

HOUSE CS FOR CS FOR SENATE BILL NO. 219 (L&C)**IN THE LEGISLATURE OF THE STATE OF ALASKA****SEVENTEENTH LEGISLATURE - FIRST SESSION****BY THE HOUSE LABOR AND COMMERCE COMMITTEE****Offered: 5/13/91****Referred: Judiciary****Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST****A BILL****FOR AN ACT ENTITLED**

1 "An Act relating to workers' compensation and civil liability for workplace safety
2 inspections; and providing for an effective date."

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

4 * **Section 1.** PURPOSE OF SECTIONS 10 AND 13. (a) It is the purpose of sec. 10 of this Act to
5 amend AS 23.30 to provide that an insurer is not liable for providing or failing to provide safety
6 inspections or safety advisory services; this amendment would decide a public policy question concerning
7 the liability of an insurer for the performance of a safety inspection or safety advisory service raised in
8 *Van Biene v. ERA Helicopters, Inc.*, 779 P.2d 315 (Alaska 1989).

9 (b) It is the purpose of sec. 13 of this Act to amend AS 23.30.265(15) to reaffirm the original
10 intent of changes made to this definition in sec. 24, ch. 93, SLA 1980, to include prior temporary total
11 disability payments within the definition of gross wages.

12 * **Sec. 2.** AS 23.30.041(k) is repealed and reenacted to read:

13 (k) The employer shall pay compensation to an employee eligible for reemployment
14 benefits, as follows:

1 (1) until the employee reaches medical stability or the reemployment plan is
2 completed or terminated, whichever comes first, temporary disability benefits shall be paid;

3 (2) if the employee reaches medical stability or has been found eligible for reem-
4 ployment benefits, temporary disability benefits shall cease and permanent impairment benefits
5 shall then be paid biweekly at the employee's temporary total disability rate until plan
6 completion, termination, or exhaustion of permanent impairment benefits; permanent impairment
7 benefits remaining unpaid upon completion or termination of the plan shall be paid to the
8 employee in a single lump sum;

9 (3) if the employee's permanent impairment benefits are exhausted before the
10 completion or termination of the reemployment plan, the employer shall pay, on a biweekly basis,
11 an amount equal to 60 percent of the employee's spendable weekly wage as determined under
12 AS 23.30.220, not to exceed \$525, until the completion or termination of the plan;

13 (4) if the employee reaches medical stability before an impairment rating is given
14 as provided in AS 23.30.190, except for the first 30 days the employee shall be paid 60 percent
15 of the employee's spendable weekly wage until an impairment rating is given; benefits paid more
16 than 30 days after medical stability but before an impairment rating is given shall be offset from
17 the total sum of permanent impairment benefits due to the employee; after the employee reaches
18 medical stability and an impairment rating is given, all benefits paid shall be included as
19 permanent impairment benefits;

20 (5) benefits related to the reemployment plan may not extend past two years from
21 the date of the initiation of the 60 percent payment of the employee's spendable weekly wage,
22 plan approval, or plan acceptance, whichever date occurs first, at which time the benefits expire;

23 (6) if the employer controverts the employee's claim or appeals a ruling of the
24 administrator or the board and the controversion or appeal delays completion of an evaluation,
25 development, commencement or completion of a plan

26 (A) the employer shall pay the employee 60 percent of the spendable
27 weekly wage during the period of controversion or appeal, except that temporary
28 disability benefits shall be paid until the employee reaches medical stability;

29 (B) the two-year limitation on payment of benefits in (5) of this subsection
30 does not begin to run or is tolled; and

31 (C) payments made at 60 percent of the employee's spendable weekly

1 wage during controversion or appeal may not be offset from permanent impairment
2 benefits due to the employee.

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

4 Sec. 23.30.047. BENEFITS FOR HEALTH INSURANCE. (a) An employer who pays
5 compensation to an injured employee under AS 23.30.041(k), 23.30.180, 23.30.185, 23.30.190,
6 23.30.200, or 23.30.215, and who provided health insurance to the employee at the date of injury
7 shall also reimburse the employee for health insurance coverage for the employee and covered
8 dependents, as provided in this section.

9 (b) Payment required under this section is equal to the employer's current contribution
10 for health insurance or the amount paid by the employee for replacement coverage, whichever
11 amount is less. Payment required under this section commences when the employee's health
12 insurance provided by the employer's contribution ceases and shall continue until the employee
13 is no longer receiving compensation described in (a) of this section, or for 18 months, whichever
14 period is shorter.

