paid within 14 days after it becomes due, there shall be added to that  
26       unpaid compensation an amount equal to 25 [20] percent of it or \$100,  
27       whichever is greater. which shall be paid at the same time as, but in  
28       addition to, the compensation, unless review of the compensation order  
29       making the award is had as provided in AS 23.30.125 and an interlocu-

1 tory injunction staying payments is allowed by the court.

2 \* Sec. 28. AS 23.30.155(m) is repealed and reenacted to read:

3 (m) On or before March 1 of each year the insurer or adjuster

4 shall file a verified annual report on a form prescribed by the board

5 stating the total amount of all compensation by type, the number of

6 claims received and the percentage controverted, medical, and related

7 benefits, vocational rehabilitation expenses, legal fees, including a

8 separate total for fees paid to attorneys and fees paid for the other

9 costs of litigation, and penalties paid on all claims during the

10 preceding calendar year. If the annual report is timely and complete

11 when received by the board and provides accurate information about

12 each category of payments, the commissioner shall review the timeli-

13 ness of the insurer's or adjuster's reports filed during the preceding

14 year under (c) of this section. If during the preceding year the

15 insurer or adjuster filed at least 99 percent of the reports on time,

16 the penalties assessed under (c) of this section shall be waived. If

17 during the preceding year the insurer or adjuster filed at least 97

18 percent of the reports on time, 75 percent of the penalties assessed

19 under (c) of this section shall be waived. If during the preceding

20 year the insurer or adjuster filed 95 percent of the reports on time,

21 50 percent of the penalties assessed under (c) of this section shall

22 be waived. If during the preceding year the insurer's or adjuster's

23 reports have not been filed on time at least 95 percent of the time,

24 none of the penalties assessed under (c) of this section shall be

25 waived. The penalties that are not waived are due and payable when

26 the insurer or adjuster receives notification from the commissioner

27 regarding the timeliness of the reports. If the annual report is not

28 filed by March 1 of each year, the insurer or adjuster shall pay a

29 civil penalty of \$100 for the first day the annual report is late, and

1       \$10 for each additional day the report is late. If the annual report  
2 is incomplete when filed, the insurer or adjuster shall pay a civil  
3 penalty of \$1,000.

4       \* Sec. 29. AS 23.30.155 is amended by adding new subsections to read:

5           (n) If the employer is self-insured or uninsured, the require-  
6 ments of (c) and (m) of this section apply to the employer.

7           (o) The board shall promptly notify the division of insurance if  
8 the board determines that the employer's insurer has frivolously or  
9 unfairly controverted compensation due under this chapter. After  
10 receiving notice from the board, the division of insurance shall  
11 determine if the insurer has committed an unfair claim settlement  
12 practice under AS 21.36.125.

13           (p) When an employer pays compensation due under this chapter to  
14 an employee residing in this state, the payment must be made by check  
15 or other negotiable instrument drawn on funds deposited in this state.

16       \* Sec. 30. AS 23.30.175 is repealed and reenacted to read:

17       Sec. 23.30.175. RATES OF COMPENSATION. (a) The weekly rate of  
18 compensation for disability or death may not exceed \$700 and initially  
19 may not be less than \$110. However, if the board determines that the  
20 employee's spendable weekly wages are less than \$110 a week as com-  
21 puted under AS 23.30.220, or less than \$154 a week in the case of an  
22 employee who has furnished documentary proof of the employee's wages,  
23 it shall issue an order adjusting the weekly rate of compensation to a  
24 rate equal to the employee's spendable weekly wages. If the employer  
25 can verify that the employee's spendable weekly wages are less than  
26 \$154, the employer may adjust the weekly rate of compensation to a  
27 rate equal to the employee's spendable weekly wages without an order  
28 of the board. If the employee's spendable weekly wages are greater  
29 than \$154, but 80 percent of the employee's spendable weekly wages is

1 less than \$154, the employee's weekly rate of compensation shall be  
2 \$154. Prior payments made in excess of the adjusted rate shall be  
3 deducted from the unpaid compensation in the manner the board deter-  
4 mines. In any case, the employer shall pay timely compensation.

