

1-25-82

HB 159

Sofa ✓✓✓

January 25, 1982

Original sponsor: Rules/Legislative Council

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 159 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to workers' compensation; and provid-
7 ing for an effective date."

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

9 ^{Sec 66 P44}
* Section 1. AS 18.80.220(a)(4) is amended to read:10 (4) an employer, labor organization or employment agency to
11 discharge, expel or otherwise discriminate against a person because he
12 has13 (A) opposed any practices forbidden under AS 18.80.200 -
14 18.80.280; [OR BECAUSE HE HAS]15 (B) filed a complaint, testified or assisted in a pro-
16 ceeding under this chapter; or17 (C) filed a claim for workers' compensation benefits
18 under AS 23.30; ^{Sec 13 P13}

19 * Sec. 2. AS 23.30.025 is amended by adding a new subsection to read:

20 (c) An insurer may issue a policy of insurance insuring the payment
21 of benefits under this chapter which provides for a deductible amount to
22 be paid by the employer. A policy with a deductible provision must be
23 approved by the director of insurance and must provide that the deduct-
24 ible amount be paid by the insurer to the employee on behalf of the
25 employer. After payment of the deductible by the insurer, the insurer
26 may recover the deductible amount from the employer. The failure of an
27 employer to reimburse an insurer for the deductible amount does not
28 relieve the insurer from any other obligation it may have under the
29 policy of insurance. An insurer is not required to apply for a deviation

1 under AS 21.39.070 in order to issue a policy under this subsection.
 2 This subsection does not apply to a policy of excess insurance purchased
 3 by a self-insurer.

4 * Sec. 3. AS 23.30.045(c) is amended to read:

5 (c) For a person eligible for vocational rehabilitation service
 6 under this chapter or AS 23.15.080 [AND] who is placed with an employer
 7 for service [WITHOUT WAGES] at the request of the board or the division
 8 [OFFICE] of vocational rehabilitation to give him on the job training,
 9 work readiness, [OR] work therapy experience [,] or work sampling, the
 10 liability set out in (a) of this section applies to the state rather
 11 than to the employer.

12 * Sec. 4. AS 23.30.080 is amended by adding a new subsection to read:

13 (d) If an employer fails to insure or provide security as required
 14 by AS 23.30.075, the board may issue a stop order prohibiting the use of
 15 employee labor by the employer until the employer insures or provides
 16 security as required by AS 23.30.075. If an employer fails to comply
 17 with a stop order issued under this section, the board shall assess a
 18 civil penalty of at least \$1,000 per day. The employer may not obtain a
 19 public contract with the state or any of its political subdivisions for
 20 one year following the violation of the stop order.

21 * Sec. 5. AS 23.30.095(a) is amended to read:

22 (a) The employer shall furnish medical, surgical, and other atten-
 23 dance or treatment, nurse and hospital service, medicine, crutches, and
 24 apparatus for the period which the nature of the injury or the process
 25 of recovery requires [, NOT EXCEEDING TWO YEARS FROM AND AFTER THE DATE
 26 OF INJURY TO THE EMPLOYEE. HOWEVER, IF THE CONDITION REQUIRING THE
 27 TREATMENT, APPARATUS, OR MEDICINE IS A LATENT ONE, THE TWO-YEAR PERIOD
 28 RUNS FROM THE TIME THE EMPLOYEE HAS KNOWLEDGE OF THE NATURE OF HIS
 29 DISABILITY AND ITS RELATIONSHIP TO HIS EMPLOYMENT AND AFTER-DISABLEMENT.