15 (c) Payment is not required under this section until the employee provides proof of health
16 insurance coverage. In this subsection, "health insurance" includes

17 (1) an individual policy of health insurance; or

18 (2) a notice of self-payment for continuance of coverage required under 29 U.S.C.
19 1161 (Consolidated Omnibus Budget Reconciliation Act of 1985) or under a union health or
20 welfare trust agreement.

21 (d) If benefits required under this section are not paid within 30 days after the employer
22 receives a request for payment, the employer shall pay a penalty equal to 25 percent of the
23 amount due.

24 * Sec. 4. AS 23.30.075(b) is amended to read:

25 (b) If an employer fails to insure and keep insured employees subject to this chapter or
26 fails to obtain a certificate of self-insurance from the board, upon conviction, the court may
27 [SHALL] impose a fine of up to \$10,000 and may impose a sentence of imprisonment for not
28 more than one year. In addition, the board may impose a civil penalty of up to three times
29 the manual rate that would have been charged for the employer's insurance premium
30 during the period the employer failed to obtain insurance. If an employer is a corporation,
31 all persons who, at the time of the injury or death, had authority to insure the corporation or

1 apply for a certificate of self-insurance [,] and the person actively in charge of the business of
2 the corporation shall be subject to the penalties prescribed in this subsection and shall be
3 personally, jointly, and severally liable together with the corporation for the payment of all
4 compensation or other benefits for which the corporation is liable under this chapter if the
5 corporation at that time is not insured or qualified as a self-insurer.

6 * Sec. 5. AS 23.30.095 is amended by adding a new subsection to read:

7 (l) The employer shall provide to the employee one round trip coach fare airline ticket
8 to the place at which an examination described under (e) of this section is performed and two
9 days per diem at the rate paid to state employees who travel outside the state if the examination
10 requires the employee to travel outside the state. If the employee objects to the physician's
11 report of the examination, takes the deposition of the physician and the deposition is taken
12 outside the state, or if the employer takes the deposition of the physician who performs the
13 examination and the deposition is taken outside the state, the employer shall provide one round
14 trip coach fair airline ticket to the location of the deposition and two days per diem at the rate
15 paid to state employees who travel outside the state.

16 * Sec. 6. AS 23.30.107 is amended to read:

17 Sec. 23.30.107. RELEASE OF INFORMATION; CONFIDENTIALITY. Upon request,
18 an employee shall provide written authority to the employer, carrier, rehabilitation provider, or
19 rehabilitation administrator to obtain medical and rehabilitation information relative to the
20 employee's injury and any prior injury. Except for medical records released to the
21 employer, carrier, rehabilitation provider, rehabilitation administrator, or other person
22 selected by the employee, the employee's medical records in the possession of the division
23 of workers' compensation are confidential and are not subject to the public records
24 inspection requirements of AS 09.25.110 - 09.25.121.

25 * Sec. 7. AS 23.30.110 is amended by adding a new subsection to read:

26 (h) If the board determines that the employee's injury resulted from the employer's
27 wilful, serious, and repeated violation of state or federal occupational safety or health guidelines,
28 the board shall report the violation to the Occupational Safety and Health Review Board
29 (AS 18.60.057).

30 * Sec. 8. AS 23.30.155(o) is amended to read:

31 (o) The division of workers' compensation [BOARD] shall promptly notify the division

1 of insurance if the division of workers' compensation [BOARD] determines that the employer's
2 insurer, including an adjuster for a self-insured employer, has filed a notice of controversion
3 for a frivolous or unfair reason. Notice of frivolous or unfair controversion is required even
4 if a hearing is not held or compensation is not awarded by the board [FRIVOLOUSLY OR
5 UNFAIRLY CONTROVERTED COMPENSATION DUE UNDER THIS CHAPTER]. After
6 receiving notice from the division of workers' compensation [BOARD], the division of
7 insurance shall determine if the insurer or adjuster has committed an unfair claim settlement
8 practice under AS 21.36.125. If the division of workers' compensation determines that an
9 adjuster for a self-insured employer has filed a notice of controversion for a frivolous or
10 unfair reason, the board shall consider the self-insured employer's claims adjusting
11 practices and may cancel or fail to renew the employer's self-insurance certificate.