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

8 (1) the weekly rate of compensation shall be calculated by  
9 multiplying the recipient's weekly compensation rate calculated under  
10 AS 23.30.180, 23.30.185, 23.30.190, 23.30.200, or 23.30.215, by the  
11 ratio of the cost of living of the area in which the recipient resides  
12 to the cost of living in this state;

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

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

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

24 (c) The board shall provide by regulation for the determination  
25 and comparison of living costs for this state and the other areas in  
26 which recipients reside and for the annual redetermination and com-  
27 parison of these costs.

28 \* Sec. 31. AS 23.30.180 is amended to read:

29 Sec. 23.30.180. PERMANENT TOTAL DISABILITY. In case of total

1 disability adjudged to be permanent 80 percent of the injured em-  
2 ployee's spendable weekly wages shall be paid to the employee during  
3 the continuance of the total disability. If a permanent partial  
4 disability award has been made before a permanent total disability  
5 determination, permanent total disability benefits must be reduced by  
6 the amount of the permanent partial disability award, adjusted for  
7 inflation, in a manner determined by the board. Loss of both hands,  
8 or both arms, or both feet, or both legs, or both eyes, or of any two  
9 of them, in the absence of conclusive proof to the contrary, consti-  
10 tutes permanent total disability. In all other cases permanent total  
11 disability is determined in accordance with the facts. In making this  
12 determination the market for the employee's services shall be

- 13 (1) area of residence;  
14 (2) area of last employment;  
15 (3) the state of residence; and  
16 (4) the State of Alaska.

17 \* Sec. 32. AS 23.30.180 is amended by adding a new subsection to read:  
18 (b) Failure to achieve remunerative employability as defined in  
19 AS 23.30.041(p) does not, by itself, constitute permanent total dis-  
20 ability.

21 \* Sec. 33. AS 23.30.185 is amended to read:

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

28 \* Sec. 34. AS 23.30.190 is repealed and reenacted to read:

29 Sec. 23.30.190. COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT.

1 (a) In case of impairment partial in character but permanent in  
2 quality, and not resulting in permanent total disability, the compen-  
3 sation is \$135,000 multiplied by the employee's percentage of perma-  
4 nent impairment of the whole person. The percentage of permanent  
5 impairment of the whole person is the percentage of impairment to the  
6 particular body part, system, or function converted to the percentage  
7 of impairment to the whole person as provided under (b) of this sec-  
8 tion. The compensation is payable in a single lump sum, except as  
9 otherwise provided in AS 23.30.041, but the compensation may not be  
10 discounted for any present value considerations.

11 (b) All determinations of the existence and degree of permanent  
12 impairment shall be made strictly and solely under the whole person  
13 determination as set out in the American Medical Association Guides to  
14 the Evaluation of Permanent Impairment, except that an impairment  
15 rating may not be rounded to the next five percent. The board shall  
16 adopt a supplementary recognized schedule for injuries that cannot be  
17 rated by use of the American Medical Association Guides.

18 (c) The impairment rating determined under (a) of this section  
19 shall be reduced by a permanent impairment that existed before the  
20 compensable injury. If the combination of a prior impairment rating  
21 and a rating under (a) of this section would result in the employee  
22 being considered permanently totally disabled, the prior rating does  
23 not negate a finding of permanent total disability.

24 \* Sec. 35. AS 23.30.200 is amended to read:

25 Sec. 23.30.200. TEMPORARY PARTIAL DISABILITY. In case of tempo-  
26 rary partial disability resulting in decrease of earning capacity the  
27 compensation shall be 80 percent of the difference between the injured  
28 employee's spendable weekly wages before the injury and the wage-  
29 earning capacity of the employee after the injury in the same or

1 another employment, to be paid during the continuance of the disabili-  
2 ty, but not to be paid for more than five years. Temporary partial  
3 disability benefits may not be paid for a period of disability occur-  
4 ring after the date of medical stability.