1 IT SHALL BE ADDITIONALLY PROVIDED THAT, IF CONTINUED TREATMENT OR CARE
 2 OR BOTH BEYOND THE TWO-YEAR PERIOD IS INDICATED, THE INJURED EMPLOYEE
 3 HAS THE RIGHT OF REVIEW BY THE BOARD. THE BOARD MAY AUTHORIZE CONTINUED
 4 TREATMENT OR CARE OR BOTH AS THE PROCESS OF RECOVERY MAY REQUIRE]. When
 5 medical care is required, the injured employee may designate a health
 6 care provider [LICENSED PHYSICIAN] inside the state to render the care
 7 except in cases where, in the judgment of the board, care or treatment
 8 or both can best be administered by the selection of another health care
 9 provider [PHYSICIAN]. Upon procuring the services of a health care
 10 provider [PHYSICIAN], the injured employee shall give proper notifica-
 11 tion of his selection to the employer within a reasonable time after
 12 first being treated. [IF FOR ANY REASON DURING THE PERIOD WHEN MEDICAL
 13 CARE IS REQUIRED THE EMPLOYEE WISHES TO CHANGE TO ANOTHER PHYSICIAN, HE
 14 MAY DO SO IN ACCORDANCE WITH RULES PRESCRIBED BY THE BOARD.]

15 * Sec. 6. AS 23.30.095(b) is amended to read:

16 (b) If the employee is unable to designate a health care provider
 17 [PHYSICIAN] and the emergency nature of the injury requires immediate
 18 medical care, or if he does not desire to designate a health care pro-
 19 vider [PHYSICIAN] and so advises the employer, the employer shall desig-
 20 nate the health care provider [PHYSICIAN]. Designation under this
 21 subsection, however, does not prevent the employee from subsequently
 22 designating a health care provider [PHYSICIAN] for continuance of re-
 23 quired medical care.

sec 31 P 24+25

24 * Sec. 7. AS 23.30.095(c) is amended to read:

25 (c) No claim for medical or surgical treatment is valid and en-
 26 forceable as against the employer unless, within 20 [TWENTY] days follow-
 27 ing the first treatment ~~and following the time set by the board for~~
 28 ~~notice of subsequent treatments~~, the health care provider [PHYSICIAN]
 29 giving the treatment or the employee receiving it furnishes to the

1 employer and the board notice of the injury and treatment, preferably on
2 a form prescribed by the board. The board shall [MAY], however, excuse
3 the failure to furnish notice within 20 days when it finds it to be in
4 the interest of justice to do so, and it may, upon application by a
5 party in interest, make an award for the reasonable value of the medical
6 or surgical treatment so obtained by the employee.

7 * Sec. 8. AS 23.30.095(e) is amended to read:

8 (e) The employee shall, after an injury, at reasonable times
9 during the continuance of his disability if requested by his employer
10 or, when ordered by the board, submit himself to an examination by a
11 health care provider [PHYSICIAN OR SURGEON] authorized to practice
12 [MEDICINE] under the laws of the state in which the employee may be
13 found, furnished and paid for by the employer. [THE EMPLOYEE HAS THE
14 RIGHT TO HAVE A PHYSICIAN, PAID FOR BY THE EMPLOYER, PRESENT AT THE
15 EXAMINATION OR EXAMINATIONS.] No fact relative to the injury or claim
16 communicated to or otherwise learned by a health care provider [PHYSI-
17 CIAN OR SURGEON] who may have attended or examined the employee, or who
18 may have been present at an examination is privileged, either in the
19 hearings provided for in this chapter or an action to recover damages
20 against an employer who is subject to the benefits [COMPENSATION] provi-
21 sions of this chapter. If an employee refuses to submit himself to any
22 examination provided for in this section [HEREIN], his rights to compen-
23 sation shall be suspended until the obstruction or refusal ceases, and
24 his compensation during the period of suspension may, in the discretion
25 of the board or the court determining an action brought for the recovery
26 of damages under this chapter [HEREUNDER], be forfeited. The board in
27 any case of death may require an autopsy at the expense of the party
28 requesting the autopsy. No autopsy may be held without notice first
29 being given to the widow or widower or next of kin if they reside in the

1 state or their whereabouts can be reasonably ascertained, of the time
 2 and place of the autopsy and reasonable time and opportunity given the
 3 widow or widower or next of kin to have a representative present to
 4 witness the autopsy. If no adequate notice is given, the findings from
 5 the autopsy may be suppressed on motion made to the board or to the
 6 superior court, as the case may be.

