

**HOUSE CS FOR CS FOR SENATE BILL NO. 219 (JUDICIARY)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**SEVENTEENTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered: 5/18/91**

**Referred: Today's Calendar**

**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 11, 14, AND 15.** (a) It is the purpose of sec. 11 of this Act  
5 to 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. 14 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 (c) It is the purpose of sec. 15 of this Act to amend AS 23.30.265(21) to clarify that medical  
13 stability results from a condition from which objectively measurable improvement or deterioration is not  
14 expected from further medical treatment, and that medical stability is presumed in the absence of

1 improvement or deterioration after 45 days.

2 \* **Sec. 2.** AS 23.30.041(k) is repealed and reenacted to read:

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

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

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

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

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

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

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

30 (A) the employer shall pay the employee 60 percent of the spendable  
31 weekly wage during the period of controversion or appeal, except that temporary

1           disability benefits shall be paid until the employee reaches medical stability;

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

4                       (C) payments made at 60 percent of the employee's spendable weekly  
5           wage during controversion or appeal may not be offset from permanent impairment  
6           benefits due to the employee.

7   \* Sec. 3. AS 23.30.041 is amended by adding a new subsection to read:

8           (q) After a person has been assigned to perform medical management services for an  
9           injured employee, the person shall send written notice to the employee, the employer, and the  
10          employee's physician explaining in what capacity the person is employed, whom the person  
11          represents, and the scope of the services to be provided.

12   \* Sec. 4. AS 23.30 is amended by adding a new section to read:

13           Sec. 23.30.047. BENEFITS FOR HEALTH INSURANCE. (a) An employer who pays  
14          compensation to an injured employee under AS 23.30.041(k), 23.30.180, 23.30.185, 23.30.190,  
15          23.30.200, or 23.30.215, and who provided health insurance to the employee at the date of injury  
16          shall also reimburse the employee for health insurance coverage for the employee and covered  
17          dependents, as provided in this section.

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

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

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

27                       (2) a notice of self-payment for continuance of coverage required under 29 U.S.C.  
28          1161 (Consolidated Omnibus Budget Reconciliation Act of 1985) or under a union health or  
29          welfare trust agreement.

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

1 amount due.

2 \* Sec. 5. AS 23.30.075(b) is amended to read:

3 (b) If an employer fails to insure and keep insured employees subject to this chapter or  
4 fails to obtain a certificate of self-insurance from the board, upon conviction, the court may  
5 [SHALL] impose a fine of up to \$10,000 and may impose a sentence of imprisonment for not  
6 more than one year. In addition, the board may impose a civil penalty of up to three times  
7 the manual rate that would have been charged for the employer's insurance premium  
8 during the period the employer failed to obtain insurance. If an employer is a corporation,  
9 all persons who, at the time of the injury or death, had authority to insure the corporation or  
10 apply for a certificate of self-insurance [,] and the person actively in charge of the business of  
11 the corporation shall be subject to the penalties prescribed in this subsection and shall be  
12 personally, jointly, and severally liable together with the corporation for the payment of all  
13 compensation or other benefits for which the corporation is liable under this chapter if the  
14 corporation at that time is not insured or qualified as a self-insurer.

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

16 (l) The employer shall provide to the employee one round trip coach fare airline ticket  
17 to the place at which an examination described under (e) of this section is performed and per  
18 diem at the rate and in the amount paid to state employees for equivalent travel outside the state  
19 if the examination requires the employee to travel outside the state. If the employee's physician  
20 recommends that an attendant accompany the employee when traveling, the employer shall  
21 provide the attendant with an airline ticket and per diem as required to be provided to the  
22 employee under this subsection. If in relation to the employee's injury, the employee takes a  
23 deposition of a physician and the deposition is taken outside the state, or if the employer takes  
24 a deposition of a physician who performs an examination described under (e) of this section and  
25 the deposition is taken outside the state, the employer shall provide one round trip coach fair  
26 airline ticket to the location of the deposition and per diem at the rate and in the amount paid to  
27 state employees for equivalent travel outside the state.

28 \* Sec. 7. AS 23.30.107 is amended to read:

29 Sec. 23.30.107. RELEASE OF INFORMATION; CONFIDENTIALITY. Upon request,  
30 an employee shall provide written authority to the employer, carrier, rehabilitation provider, or  
31 rehabilitation administrator to obtain medical and rehabilitation information relative to the

1 employee's injury and any prior injury. Except for medical records released to the  
2 employer, carrier, rehabilitation provider, rehabilitation administrator, or other person  
3 selected by the employee, the employee's medical records in the possession of the division  
4 of workers' compensation are confidential and are not subject to the public records  
5 inspection requirements of AS 09.25.110 - 09.25.121.

6 \* Sec. 8. AS 23.30.110 is amended by adding a new subsection to read:

7 (h) If the board determines that the employee's injury resulted from the employer's  
8 wilful, serious, and repeated violation of state or federal occupational safety or health guidelines,  
9 the board shall report the violation to the division of labor standards and safety.