12 * Sec. 9. AS 23.30.155 is amended by adding a new subsection to read:

13 (p) Compensation due an employee under this chapter shall be paid by negotiable bank
14 check that can be cashed not more than three business days after being issued.

15 * Sec. 10. AS 23.30 is amended by adding a new section to read:

16 Sec. 23.30.232. CIVIL LIABILITY FOR WORKPLACE SAFETY INSPECTIONS. A
17 carrier, an insurance service agent to a self-insured employer, or a trade association is not liable
18 for civil damages as a result of an act or omission in performing or failing to perform a
19 workplace safety inspection or a safety advisory service unless the carrier's, agent's, or
20 association's act or failure to act constitutes reckless or intentional misconduct.

21 * Sec. 11. AS 23.30 is amended by adding a new section to read:

22 Sec. 23.30.238. VOLUNTEER EMERGENCY MEDICAL TECHNICIANS AS
23 EMPLOYEES. (a) A person who is injured during the course and within the scope of providing
24 service as a volunteer emergency medical technician is an employee of the state for purposes of
25 this chapter if the person

26 (1) is certified by the state under AS 18.08 as an emergency medical technician;

27 (2) provides emergency medical service outside an incorporated city or borough;

28 and

29 (3) is not otherwise covered for that injury by an employer's workers'
30 compensation insurance policy or self-insurance certificate.

31 (b) The gross weekly earnings for a person receiving benefits under this section shall be

1 the gross weekly earnings paid a full-time emergency medical technician employed in the city
2 or borough nearest to the place where the injury occurred, or, if the nearest city or borough has
3 no full-time emergency medical technician, at a reasonable figure previously set by the nearest
4 city or borough to make this determination, but in no case may the gross weekly earnings for
5 calculating compensation be less than the minimum wage computed on the basis of 40 hours of
6 work a week.

7 * Sec. 12. AS 23.30.265(2) is amended to read:

8 (2) "arising out of and in the course of employment" includes employer-required
9 or supplied travel to and from a remote job site; activities performed at the direction or under the
10 control of the employer; and employer-sanctioned activities at employer-provided facilities; but
11 excludes recreational activities sponsored by the employer that are performed at facilities
12 not provided by the employer, unless participation is required as a condition of
13 employment, and activities of a personal nature away from employer-provided facilities;

14 * Sec. 13. AS 23.30.265(15) is amended to read:

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

28 * Sec. 14. AS 23.30.265 is amended by adding a new paragraph to read:

29 (34) "volunteer emergency medical technician" means a person who is certified
30 by the state as an emergency medical technician under AS 18.08 and who provides emergency
31 medical services on a voluntary basis.

1 * **Sec. 15. DIVISION OF INSURANCE REPORT.** The division of insurance shall prepare a report
2 on the feasibility of implementing a contracting classification premium adjustment program to provide
3 premium credits for employers who purchase workers' compensation insurance. The report must include
4 comments and recommendations from labor and management representatives in the state. The division
5 of insurance shall submit the report to the Second Session of the Seventeenth Alaska State Legislature
6 by January 31, 1992.

7 * **Sec. 16. DIVISION OF WORKERS' COMPENSATION REPORT.** The division of workers'
8 compensation shall report to the Alaska State Legislature by January 1, 1992, with the following:

- 9 (1) recommendations for changes to AS 23.30 that will promote workplace safety;
- 10 (2) recommendations for increasing workplace safety;
- 11 (3) a discussion of the effect, if any, of the enactment of ch. 79, SLA 1988, on workers'
12 compensation;
- 13 (4) a determination of the effectiveness of AS 23.30.145 in ensuring that employees who
14 file claims are receiving adequate legal representation;
- 15 (5) a survey of claims filed in 1989 and 1990 to determine
 - 16 (A) how many employees were not represented by an attorney in making the
17 claim; and
 - 18 (B) how many employees who were not represented by an attorney tried but
19 failed to find legal representation;
- 20 (6) a determination of whether the procedures used by the board in granting a "blanket"
21 release of medical information are adequate to avoid the release of nonmedical information that is not
22 relevant to the claim;
- 23 (7) a determination of whether employers or carriers are routinely requesting a "blanket"
24 release of medical information in an effort to discourage injured employees from filing a claim, and if
25 this is occurring, recommendations for legislation to halt this practice; and
- 26 (8) recommendations for reducing fees charged by attorneys who represent employees
27 and carriers.

28 * **Sec. 17.** This Act takes effect immediately under AS 01.10.070(c).