7 * Sec. 9. ^{Sec 36 P 26} AS 23.30.105(a) is amended to read:

8 (a) The right to benefits [COMPENSATION FOR DISABILITY] under this
 9 chapter is barred unless a claim for them [IT] is filed within two years
 10 after the employee has knowledge of the nature of his disability and its
 11 relation to his employment and after disablement. The [HOWEVER, THE
 12 MAXIMUM TIME FOR FILING THE CLAIM IN ANY EVENT OTHER THAN ARISING OUT OF
 13 AN OCCUPATIONAL DISEASE SHALL BE FOUR YEARS FROM THE DATE OF INJURY, AND
 14 THE] right to benefits [COMPENSATION] for death is barred unless a claim
 15 for benefits [THEREFORE] is filed within one year after the death. If [,
 16 EXCEPT THAT IF] payment of compensation has been made without an award
 17 on account of the injury or death, a claim may be filed within two years
 18 after the date of the last payment. It is additionally provided that,
 19 in the case of a latent injury [DEFECTS PERTINENT TO AND CAUSING COMPEN-
 20 SABLE DISABILITY], the injured employee has full right to claim as shall
 21 be determined by the board, time limitations notwithstanding.

22 * Sec. 10. ^{Sec 40 P 30} AS 23.30.110(c) is amended to read:

23 (c) The board shall make the investigation which it considers
 24 necessary in respect of the claim, and upon application of an interested
 25 party shall order a hearing on it. If a hearing on a claim is ordered,
 26 the board shall give the claimant and other interested parties at least
 27 10 days' notice of the hearing, served personally upon the claimant and
 28 other interested parties or sent by registered mail, and shall, within
 29 30 [20] days after the hearing is held [HAD], by order, reject the claim

1 or make an award in respect to it. If a hearing is continued by the
 2 board, additional notice under this subsection is not required. [IF NO
 3 HEARING IS ORDERED WITHIN 20 DAYS AFTER NOTICE IS GIVEN AS PROVIDED IN
 4 (b) OF THIS SECTION, THE BOARD SHALL BY ORDER REJECT THE CLAIM OR MAKE
 5 AN AWARD IN RESPECT TO IT.]

6 * Sec 11. AS 23.30.155(j) ^{Sec 45 P 33} is amended to read:

7 (j) If an employer has made advance payments or overpayments of
 8 compensation, he is entitled to be reimbursed, after approval by the
 9 board, out of any unpaid installment or installments of compensation
 10 due.

11 * Sec. 12. AS 23.30.155 is amended by adding new subsections to read:

12 (n) Compensation owed to an injured employee in the state shall be
 13 paid by a check or draft that may be cashed on the first banking day
 14 after it is received by the employee and on any succeeding banking day.

15 (o) If the board determines that it is in the interest of an
 16 injured employee and that a substantial hardship will not be imposed on
 17 the employer, the liability of the employer for all or part of compensa-
 18 tion payable under AS 23.30.190 may be discharged by the payment of a
 19 lump sum. ^{Sec 51 P 36}

20 * Sec. 13. AS 23.30.175(b) is repealed and reenacted to read:

21 (b) After June 30 and before December 1 of each year, the commis-
 22 sioner shall adopt and publish the average weekly wage for each jurisdic-
 23 tion for the preceding calendar year as published by the United States
 24 Secretary of Labor for the purposes of unemployment insurance. In
 25 determining the rate of compensation the commissioner shall use the
 26 average weekly wage figure for each jurisdiction, including Alaska, for
 27 which the Secretary of Labor computes an average weekly wage. These
 28 figures are the applicable average weekly wages for those jurisdictions
 29 for the following calendar year.

Sec. 52 P 36, 37

1 * Sec. 14. AS 23.30.175(c) is repealed and reenacted to read:

2 (c) The following rules apply to recipients who do not reside in
3 Alaska:

4 (1) The weekly rate of compensation shall be calculated by
5 multiplying the recipient's average weekly wage times the ratio of the
6 average weekly wage of the jurisdiction in which the recipient resides
7 to the average weekly wage of Alaska. The rate is based on the average
8 weekly wages in effect when the recipient leaves Alaska and shall be
9 adjusted annually upon publication of the average weekly wages for all
10 jurisdictions.

11 (2) The calculation required by this subsection does not
12 apply if the recipient is absent from Alaska for medical or rehabilita-
13 tion services not reasonably available in Alaska.