10 \* Sec. 9. AS 23.30.155(o) is amended to read:

11 (o) The division of workers' compensation [BOARD] shall promptly notify the division  
12 of insurance if the division of workers' compensation [BOARD] determines that the employer's  
13 insurer, including an adjuster for a self-insured employer, has filed a notice of controversion  
14 for a frivolous or unfair reason. Notice of frivolous or unfair controversion is required even  
15 if a hearing is not held or compensation is not awarded by the board [FRIVOLOUSLY OR  
16 UNFAIRLY CONTROVERTED COMPENSATION DUE UNDER THIS CHAPTER]. After  
17 receiving notice from the division of workers' compensation [BOARD], the division of  
18 insurance shall determine if the insurer or adjuster has committed an unfair claim settlement  
19 practice under AS 21.36.125. If the division of workers' compensation determines that an  
20 adjuster for a self-insured employer has filed a notice of controversion for a frivolous or  
21 unfair reason, the board shall consider the self-insured employer's claims adjusting  
22 practices and may cancel or fail to renew the employer's self-insurance certificate.

23 \* Sec. 10. AS 23.30.155 is amended by adding a new subsection to read:

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

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

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

1 \* Sec. 12. AS 23.30 is amended by adding a new section to read:

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

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

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

8                     and

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

11                   (b) The gross weekly earnings for a person receiving benefits under this section shall be  
12 the gross weekly earnings paid a full-time emergency medical technician employed in the city  
13 or borough nearest to the place where the injury occurred, or, if the nearest city or borough has  
14 no full-time emergency medical technician, at a reasonable figure previously set by the nearest  
15 city or borough to make this determination, but in no case may the gross weekly earnings for  
16 calculating compensation be less than the minimum wage computed on the basis of 40 hours of  
17 work a week.

18 \* Sec. 13. AS 23.30.265(2) is amended to read:

19                   (2) "arising out of and in the course of employment" includes employer-required  
20 or supplied travel to and from a remote job site; activities performed at nonremote the direction  
21 or under the control of the employer; and employer-sanctioned activities at employer-provided  
22 facilities; but excludes recreational activities sponsored by the employer that are performed  
23 at nonremote facilities not owned or leased by the employer, unless participation is required  
24 as a condition of employment, and activities of a personal nature away from employer-provided  
25 facilities;

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

27                   (15) "gross earnings" means periodic payments [,] by an employer to an employee  
28 for employment before any authorized or lawfully required deduction or withholding of money  
29 by the employer, including wages [COMPENSATION THAT IS] deferred at the option of the  
30 employee and temporary disability compensation for an occupational injury or illness, and  
31 excluding irregular bonuses, reimbursement of expenses, expense allowances, and any benefit or

1 payment to the employee that is not fully taxable to the employee during the pay period, except  
2 that the total amount of contributions made by an employer to a qualified pension or profit  
3 sharing plan during the two plan years preceding the injury, multiplied by the percentage of the  
4 employee's vested interest in the plan at the time of injury, shall be included in the determination  
5 of gross earnings; the value of room and board if taxable to the employee may be considered in  
6 determining gross earnings; however, the value of room and board that would raise an  
7 employee's gross weekly earning above the state average weekly wage at the time of injury may  
8 not be considered;

9 \* Sec. 15. AS 23.30.265(21) is amended to read:

10 (21) "medical stability" means the date after which further objectively measurable  
11 improvement or deterioration from the effects of the compensable injury is not reasonably  
12 expected to result from additional medical care or treatment, notwithstanding the possible need  
13 for additional medical care or the possibility of improvement or deterioration resulting from the  
14 passage of time; medical stability shall be presumed in the absence of objectively measurable  
15 improvement or deterioration for a period of 45 days; this presumption may be rebutted by clear  
16 and convincing evidence;

17 \* Sec. 16. AS 23.30.265 is amended by adding a new paragraph to read:

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

21 \* Sec. 17. DIVISION OF INSURANCE REPORT. The division of insurance shall prepare a report  
22 on the feasibility of implementing a contracting classification premium adjustment program to provide  
23 premium credits for employers who purchase workers' compensation insurance. The report must include  
24 comments and recommendations from labor and management representatives in the state. The division  
25 of insurance shall submit the report to the Second Session of the Seventeenth Alaska State Legislature  
26 by January 31, 1992.

27 \* Sec. 18. DIVISION OF WORKERS' COMPENSATION REPORT. The division of workers'  
28 compensation shall report to the Alaska State Legislature by January 1, 1992, with the following:

- 29 (1) recommendations for changes to AS 23.30 that will promote workplace safety;  
30 (2) recommendations for increasing workplace safety;  
31 (3) a discussion of the effect, if any, of the enactment of ch. 79, SLA 1988, on workers'

1 compensation;

2 (4) a determination of the effectiveness of AS 23.30.145 in ensuring that employees who  
3 file claims are receiving adequate legal representation;

4 (5) a survey of claims filed in 1989 and 1990 to determine

5 (A) how many employees were not represented by an attorney in making the  
6 claim; and

7 (B) how many employees who were not represented by an attorney tried but  
8 failed to find legal representation;

9 (6) a determination of whether the procedures used by the board in granting a "blanket"  
10 release of medical information are adequate to avoid the release of nonmedical information that is not  
11 relevant to the claim;

12 (7) a determination of whether employers or carriers are routinely requesting a "blanket"  
13 release of medical information in an effort to discourage injured employees from filing a claim, and if  
14 this is occurring, recommendations for legislation to halt this practice; and

15 (8) recommendations for reducing fees charged by attorneys who represent employers  
16 and carriers.

17 \* Sec. 19. This Act takes effect immediately under AS 01.10.070(c).