5 \* Sec. 36. AS 23.30.200 is amended by adding a new subsection to read:

6 (b) The wage-earning capacity of an injured employee is deter-  
7 mined by the actual spendable weekly wage of the employee if the  
8 actual spendable weekly wage fairly and reasonably represents the  
9 wage-earning capacity of the employee. The board may, in the interest  
10 of justice, fix the wage-earning capacity that is reasonable, having  
11 due regard to the nature of the injury, the degree of physical impair-  
12 ment, the usual employment, and other factors or circumstances in the  
13 case that may affect the capacity of the employee to earn wages in a  
14 disabled condition, including the effect of disability as it may  
15 naturally extend into the future.

16 \* Sec. 37. AS 23.30.220(a) is amended to read:

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

21 (1) The gross weekly earnings are computed by dividing by  
22 100 the gross earnings of the employee in the two calendar years  
23 immediately preceding the injury.

24 (2) If the employee was absent from the labor market for 18  
25 months or more of the two calendar years preceding the injury [THE  
26 BOARD DETERMINES THAT THE GROSS WEEKLY EARNINGS AT THE TIME OF THE  
27 INJURY CANNOT BE FAIRLY CALCULATED UNDER (1) OF THIS SUBSECTION], the  
28 board shall [MAY] determine the employee's gross weekly earnings for  
29 calculating compensation by considering the nature of the employee's

1 work and work history, but compensation may not exceed the employee's  
2 projected gross weekly earnings at the time of injury.

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

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

19 \* Sec. 38. AS 23.30.225 is amended by adding a new subsection to read:

20 (c) If employer contributions to a qualified pension or profit  
21 sharing plan have been included in the determination of gross earnings  
22 and the employee is receiving pension or profit sharing payments,  
23 weekly compensation benefits payable under this chapter shall be  
24 reduced by the amount paid or payable to the injured worker under the  
25 plan for any week or weeks during which compensation benefits are also  
26 payable. The amount of the reduction may not in any week exceed the  
27 increase in weekly compensation benefits brought about by the inclu-  
28 sion of employer contributions to a qualified pension or profit shar-  
29 ing plan in the determination of gross earnings.

1     \* Sec. 39. AS 23.30.244 is amended to read:

2             Sec. 23.30.244. CIVIL DEFENSE AND DISASTER RELIEF FORCES AS  
3     STATE EMPLOYEES. A resident of Alaska temporarily engaged in a civil  
4     defense or disaster relief function in another state or country under  
5     [THE PROVISION OF] AS 26.23.130 or as a volunteer in this state is  
6     considered an employee of the state for purposes of this chapter.

7     \* Sec. 40. AS 23.30 is amended by adding a new section to read:

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

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

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

26     \* Sec. 41. AS 23.30.265(15) is amended to read:

27            (15) "gross earnings" means periodic payments, by an em-  
28    ployer to an employee for employment before any authorized or lawfully  
29    required deduction or withholding of money by the employer, including

1 compensation that is deferred at the option of the employee, and  
2 excluding irregular bonuses, reimbursement of expenses, expense allow-  
3 ances, and any benefit or payment to the employee that is not fully  
4 taxable to the employee during the pay period, except that the total  
5 amount of contributions made by an employer to a qualified pension or  
6 profit sharing plan during the two plan years preceding the injury,  
7 multiplied by the percentage of the employee's vested interest in the  
8 plan at the time of injury, shall be included in the determination of  
9 gross earnings; the value of room and board if taxable to the employee  
10 may be considered in determining gross earnings; however, the value of  
11 room and board that would raise an employee's gross weekly earning  
12 above the state [ALASKA] average weekly wage at the time of injury may  
13 not be considered;