14 (3) If the average weekly wage of the recipient and the
15 resulting compensation rate is determined under AS 23.30.220(2) the
16 calculation required by this subsection applies to only those wages
17 earned in Alaska.

18 (4) Application of this subsection may not result in a reduc-
19 tion of the weekly compensation rate to less than \$65 a week except as
20 provided in (e) of this section.

Sec 53 P 37

21 * Sec. 15. AS 23.30.175(d) is repealed and reenacted to read:

22 (d) In a jurisdiction for which no average weekly wage is computed
23 by the United States Secretary of Labor for the purposes of unemployment
24 insurance, the average weekly wage shall be as determined by the commis-
25 sioner.

Sec 55 P 38, 39, 40

26 * Sec. 16. AS 23.30.190(a)(20) is amended to read:

27 (20) in all other cases in this class of disability the
28 compensation is 66-2/3 percent of the difference between his average
29 weekly wages and his wage-earning capacity after the injury in the same

1 employment or otherwise, payable during the continuance of the partial
 2 disability, but subject to reconsideration of the degree of the impair-
 3 ment by the board on its own motion or upon application of a party in
 4 interest; [WHENEVER THE BOARD DETERMINES THAT IT IS IN THE INTEREST OF
 5 JUSTICE, THE LIABILITY OF THE EMPLOYER FOR COMPENSATION, OR ANY PART OF
 6 IT AS DETERMINED BY THE BOARD, MAY BE DISCHARGED BY THE PAYMENT OF A
 7 LUMP SUM;]

8 * Sec. 17. AS 23.30.191^{SEC 56 P 40} is repealed and reenacted to read:

9 Sec. 23.30.191. EXPENSES FOR REHABILITATING INJURED EMPLOYEES. An
 10 employee, who, as a result of injury, is or may be expected to be totally
 11 or partially incapacitated for his normal occupation and who, under the
 12 direction of the board, is being rehabilitated to engage in a remunera-
 13 tive occupation, may receive compensation necessary for his rehabilita-
 14 tion of 66-2/3 percent of his average weekly wage subject to the maximum
 15 payable under AS 23.30.175.

16 * Sec. 18. AS 23.30.215(a)(1)^{SEC 58 P 41} is amended to read:

17 (1) reasonable and necessary funeral expenses not exceeding
 18 \$2,500 [\$1,000];

19 * Sec. 19. AS 23.30.220(2)^{SEC 59 P 41, 42} is amended to read:

20 (2) the average weekly wage is [THAT MOST FAVORABLE TO THE
 21 EMPLOYEE] calculated by dividing 456 [52] into the total wages earned,
 22 including self-employment, in the highest paid three consecutive years
 23 out of [ANY ONE OF] the five [THREE] calendar years immediately preced-
 24 ing the injury;^{SEC 63 P 43}

25 * Sec. 20. AS 23.30.250 is amended to read:

26 Sec. 23.30.250. PENALTY FOR MISREPRESENTATION. A person who wil-
 27 fully makes a false or misleading statement or representation for the
 28 purpose of obtaining a benefit or payment under this chapter is guilty
 29 of theft as defined in AS 11.46.100(3) and is punishable as provided in

1 AS 11.46.120 - 11.46.150 [A MISDEMEANOR, AND UPON CONVICTION IS PUNISH-
 2 ABLE BY A FINE OF NOT MORE THAN \$1,000, OR BY IMPRISONMENT FOR NOT MORE
 3 THAN ONE YEAR, OR BY BOTH].

4 * Sec. 21. AS 23.30.265(16) is amended to read:

5 (16) "medical and related benefits" includes but is not
 6 limited to physicians' fees, nurses' charges, pain clinic services,
 7 hospital services, hospital supplies, medicine and prosthetic devices,
 8 physical rehabilitation, and treatment for the fitting and training for
 9 use of such devices as may reasonably be required which arises out of or
 10 is necessitated by an injury, and transportation charges to the nearest
 11 point where adequate medical facilities are available;

12 * Sec. 22. AS 23.30.265(20) is amended to read:

