

HOUSE CS FOR CS FOR SENATE BILL NO. 219 (JUDICIARY) am H**IN THE LEGISLATURE OF THE STATE OF ALASKA****SEVENTEENTH LEGISLATURE - FIRST SESSION****BY THE HOUSE JUDICIARY COMMITTEE****Amended: 5/19/91****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."

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 AS 23.30.041(k) is repealed and reenacted to read: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
12 notify the division of insurance if the division of workers' compensation [BOARD] determines that
13 the employer's insurer, including an adjuster for a self-insured employer, has filed a notice of
14 controversion for an apparently frivolous or unfair reason. Notice of an apparently frivolous or
15 unfair controversion is required even if a hearing is not held or compensation is not awarded by
16 the board [FRIVOLOUSLY OR UNFAIRLY CONTROVERTED COMPENSATION DUE UNDER
17 THIS CHAPTER]. After receiving notice from the division of workers' compensation [BOARD], the
18 division of 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 adjuster
20 for a self-insured employer has filed a notice of controversion for an apparently frivolous or unfair
21 reason, the board shall consider the self-insured employer's claims adjusting practices and may
22 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 or is an active roster volunteer member of a state certified emergency medical service and is
8 registered with the Department of Health and Social Services;

9 (2) provides emergency medical service outside an incorporated city or borough;
10 and

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

13 (b) The gross weekly earnings for a person receiving benefits under this section shall be
14 the minimum gross weekly earnings paid a full-time emergency medical technician employed in
15 the city or borough nearest to the place where the injury occurred, or, if the nearest city or
16 borough has no full-time emergency medical technician, at a reasonable figure previously set by
17 the nearest city or borough to make this determination, but in no case may the gross weekly
18 earnings for calculating compensation be less than the minimum wage computed on the basis of
19 40 hours of work a week.

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

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

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

29 (15) "gross earnings" means periodic payments [,] by an employer to an employee
30 for employment before any authorized or lawfully required deduction or withholding of money
31 by the employer, including wages [COMPENSATION THAT IS] deferred at the option of the

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

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

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

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

20 (34) "volunteer emergency medical technician" means a person who (A) is
21 certified by the state as an emergency medical technician under AS 18.08 or (B) is an active
22 roster volunteer member of a state certified emergency medical service and is registered with the
23 Department of Health and Social Services, and who provides emergency medical services on a
24 voluntary basis.

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

31 * Sec. 18. DIVISION OF WORKERS' COMPENSATION REPORT. The division of workers'

1 compensation shall report to the Alaska State Legislature by January 1, 1992, with the following:

2 (1) recommendations for changes to AS 23.30 that will promote workplace safety;

3 (2) recommendations for increasing workplace safety;

4 (3) a discussion of the effect, if any, of the enactment of ch. 79, SLA 1988, on workers'
5 compensation;

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

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

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

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

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

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

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