14 \* Sec. 42. AS 23.30.265(17) is amended to read:

15 (17) "injury" means accidental injury or death arising out  
16 of and in the course of employment, and an occupational disease or  
17 infection which arises naturally out of the employment or which natu-  
18 rally or unavoidably results from an accidental injury; "injury" [,  
19 AND] includes breakage or damage to eyeglasses, hearing aids, den-  
20 tures, or any prosthetic devices which function as part of the body  
21 and further includes an injury caused by the wilful act of a third  
22 person directed against an employee because of the employment; "in-  
23 jury" does not include mental injury caused by mental stress unless it  
24 is established that (A) the work stress was extraordinary and unusual  
25 in comparison to pressures and tensions experienced by individuals in  
26 a comparable work environment, and (B) the work stress was the predom-  
27 inant cause of the mental injury; the amount of work stress shall be  
28 measured by actual events; a mental injury is not considered to arise  
29 out of and in the course of employment if it results from a disciplin-

1 ary action, work evaluation, job transfer, layoff, demotion, termina-  
2 tion or similar action, taken in good faith by the employer;

3 \* Sec. 43. AS 23.30.265 is amended by adding a new paragraph to read:

4 (34) "medical stability" means the date after which further  
5 objectively measurable improvement from the effects of the compensable  
6 injury is not reasonably expected to result from additional medical  
7 care or treatment, notwithstanding the possible need for additional  
8 medical care or the possibility of improvement or deterioration re-  
9 sulting from the passage of time; medical stability shall be presumed  
10 in the absence of objectively measurable improvement for a period of  
11 45 days; this presumption may be rebutted by clear and convincing  
12 evidence.

13 \* Sec. 44. AS 23.30.210 and 23.30.265(28) are repealed.

14 \* Sec. 45. TRANSITIONAL PROVISIONS. Notwithstanding AS 23.30.040(b),  
15 as amended by sec. 8 of this Act, and AS 23.30.155(m), as amended by  
16 sec. 28 of this Act, on or before March 1, 1989, each employer that is  
17 subject to those sections shall file a report and make the appropriate  
18 contribution for all claims existing as of December 31, 1988. The period  
19 covered in the report shall be from the date of the termination report or  
20 the last anniversary report filed, if one has been filed, through  
21 December 31, 1988.

22 \* Sec. 46. TEMPORARY RATE REDUCTION; FUTURE FILINGS. (a) Notwith-  
23 standing AS 21.39.030, an insurer providing workers' compensation insurance  
24 in the state shall provide at least a six percent reduction in the premium  
25 rate charged within the state for workers' compensation insurance, for the  
26 period beginning July 1, 1988, and ending January 1, 1990.

27 (b) Rate filings made after December 31, 1988, must fully reflect the  
28 legal effect of changes made to the workers' compensation system by this  
29 Act.

1       \* Sec. 47. TRANSITIONAL PROVISION. Notwithstanding AS 23.30.041(p), as  
2 enacted by sec. 10 of this Act, for the period from July 1, 1988, until  
3 June 30, 1989, the term "rehabilitation specialist" as used in AS 23.30.041  
4 includes a person who was actively employed for at least one year before  
5 June 30, 1988, in providing rehabilitation services to an injured worker  
6 receiving benefits under AS 23.30.

7       \* Sec. 48. APPLICABILITY. Except for secs. 8, 25, 28, 29, 42, and 46  
8 of this Act, this Act applies only to injuries sustained on or after  
9 July 1, 1988.

10       \* Sec. 49. Section 42 of this Act applies to injuries sustained on or  
11 after the effective date of sec. 42 of this Act.

12       \* Sec. 50. Sections 42 and 49 of this Act take effect immediately under  
13 AS 01.10.070(c).

14       \* Sec. 51. Sections 1 - 41, and 43 - 48 of this Act take effect July 1,  
15 1988.