13 (20) "wages" means the money rate at which the service ren-
 14 dered is recompensed under the contract of hiring [IN FORCE AT THE TIME
 15 OF THE INJURY,] and includes the reasonable value of board, rent,
 16 housing, lodging, or similar advantage received from the employer, and
 17 gratuities received in the course of employment from other [OTHERS] than
 18 the employer;

19 * Sec. 23. AS 23.30.265 is amended by adding new paragraphs to read:

20 (29) "benefits" means compensation and medical and related
 21 benefits;

22 (30) "health care provider" means a chiropractor licensed
 23 under AS 08.20; a dental hygienist licensed under AS 08.32; a dentist
 24 licensed under AS 08.36; a nurse licensed under AS 08.68; a dispensing
 25 optician licensed under AS 08.71; an optometrist licensed under AS 08.72;
 26 a pharmacist licensed under AS 08.80; a physical therapist licensed
 27 under AS 08.84; a physician licensed under AS 08.64; a podiatrist; a
 28 psychologist and a psychological associate licensed under AS 08.86; and
 29 a hospital as defined in AS 18.20.130, including a governmentally owned

1 or operated hospital; a corporate entity covered under AS 21.88.050-
 2 (b)(12); an employee of a health care provider acting within the course
 3 and scope of his employment; and persons comparably licensed in other
 4 jurisdictions to provide health care;

5 (31) "in the course of employment" includes travel to and from
 6 a remote job site but does not include activities outside of working
 7 hours off a site provided by the employer that are not under the super-
 8 vision or control of the employer.

Sec 72 P46

9 * Sec. 24. AS 23.30.095(g), 23.30.125(b), 23.30.175(e) and (f), and
 10 23.30.225(b) are repealed.

Sec 72 P46

11 * Sec. 25. This Act takes effect July 1, 1982.

HOUSE LABOR & COMMERCE
STANDING COMMITTEE
January 25, 1982
1:20 p.m.

Members Present: Rep. Martin, Chairman
Rep. Bylsma, Vice Chairman
Rep. Rogers
Rep. Randolph
Rep. Gardiner

Members Absent: No members absent.

COMMITTEE CALENDAR

HB 159 An act relating to workers' compensation,
and providing for an effective date.

WITNESS REGISTER

Tom Sofo
LAA Legal Services
State Capitol, Pouch Y
Juneau, Alaska 99811
465-3867

Position Statement: Gave overview of workdraft changes and
amendments.

Jeff Barry, Administrative Assistant
House Labor & Commerce Committee
Pouch V
Juneau, Alaska 99811
465-3669

Position Statement: Available to answer questions and present
results of research.

Jacquelyn McClintock, Director
Division of Workers Compensation
Department of Labor
PO Box 1149
Juneau, Alaska 99811
465-2790

Position Statement: Available to answer questions.

Don Koch
Division of Insurance
Department of Commerce & Economic Development
Pouch D
Juneau, Alaska 99811
465-2577

Position Statement: Available to answer questions.

Jack Thompson
WCCA/ACE
2216 Post Road
Anchorage, Alaska 99501
272-0536

Position Statement: Observing; available to answer questions.

M.C. Morgan
Division of Vocational Rehabilitation
Department of Education
9170 Glacierwood Drive
Juneau, Alaska 99801
586-6500

Position Statement: Overview of function of vocational rehabilitation; answered questions.

PREVIOUS ACTION

HB 159

No previous action. No amendments formally considered this date.

Statutory reference: AS 18.80; AS 23.30.

ACTION NARRATIVE

Tape #005
Recording
Number 0004

The meeting was called to order by Chairman Martin at 1:20 p.m. All committee members were present. Chairman Martin introduced Jeff Barry, administrative aide to the Committee, and Tom Sofo of LAA Legal Services. Chairman Martin gave a brief recap of work completed so far, and went over the week's agenda. He was hopeful that the committee would be ready for final action on HB 159 by the week of 2/14-18.

Number 0118

TOM SOFO, LAA Legal Services, went over the workdraft committee substitute for HB 159. He said all references to self-insurance are omitted from this workdraft. He noted that the bill contains a parallel section to each section of the governor's bill, HB 659, and compared the workdraft to the governor's bill section by section.

Section 1 (of HB 159): Includes form for ascertaining discrimination.

Section 2: Deals with insurance matters; allows insurers to use deductible. This was

taken from the last version of HB 159. Sofu noted that almost all amendments in this draft have appeared in prior drafts.

Number 0190

Section 4: Speaks to employer penalties and stop order authority. There was some clarification by Don Koch, Division of Insurance, and Jackie McClintock, Division of Workers Compensation.

Number 0210

Section 5: Regards furnishing of medical care. One thing introduced is the concept of "health care provider" to include a broader range of services and care. Sofu noted that the last portion of the bill defines health care providers.

Number 0242

There was discussion about reporting times. Rep Rogers preferred the draft committee substitute version of reporting times over those in the last version. Jeff Barry noted that when people don't show up for scheduled appointments for treatment, the health care provider notifies the Workers Compensation Board (under the draft CS).

Number 0279

Sofu said that, in Section 5, the draft bill removes the two-year limitation on employer furnished medical services.

Number 0307

Rep. Rogers noticed that, in Section 8, which appears on line 20, pg 4 of the draft bill, the word "benefits" replaces the word "compensation". He saw nothing wrong with that, but felt it should be consistent throughout the bill. Sofu pointed out that the Workers Compensation Act didn't consistently use the words "benefits" and "compensation". He tried to clarify the difference between the two.

Number 0346

Sofu said that, in Section 10 of the draft CS, there appeared language new to the bill: AS 23.30.110(c) notice requirements are changed from 20 days to 30 days, and if a noticed hearing is not held, no additional notice is required.

Section 19: Sofu said that, on page 8, Section 19 of the bill, regarding weekly wage, they had tried to look at a compromise method of determining compensation by taking the three highest years' wages of the

preceding five years.

- Number 0378 There was discussion between Rep. Rogers and Sofu regarding clarifying the distinction between "compensation" and "benefits". Sofu felt there was also a problem with the definition of what is meant by "in the course of employment".
- Number 0425 There was discussion among Rep. Rogers, Sofu, and McClintock regarding scheduled and unscheduled payments.
- Number 0443 Section 23: Sofu said this section includes new definitions, the most controversial of which would probably be the definition of "in the course of employment".
- Number 0456 Committee discussion: Sofu said the greatest substance deleted in the draft version is self-insurance. Rogers noted that another new change is the repeal of AS 23.30.225(b). Sofu spoke to social security offset, saying the section didn't interact correctly with federal regulations, so to correct this discrepancy, language was deleted.
- Number 0515 Rep. Rogers noted that three factors must be met for a worker not to be considered performing "in the scope of employment": 1) outside working hours; 2) off site; and, 3) not under the supervision of the employer. Considerable discussion ensued regarding what activities fell under this definition.
- Number 0570 Sofu then addressed the five proposed amendments to the workdraft. He said they were deleted from the new workdraft for ease in dealing with the legislation.
- Number 0595 Rep. Rogers did not understand why people should be denied medical benefits on the basis of how many job referrals they received; he felt the language should perhaps be changed to job "offers". There was discussion of this point between Reps. Rogers and Martin.
- Number 0672 Sofu addressed the second proposed amendment, which requires injured employees to report wages earned or lose their benefits. He said this stands as a reporting requirement. Barry said the

question could be raised as to whether an additional insurance policy, such as life insurance, could be construed as earnings. Rogers pointed out that the amendment specifically addresses reporting "wages", which are defined as something received from an employer.

Number 0701

Koch asked what the Division of Insurance would be expected to do with information when it is received. McClintock added that her division hears claims, but doesn't adjust them. Sofu said this was discussed before, and that the workdraft does not give guidelines as to what the information will be used for.

Number 0721

Sofu addressed the third proposed amendment, which referred to compensation for permanent partial disability. He said the language seems to delete the amount of time compensation could be collected, and lowers some benefits. Reps. Randolph and Rogers asked if lowering the benefit amounts had any affect on premiums, and asked the reasons for this action. Rep. Martin thought John Lewis, a consultant scheduled to give testimony later in the week, might be able to clarify this point. Barry pointed out that the effect would be that the lowest paid people would lose benefits. Rep. Rogers felt that, if low paid people were affected and higher paid people unaffected, they should look at the number of dollars, not the number of weeks. He said it would seem they would want to help the lower wage earners.

Number 0778

Sofu said the fourth proposed amendment addresses unemployment compensation. There was discussion among the committee, Sofu, and Koch.

Number 0825

Sofu said the fifth proposed amendment ensures that a worker eligible for workers compensation can't collect sick pay and workers compensation in a total amount that is more than 100% of a worker's normal pay. This provides incentive to return to work. Barry added that an example is a worker drawing holiday pay, vacation pay, and workers compensation. He noted that abuses have come in areas of non-compensable sick pay. There was discussion between the

committee and Barry.

Number 0883

Jack Thompson, of WCCA/ACE, asked if a non-union employer gets a benefit a union employer would not. Barry said no; there was discussion between Barry, Thompson, and Koch on this point.

Number 0910

Rep. Martin asked M.C. Morgan, of the Division of Vocational Rehabilitation, to address the committee.

Number 0932

M.C. Morgan said that, in this legislation, Vocational Rehabilitation is one of the primary deliverers of services to people drawing workers compensation. During the year, 500-600 disabled will be placed in employment, 40% of whom are severely disabled. Approximately 5% of those clients are under workers compensation. He gave rehabilitation statistics, breakdowns, and observations on the differences between their general caseload and the workers compensation cases. He said that disincentives to returning to work were eligibility for workers compensation on the basis of permanent injury; greater extent of injuries; and greater extent of benefits. He said it is difficult for a vocational rehabilitation counselor to motivate a client when the client knows this could damage his claim. He said this helps to explain the longer timeframe and higher cost to rehabilitate a workers compensation client.

Number 1026

At Rep. Martin's request, Morgan said he would draw up a list of suggestions, particularly suggestions to eliminate disincentives to return to work. He noted that 44% of the workers compensation referrals come 9-12 months after the injury; and 30% come 18 months after injury. He said these long referral times reduce the chances of rehabilitating the injured person. There was discussion between Martin and Morgan.

Number 1045

Rep. Rogers said that, at a December meeting with the Workers Compensation Board, it was suggested that there should be separate methods of calculating average weekly wage for permanent and partial disabilities, the temporary disability rate being based on

recent employment, and the permanent disability figured over a longer term. Rep. Martin said they should wait for John Lewis's input on this subject.

Number 1058

As there was no further business to come before the committee, the meeting was adjourned at 2:47 p.m.

LABOR & COMMERCE COMMITTEE
DAILY COMMITTEE HEARING

Date: 1/25/82

Place: _____

<u>Members</u>	<u>Present</u>	<u>Absent</u>	<u>Time Arrived</u>	<u>Time Left</u>
Rep. B. Bylsma, V. Chair	✓	EB	1:15	
Rep. D. Randolph	✓		1:18	
Rep. B. Rogers	✓		1:15	
Rep. T. Gardiner	✓		1:15	
Rep. T. Martin, Chair	✓	1:05	1:05	

Subject Matter:

House Bill No. HB 159 _____

Senate Bill No. _____

Special Orders:

Alaska State Legislature

REPRESENTATIVE
TERRY MARTIN

DISTRICT 8
CHAIRMAN—LABOR AND COMMERCE COMMITTEE
PHONE 465-3873



3960 REKA DRIVE—DC
ANCHORAGE, AK 99504
PHONE 333-6990

DURING LEGISLATURE
POUCH V
STATE CAPITOL
JUNEAU, AK 99811
PHONE 465-3784

January 5, 1982

To: All concerned about Alaska's Workers Compensation
--an addition to report of December 17, 1981

From: Representative Terry Martin

Ref: More points of view to consider for Alaska's Workers
Compensation legislation--HB 159, 1981

Changes have taken place in our state which now result in a number of claimants drawing excessively large benefit amounts or drawing benefits when they should not be entitled to them at all. An effort should be made to seek alternatives that would eliminate oversized, unearned benefits while still protecting the vast majority of the workforce. Necessary changes should result in compensation large enough for most claimants to survive on during time of recuperation and rehabilitation of injury suffered while on the job, and during period of temporary unemployment, while at the same time not reducing or eliminating the incentive to return to work.

Current policies and lack of regulations or laws result in very large benefit amounts when compared to some individuals' complete work histories. An example of this phenomena is the part-time and seasonal worker. The number of part-time/seasonal workers has grown dramatically in the past years and the projections are that the part-time/seasonal work force will continue to grow faster than the total work force. In Alaska, many seasonal and part-time workers seem to get injured in the closing days of their current jobs. For claimants

with a history of short working periods on an annual basis, a percentage of full-time workers compensation should be considered as to percentage of time worked in the immediate calendar year. The current policy is unfair to workers with full-time, long history of working, and also to employers. A strong duration formula will help to offset the adverse effects of a liberal benefit formula. Furthermore, support of persons only marginally in the labor force should be a welfare function and not a function of worker compensation.

Disqualification. Claimants should be disqualified for willful misconduct connected with work.

Gross misconduct may include acts of dishonesty, violation of safety rules, assault and battery, and destruction of employer's property as assessed by the Workers Compensation Board. The Board may also evaluate a percentage of workers compensation for willful misconduct connected with work. This would include willful acts which do not warrant a disqualification under the gross misconduct provision.

Job Refusal. Claimants may be disqualified by the Workers Compensation Board for refusal of suitable work after release by proper medical authority. Suitable work may be limited to jobs that had approximately the same pay as employment at time of injury.

Vacation Pay. The Workers Compensation Board may consider if vacation pay should postpone the individual from receiving workers compensation benefits for the weeks the vacation pay would cover. Worker compensation is designed to be a wage-lost replacement program, therefore the feeling that the employee is receiving continual wages, so it would not be appropriate to allow the individual to draw both benefits.

Unemployment Compensation. Normally an individual receiving workers compensation for any week would not be able to work, and therefore would not qualify for unemployment compensation. There are situations, however, where the person could be able to work but cannot perform his old job because of the disability. If he is receiving unemployment compensation for any such week, the worker compensation should reduce dollar for dollar any unemployment benefit the individual could otherwise receive.

Eliminate "socialized cost" of workers compensation from employers' premium rates. Rates assigned to employers should be designed to try and recoup from most employers the loss of employees wages and medical cost of injury. In many states, there has been a tendency to recognize that the cost of benefits of certain types should not be charged to individual employers; thus, the legislature should address the question of separating the socialized cost from workers compensation premiums paid by employers, and make the cost--eg, retraining and rehabilitation--the responsibility of proper State agencies. This switch in financing social cost would certainly make State agencies more conscientious of expenditures associated with so-called "retraining programs", when State revenues are used to support their non-controlled advocacies of social benefits, rather than a distant third or fourth party paying the bill, that has virtually no control over social cost of workers compensation. In evaluating the current rate formula in Alaska, the premiums may result in recouping more for socialized costs than what is necessary or fair to the employer. Since 1975, there has been an interplay where there was a large increase in benefit payments which are not recouped fast enough through the normal rate schedule.

The State legislature readily sees other factors that increase the cost of premiums for workers compensation that should be immediately addressed. These changes would reverse the incentives of staying on compensation rather than returning to work as soon as possible. For instance, the compensation formula should not result in an individual drawing more income monthly while on compensation than he or she took home while fully employed. Thus the formula should exclude from wages payments by the employer of the employee's tax for federal old age and survivors insurance, and payments from or to certain special benefits funds by employers. For monthly payments, other income from food stamps, medicaid, medicare, child care, unemployment compensation, and other social services should be not allowed or deducted.

In the state of Alaska, an employer should be subject to certain interest or penalty payments for delay or default in payments of

contributions and incur penalties for failure or delinquency in making reports of proper coverage for employees. The Workers Compensation Division or Department of Labor should be allowed authority to immediately close a business until there is proof that employees are covered for injuries received on the job and the premiums are paid up to date. It should be mandatory that insurance carriers notify the Division of Insurance within ten days when an employer has failed to pay premiums or suspended insurance policy.

Original employers, especially self-insured employers who will not for any reason rehire an employee who is re-seeking work, should be somewhat responsible to contribute to the second injury fund covering an ex-employee who is off workers compensation and working for a new employer. Such a policy may encourage reemployment by the original employer or encourage a new employer to hire previously injured or handicapped workers.